



NEW YORK STATE SENATOR

Brian X. Foley

Sen. Foley Helps Pass Legislation Empowering Families With Health Care Decisions

BRIAN X. FOLEY February 24, 2010

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Families Health Care Decisions Act passes after being stalled for 17 years Today, State Senator Brian X. Foley (D – Blue Point) helped pass the Family Health Care Decisions Act, a long awaited healthcare bill that empowers family members to make critical medical decisions on behalf of an incapacitated loved one.

The legislation (S. 3164), which passed with bi-partisan support, had failed to pass the senate for 17 years despite being favored by healthcare advocates throughout the state.

“I am proud to help pass this crucial legislation because I know it will help families who care about a loved one no longer capable of making healthcare decisions,” Sen. Foley said. “Protecting patients during their time of greatest need and empowering families to carry out the wishes and personal values of their incapacitated loved one is the common sense and compassionate way to ensure patients get the care they deserve.”

To appoint a surrogate, the Family Healthcare Decisions Act 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. 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.

The legislation establishes a clear line of potential surrogates in priority order:

- 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

Under the Family Healthcare Decisions Act 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 surrogate is directed to make decisions in accordance with the patient’s wishes, including the patient’s religious and moral beliefs.