

## PUBLIC NOTICE

### HEALTH

#### THE COMMISSIONER

#### Notice of Receipt of Petition for Rulemaking

#### Definitions; Patient Rights

#### N.J.A.C. 8:43G-1.2 and 4.1(a)7

Petitioner: Lisa D. Taylor, Esq., of Inglesino, Webster, Wyciskala and Taylor, LLC of Parsippany, New Jersey.

**Take notice** that on April 8, 2021, the Department of Health (Department) received a petition for rulemaking from Lisa D. Taylor, Esq., of Inglesino, Webster, Wyciskala and Taylor, Parsippany, New Jersey.

#### **Substance or nature of the requested rulemaking action:**

The petitioner requests that the Department make certain amendments to N.J.A.C. 8:43G-1.2, Definitions, and 4.1, Patient rights.

#### **Problem or purpose of the request:**

N.J.A.C. 8:43G Hospital Licensing Standards establishes licensure standards applicable to hospitals that the Department regulates pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. N.J.A.C. 8:43G-1.2 sets forth definitions of terms that the chapter uses. N.J.A.C. 8:43G-4.1 sets forth the rights of every New Jersey hospital patient and tasks each hospital administrator with the responsibility of developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights.

N.J.A.C. 8:43G-4.1(a)7 uses the term, “next of kin.” The petitioner requests that the Department amend N.J.A.C. 8:43G-1.2 to define the term “next of kin” and identify a hierarchy of individuals whom a hospital could contact to provide consent for a patient when the patient is unable to consent, has no next of kin, and has not designated an individual to make health care decisions on the patient’s behalf.

The petitioner indicates that sometimes an individual is transported to a hospital for emergency treatment, then, after the emergency has ceased, the patient is a candidate for continued treatment at a skilled nursing facility, but is unable to consent to the transfer. Skilled nursing facilities are reluctant to accept such a patient without written consent. The petitioner states, “there are patients who have no family or whose family members are unwilling to be involved for a number of reasons but may have a close friend or other adult who is familiar with the patient’s preferences. However, in the absence of a specific basis for authorization and in an exercise of caution, many health care providers decline to accept consent from a friend or other adult.” The petitioner further states that, although the filing of an emergency petition for medical guardianship is an option, this course of action can be costly and time-consuming.

The petitioner provides copies of statutes of the States of New York, Pennsylvania, and Florida; and Delaware regulations, which identify a hierarchy of individuals from whom a hospital could obtain medical consent on behalf of such a patient.

In accordance with N.J.A.C. 1:30-4.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.