

FAMILY HEALTH CARE DECISIONS ACT FINALLY PASSES BOTH HOUSES AFTER 17 YEARS

The Family Health Care Decisions Act (FHCDA) finally passed both house after 17 years. The Governor is expected to sign the measure which reforms end of life decision making for New York State's general population.

In response to the inability of the FHCDA to pass, NYSARC initiated passage and enactment of the Health Care Decisions Act in 2002 (HCDA). The HCDA covers only persons with intellectual developmental disabilities. The HCDA was the first law in New York history to broach this sensitive legal terrain. Persons with intellectual developmental disabilities will continue to be covered by the HCDA pending the results of a study determining whether or not to merge the two laws.

This is an historic achievement for New York State and a big step forward for all New Yorkers.

Below is Governor Paterson's press release hailing the measure.

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FOR IMMEDIATE RELEASE:

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Governor Paterson Applauds Legislature's Passage of Family Health Care Decisions Act

Governor David A. Paterson today announced passage of the Family Health Care Decisions Act (FHCDA). The FHCDA allows family members to make health care decisions, including decisions about the withholding or withdrawal of life-sustaining treatment, on behalf of patients who lose their ability to make such decisions and have not prepared advance directives regarding their wishes.

"The passage of the Family Health Care Decisions Act is a monumental achievement that should be celebrated by all New Yorkers, as it will help patients receive needed medical care more quickly and avoid undue suffering for patients and their loved ones," Governor Paterson said. "I commend the legislative leaders for working with my office to make this day a reality. In particular, I applaud Assemblyman Richard Gottfried, Chair of the Assembly Health Committee, as well as Senate Health Chair Tom Duane and Senator Kemp Hannon, for having tirelessly championed this legislation. I also want to recognize the efforts of the many advocacy groups that supported this legislation, including the health care provider groups who wanted to ensure that they would be able to honor the wishes of patients and their families."

The FHCDA was first introduced in the Legislature in 1993 and was based on recommendations made by the New York State Task Force on Life and the Law. This legislation establishes a protocol for health care practitioners to determine whether a patient in a general hospital or nursing home has decision-making capacity and, for patients without such capacity, requires the selection of a surrogate from a list of individuals ranked in order of priority, including family members, domestic partners and close friends. Various safeguards are required under the FHCDA to prevent inappropriate decisions, including procedures for a patient, family member or physician to assert objections to the selection of a particular person as a surrogate or to a decision made by a surrogate.

Without a statute such as the FHCDA, the common law of New York State provides that life-sustaining treatment cannot be withdrawn or withheld from an individual who has lost the capacity to make such decisions, unless clear and convincing evidence can be produced to show that the individual would have declined treatment if competent. An advance directive, such as a living will or a health care proxy, can serve as clear and convincing evidence of a patient's wishes, but many people do not prepare such directives while they are competent to do so.

The FHCDA does not apply to individuals without decision-making capacity who have developmental disabilities or who reside in mental health facilities, if health care decisions for these individuals can be made under other laws or regulations. For example, decisions about life-sustaining treatment are authorized under the previously enacted Health Care Decisions Act for persons with developmental disabilities. The FHCDA requires establishment of a special advisory committee to guide the Task Force in careful consideration of whether decision-making for these individuals should be incorporated into the FHCDA.

Even with the passage of the FHCDA, New Yorkers are still encouraged to prepare a health care proxy, which allows an agent to make health care decisions on behalf of an individual if he or she later loses capacity. The proxy form can be tailored to give the agent as much or as little authority as the individual desires, and the agent must make decisions in accordance with the principal's wishes or, if such wishes are not known, in accordance with the principal's best interests. The proxy is able, but not required, to permit decision-making authority regarding life-sustaining treatment. If the principal's wishes regarding the administration of artificial nutrition and hydration are not known, the agent may not make decisions regarding such measures.

The health care proxy form authorized by the Public Health Law and instructions on completing the form are available on the Department of Health's website at: http://www.health.state.ny.us/professionals/patients/health_care_proxy/intro.htm.

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The following statements were provided in support of the Family Health Care Decisions Act:

Assemblyman Richard N. Gottfried, Chair of the Assembly Health Committee, said: "It has taken 17 years of tortuous struggle to get to this day. Now, families will be able to make medical decisions for loved ones who don't have the ability to do so. Patients will no longer be denied appropriate treatment, subjected to burdensome treatments, or have their wishes, values, or religious beliefs violated. Thanks to Governor Paterson, Senate Health Chair Thomas Duane, and Senator Kemp Hannon for their work in helping make this possible."

Senator Thomas K. Duane, Chair of the Senate Health Committee, said: "The FHCDA will give New Yorkers peace of mind by allowing all parents, all guardians, all partners and all families the ability to make important medical decisions. This law establishes a standard of care for incapacitated persons which has been long overdue. FHCDA is yet another progressive piece of legislation that Governor Paterson will sign into law and he deserves our thanks for his leadership."

State Health Commissioner Richard F. Daines, M.D., said: "This is a major victory for patient care and for patients' families. As a critical care specialist and a former hospital chief medical officer, I have seen the stress families endure when a patient is unable to communicate his or her wishes, and I thank Governor Paterson and legislative leaders for addressing these situations. This Act clarifies and empowers family agents to help manage patient care. Physicians across the State welcome the chance to work more closely with patients' loved ones."