Family Health Care Decisions Act

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Imagine someone you love is incapacitated and unable to make decisions concerning his own well being. Now imagine that there is no way you can help this individual because the proper paper work is not in place. Even though you know very well the wishes of your loved one, your hands are tied.

That is exactly the type of scenario I hope will be cleared up through an essential piece of legislation approved recently by the state senate. Senate bill number 3164b, also known as the Family Health Care Decisions Act (FHCDA), establishes procedures and guidelines for making health care decisions on behalf of patients unable to decide about treatment for themselves.

The FHCDA is designed to protect patients who have not made their health care wishes clear and have not selected a health care proxy. The bill strikes a balance between providing adequate protections for an incapacitated patient while empowering a surrogate to help avoid unnecessary suffering.

The bill will have an impact on a staggering number of individuals. A 2008 survey of upstate New Yorkers highlighted the disparity between values and actions related to health care proxy completion. Nearly 90 percent of those surveyed said that it's important to have someone close to them making medical care decisions on their behalf if they were to have irreversible terminal conditions and were unable to communicate or make decisions. Despite that, only 42 percent of those surveyed had actually designated a health care proxy to ensure their wishes are carried out.

New York has been called 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.

Under current law, there are several groups in particular that are at risk of not having their treatment wishes carried out. While it is the practice of many health care providers to turn to the family of an incapacitated adult patient for consent to treatment, family members and close friends do not have any legal right to provide or withhold that consent. Many of the 75,000 people who die in New York health care institutions each year risk not having their wishes honored. Even parents of children 18 years of age or older are prohibited from making health care decisions for their sons and daughters.

A host of healthcare and legal groups have offered ringing endorsements of the Family Health Care Decisions Act.

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."

Maria Cilenti, legislative director of the New York City Bar Association added, "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."

As a long time supporter of the Family Health Care Decisions Act, I am pleased to see it win passage in the senate and look forward to it becoming law in New York.