

Important New Legislation

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Despite all the chaos coming out of Albany, one excellent piece of legislation has been produced that merits attention and applause.

At the end of February, the Governor announced passage of the Family Health Care Decisions Act. That act allows family members to make health care decisions for patients who have lost their ability to make such decisions and who neglected to complete advanced health care directives. Until now, no one, even including spouses or children, could make decisions about medical treatment for patients who lacked health care proxies and/or living wills unless those patients had left “clear and convincing evidence” of their wishes, and most people did not leave that type of evidence. Therefore, some incapacitated patients were denied appropriate treatment, while others received treatments that would have been contrary to their wishes and values. Patients were sometimes maintained for months with life sustaining treatments that families knew they would not have wanted, but the families could do nothing to change the situation.

Now, family members will have the right to make treatment decisions for adult patients including inserting, or withholding, or withdrawing life sustaining treatments including feeding tubes and ventilator care. There are safeguards built into the bill. For example, refusal of life sustaining treatments is acceptable only if the treatments impose “excessive burden” on the patient, if the patient is terminally ill or permanently unconscious, or if the patient has an irreversible or incurable condition and the treatment would involve inhumane or “excessively burdensome” treatments. The bill requires the selection of a specific person to be decision maker with a ranking of order in who will be selection e.g. spouse, children, etc. The bill also allows for a procedure by which objections can be raised to the person who was selected. Decisions that your surrogate makes must be consistent with your wishes or if that can’t be determined, they must be in your best interest.

While some of the protections built into the bill can slow down the process of making decisions, at least those decisions are now made by the patient’s surrogate as opposed to the health care providers or the insurance companies.

Let me be very clear about the fact that completion of advanced health care directives and health care proxy forms is still very important and preferred; don’t think you can now put those forms on the back burner and not worry about filling them out. Those forms remain the one clear way that you can control who makes your decisions without risking a challenge to that person’s authority, and those forms remain the one way you can state clearly what measures you do – and do not want – for yourself. They will avoid delay and potential frustration on the part of your loved ones, and they will insure that your wishes are heard and obeyed.

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Thanks are due our local physicians, clergy, consumers, legislators, and others who supported this bill on behalf of all of those New Yorkers who have never gotten around to completing their advanced health care directives.

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