

5014

2011-2012 Regular Sessions

I N   S E N A T E

May 2, 2011

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Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and  
when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the authority of  
an agent to act outside a hospital setting to make certain decisions  
regarding the transport of the principal to a particular medical  
setting when such principal is unconscious or unresponsive

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 4 of section 2981 of the public health law, as  
2     added by chapter 752 of the laws of 1990, is amended to read as follows:  
3     4. Commencement of agent's authority. The agent's authority shall  
4     commence upon a determination, made pursuant to subdivision one of  
5     section two thousand nine hundred eighty-three of this article, that the  
6     principal lacks capacity to make health care decisions OR IF THE PRINCI-  
7     PAL IS NOT FOUND WITHIN A HOSPITAL, MENTAL HYGIENE FACILITY OR RESIDEN-  
8     TIAL HEALTH CARE FACILITY AND IS IN AN UNCONSCIOUS OR UNRESPONSIVE  
9     STATE.  
10    S 2. Subdivision 2 of section 2982 of the public health law, as  
11    amended by chapter 230 of the laws of 2004, is amended to read as  
12    follows:  
13    2. Decision-making standard. After consultation with a licensed physi-  
14    cian, registered nurse, licensed psychologist, licensed master social  
15    worker, or a licensed clinical social worker, the agent shall make  
16    health care decisions: (a) in accordance with the principal's wishes,  
17    including the principal's religious and moral beliefs; or (b) if the  
18    principal's wishes are not reasonably known and cannot with reasonable  
19    diligence be ascertained, in accordance with the principal's best inter-  
20    ests; provided, however, that if the principal's wishes regarding the  
21    administration of artificial nutrition and hydration are not reasonably  
22    known and cannot with reasonable diligence be ascertained, the agent  
23    shall not have the authority to make decisions regarding these measures.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD11239-01-1

1 WHERE THE PRINCIPAL IS UNCONSCIOUS OR UNRESPONSIVE AND IS NOT FOUND  
2 WITHIN A HOSPITAL, MENTAL HYGIENE FACILITY OR A RESIDENTIAL HEALTH CARE  
3 FACILITY, THE AGENT SHALL MAKE DECISIONS LIMITED TO PLACEMENT IN A  
4 HOSPITAL, MENTAL HYGIENE FACILITY, RESIDENTIAL HEALTH CARE FACILITY OR  
5 THE CHOICE OF HEALTH CARE PROVIDER PURSUANT TO THIS SUBDIVISION WITHOUT  
6 CONSULTATION WITH A LICENSED PHYSICIAN, REGISTERED NURSE, LICENSED  
7 PSYCHOLOGIST, LICENSED MASTER SOCIAL WORKER, OR LICENSED CLINICAL SOCIAL  
8 WORKER.

9 S 3. Paragraph (a) of subdivision 1 of section 2983 of the public  
10 health law, as added by chapter 752 of the laws of 1990, is amended to  
11 read as follows:

12 (a) A determination that a principal lacks capacity to make health  
13 care decisions shall be made by the attending physician to a reasonable  
14 degree of medical certainty. The determination shall be made in writing  
15 and shall contain such attending physician's opinion regarding the cause  
16 and nature of the principal's incapacity as well as its extent and prob-  
17 able duration. The determination shall be included in the patient's  
18 medical record. For a decision to withdraw or withhold life-sustaining  
19 treatment, the attending physician who makes the determination that a  
20 principal lacks capacity to make health care decisions must consult with  
21 another physician to confirm such determination. Such consultation shall  
22 also be included within the patient's medical record. NO DETERMINATION  
23 BY THE PHYSICIAN SHALL BE REQUIRED WHERE THE PRINCIPAL IS FOUND OUTSIDE  
24 OF A HOSPITAL, MENTAL HYGIENE FACILITY OR RESIDENTIAL HEALTH CARE FACIL-  
25 ITY AND THE PRINCIPAL IS UNCONSCIOUS OR UNRESPONSIVE AS THERE SHALL BE A  
26 PRESUMPTION OF INCAPACITY FOR THE LIMITED PURPOSE OF EMPOWERING THE  
27 HEALTH CARE AGENT TO MAKE HEALTH CARE DECISIONS IN REGARD TO THE PRINCI-  
28 PAL'S PLACEMENT IN A HOSPITAL, MENTAL HYGIENE FACILITY, RESIDENTIAL  
29 HEALTH CARE FACILITY OR CHOOSING A HEALTH CARE PROVIDER.

30 S 4. This act shall take effect on the one hundred twentieth day after  
31 it shall have become a law. Effective immediately, the addition, amend-  
32 ment and/or repeal of any rules or regulations necessary for the imple-  
33 mentation of this act on its effective date are authorized to be made on  
34 or before such effective date.