



NEW YORK STATE SENATOR

Thomas K. Duane

The Senate Passes the Family Health Care Decisions Act

THOMAS K. DUANE February 24, 2010

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The New York State Senate passed the Family Health Care Decisions Act (FHCDA) today by a vote of 55-3, empowering family members and others close to the patient to make medical decisions for incapacitated patients.

Only 20 percent of individuals sign a health care proxy, leaving the overwhelming majority of patients without any opportunity for decisions to be made on their behalf if they become incapacitated. After years of inaction, the Senate passed the FHCDA to create a legal mechanism for the appointment of a health care surrogate to make health care decisions for individuals who become incapacitated.

“The Family Health Care Decisions Act was first introduced 17 years ago. Today, as the Senate Health Chair, I am proud to announce the passage of this crucial legislation -- and I am confident Governor Paterson will sign it into law,” said Senator Thomas K. Duane, the bill’s lead sponsor. “This is vitally important legislation that protects those who are incapacitated and powerless. The FHCDA eliminates the

uncertainty that care-givers face when a patient is no longer able to make decisions for him or herself, assuring that the best interests of that individual are respected.”

“For years, families have been shut out from making health care decisions for their loved ones who are incapacitated. We are empowering families and protecting patients during their time of need. This bill will give patients the opportunity they need to get the treatment they deserve. I applaud Senator Tom Duane, sponsor of this legislation, for his leadership and commitment to giving all New Yorkers a health care system that cares for their needs,” said Senate Majority Conference Leader John L. Sampson.

Senator Neil D. Breslin (D-Albany) said, “Giving incapacitated patients a voice through family members and loved ones when facing critical medical decisions is necessary and long overdue. I applaud Senator Duane for his commitment and vision to this critical issue.”

Senator Andrea Stewart-Cousins (D/WF – 35th District) stated, “I was pleased to vote in favor of this important legislation that allows families and loved ones to make the difficult decisions that are in the best interest of those in their care when they cannot do so themselves. It allows for the best options to be decided by those who are the closest and most able to make appropriate health care decisions.”

“This legislation will help families during their most vulnerable times,” said Sen. Brian X. Foley (D - Blue Point). “I commend Sen. Duane for his leadership on this very important issue and look forward to continue working with my colleagues to help patients and families on Long Island across New York State.”

David Gregorie, Executive Director of the Northeastern New York Chapter of the Alzheimer’s Association said, “The FHCDA will change how health care decisions can be made for hospital and nursing home patients who lack decision-making capacity. I have seen firsthand that the progression of Alzheimer’s disease directly impacts a patient’s decision making capabilities. Most individuals with Alzheimer’s disease that seek services from our office believe that their family member or close friend can make these kinds of decisions for them, if necessary. And indeed in most states, that is the case. But it has not been the case in New York. The FHCDA will reform that.”

Diana Martin, Regional Vice President, American Cancer Society said, “New York can emerge from the dark ages and ease the burden on patients and families facing chronic or terminal illnesses by enacting this measure that puts health care decision making power where it belongs – within the context of a patient’s relationship with their loved ones. Achieving the best quality of life possible is key for patients facing cancer. A good quality of life often is reached when survivors, their families or close friends take on the challenges of cancer and any decisions that need to be made together.”

Kenneth E. Raske, Greater New York Hospital Association president said, “By passing the Family Health Care Decisions Act, hospitals in New York will be able to work more closely than ever with patients and their families in providing quality care that is consistent with patients’ wishes and personal values. We are thrilled that New Yorkers can finally make treatment decisions for incapacitated loved ones.”

Daniel Sisto, President of the Healthcare Association of New York State, said: "These patients and their families are lost in the loopholes of existing law, too often resulting in terrible, unneeded suffering on the part of the patient and the patient's loved ones. Beyond the tragic human costs there are also the

tremendous financial costs associated with providing care that neither the patient nor the family may support. We need to free them from these terrible dilemmas and give the patient every opportunity to have his or her own wishes fulfilled. It is an essential right for all of us."

Barbara Shack, Chair of the Family Decisions Coalition Steering Committee said, "For 17 years more than 100 NY organizations have worked together to enact this bill. With today's Senate vote, NY will finally turn common sense into law by authorizing family members to make necessary medical decisions for their loved ones who have lost the mental capacity to decide for themselves."

David C Leven, Executive Director of Compassion & Choices of New York said, "Passage of this law is an historic milestone. Health care decisions will now be able to be made by loved ones for thousands of patients, each year, who lack decision making capacity, but do not have a health care agent, primarily those who are dying. In accordance with the wishes or best interests of the patients, unwanted, aggressive but costly and unnecessary treatment which often causes great suffering will be prevented or stopped and care and treatment that is wanted will now be provided".

Maria Cilenti, Legislative Director of the New York City Bar Association said, "The Family Health Care Decisions Act is a comprehensive and thoughtful approach to health care decision-making for patients who are incapacitated and have not established a proxy. This much-needed humanitarian law will balance family decision-making with several safeguard provisions, providing for the best interests of the patients and families. It will put decision-making power where it belongs - in the hands of the family, not the court."

Details of the FHCDA:

Appointing a Surrogate:

- To appoint a surrogate, the FHCDA requires a determination by an attending physician that the individual lacks decision-making capacity.
- In a nursing home, this determination must be confirmed by an independent determination by a health or social services practitioner that the individual lacks decision-making capacity.
- In a hospital, the independent determination is required only if the surrogate's decision concerns withdrawal or withholding of life-sustaining treatment.
- If there is disagreement about whether the individual lacks decision-making capacity, the matter is referred to the hospital or nursing home ethics committee for resolution.

Potential Surrogates (in order of priority):

- Court-appointed guardian;
- Individual designated orally by the subsequently incapacitated individual;
- Spouse or domestic partner;
- Adult son or daughter;

- Parent;
- Adult brother or sister;
- Close relative or friend.

Medical Decisions by a Surrogate:

- The surrogate has all the powers an individual has to make their own medical decisions, including the decision to withhold or withdraw life-sustaining treatment.
- The FHCDA directs the surrogate to make decisions in accordance with the patient's wishes, including the patient's religious and moral beliefs.
- If the patient's wishes are not reasonably known and cannot be ascertained, the FHCDA directs the surrogate to make decisions in accordance with the patient's best interests.

Decisions to Withhold or Withdraw Life-Sustaining Treatment:

- Decisions to withhold or withdraw life-sustaining treatment are governed by additional standards under the FHCDA.
- A surrogate may withhold or withdraw life-sustaining treatment for an individual if that individual will die within six months with or without treatment, as determined by two independent physicians, and treatment would be an extraordinary burden to the patient.
- A surrogate may also withhold or withdraw life-sustaining treatment if the patient has an irreversible condition, as determined by two independent physicians, and treatment would involve such pain, suffering, or other burden that it would be inhumane or extraordinarily burdensome to provide treatment under the circumstances.
- Decisions to withhold or withdraw life-sustaining treatment for minors are made by the minor's parents.

Medical Decisions for Individuals Without a Surrogate:

- The FHCDA authorizes the attending physician to act as surrogate for routine medical treatment.
- For major medical treatment, a physician may act only upon the concurrence of another physician that such major medical treatment is necessary.
- A physician may withhold or withdraw life-sustaining treatment for individuals without a surrogate only upon the independent concurrence of another physician that life-sustaining treatment offers no medical benefit to the patient because the patient will die imminently and the provision of life-sustaining treatment would violate accepted medical standards.

Individuals with Mental Retardation/Developmental Disability:

- Under the FHCDA, individuals with mental retardation or developmental disabilities are within the class of individuals for whom health care surrogates may be appointed.

“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.” said Senator Duane.

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