



NEW YORK STATE SENATOR

Malcolm Smith

Senate President Malcolm A. Smith Supports Families to Make Health Care Decisions

MALCOLM A. SMITH February 24, 2010

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Senate Passes the Family Health Care Decisions Act Empowering Families and Loved Ones to Make Important Health Care Decisions

(ST. ALBANS, NY)- Today, the New York State Senate passed (S3164) the Family Health Care Decisions Act (FHCDA), empowering family members and others to make critical medical decisions on behalf of an incapacitated loved one.

“After years of inaction, the Senate Democrats were finally able to pass this bill allowing the medical decisions of an incapacitated person to be made by a family member or loved one,” Senator Smith 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.”

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.