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New York Passes The Family Health Care Decisions Act
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Health Care

On February 24, 2010, the Senate of the State of New York passed (S.3164/A.7729), The Family Health Care Decisions Act (the "FHCDA"). The New York Assembly passed the bill in January. This important piece of legislation allowing for surrogates to make health care decisions in certain circumstances has been in the works since 1993. NY Governor David A. Paterson applauded the passage of the FHCDA.

Consumers and health care providers have historically had to rely on a patchwork of common law decisions and the Health Care Proxy and Do-Not-Resuscitate laws to address personal health care decisions. New York common law (in a line of well know court decisions) provides that life-sustaining treatment cannot be withdrawn or withheld, unless clear and convincing evidence of the patient's wishes can be produced. An advance directive could serve as that evidence but way too often patients have not completed one when they were competent.

The FHCDA now provides a framework for health care decisions to be made by surrogates. By doing so, it reduces the uncertainty and need for judicial determination in many situations in which current law did not provide a clear way for a health care decision to be made for an incompetent patient.

Assuming that certain standards are met, the FHCDA provides that a surrogate may be a spouse, domestic partner, son or daughter, parent, brother or sister or a close friend. Once identified, a surrogate can make any and all health care decisions for an adult patient could make subject to a few limitations. A surrogate must make their decision(s) in accordance with a patient's wishes and religious and moral beliefs. To the extent the surrogate doesn't know a patient's wishes or beliefs, they must act in the patient's best interest. If the decision involves withholding or withdrawing life sustaining treatment, the FHCDA requires that the surrogates decision be made only when specific circumstances exists, such as the treatment representing an extraordinary burden to the patient.

Its important to point out that the FHCDA does not apply to individuals who have developmental disabilities or who reside in mental health facilities, if health care decisions for these individuals can be made under other state laws or regulations.

Please click [here](#) for a copy of (S.3164/A.7729), The Family Health Care Decisions Act.

For additional information on the FHCDA and how it might affect you or your organization, please contact a member of Benesch's Health Care Department:

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