



NEW YORK STATE SENATOR

Thomas K. Duane

Family Health Care Decisions Act Passes Senate

THOMAS K. DUANE July 21, 2009

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For the First Time, Family Health Care Decisions Act Passes Senate; Bill Now Pending in Assembly

(Albany, NY) -- Senate Health Committee Chair Thomas K. Duane announced today that the *Family Health Care Decisions Act* (S.3164-A/A.7729-C) (FHCDA) passed the Senate on Thursday, July 16, 2009, in a unanimous, bipartisan vote of 57-0. The FHCDA grants medical decision-making authority to loved ones of an incapacitated patient who does not have a health care proxy or other advance directive. The bill is sponsored by Senator Duane and Assemblymember Richard Gottfried.

The FHCDA would permit an individual's family member, domestic partner and close friends to make health care treatment decisions when the individual no longer has decision making capacity. Further, the bill sets statutory procedures for selecting a surrogate which ensures that patients receive the health care treatment they would choose if they were not incapacitated. The FHCDA also encompasses and protects patients who are mentally ill, elderly, developmentally disabled, homeless and children where often there is neither clear evidence of wishes nor a health care proxy selected.

Currently New York is one of the most restrictive states in the nation for end-of-life decision-making by surrogates. The New York Court of Appeals has ruled that a decision to forgo

treatment of an incapacitated person may only be done if there is “clear and convincing” evidence of the patient’s wishes to stop treatment – a difficult burden that most families and loved ones cannot meet.

This marks the first time that the bill, which had key support from Senator Kemp Hannon, the ranking Republican on the Senate Health Committee, has passed the Senate. An earlier version passed the Assembly in 2006. It is a major step forward for advocates of a more sensible system for determining health care proxies in lieu of guardians or next of kin. Nationwide, 35 states have adopted laws similar to the FHCDA.

“The Family Health Care Decisions Act was first introduced 17 years ago and I am hopeful that this year the Assembly will follow our lead and send this legislation to Governor Paterson to sign into law,” **said Senator Duane**. “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.”

According to the Family Decisions Coalition, approximately 80 percent of the population does not currently have a designated healthcare proxy. In cases where patients are incapacitated in hospitals and nursing homes, existing statutes do not provide a mechanism for determining health care surrogates who can make legal and appropriate health care decisions for those people.

The FHCDA sets clear guidelines for attending physicians and health and social service practitioners to determine whether a patient has decision-making capacity. Assuming individuals do not have that capacity, the FHCDA directs the selection of a surrogate from a list of individuals ranked in order of priority, including provisions for those who live in domestic partnerships. The bill also sets guidelines for decisions to withdraw life-sustaining

treatment while including individuals with mental retardation or developmental disabilities 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 and it is my hope that we can pass this common sense and compassionate law,” **said Senator Duane.**

The bill is now pending in the Assembly Codes Committee.

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