S T A T E O F N E W Y O R K

5435

2009-2010 Regular Sessions

I N S E N A T E

May 5, 2009

Introduced by Sen. HUNTLEY -- (at request of the Office of Mental Retardation Development Disabilities) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to authorizing the consumer advisory board to make health care decisions for certain residents of the former Willowbrook state school

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

Section 1. Paragraphs (a) and (b) of subdivision 1 of section 1750-b of the surrogate's court procedure act, as added by chapter 105 of the laws of 2007, the closing paragraph of paragraph (a) as added by chapter 262 of the laws of 2008, are amended to read as follows:

(a) For the purposes of making a decision to withhold or withdraw life-sustaining treatment pursuant to this section, in the case of a person for whom no guardian has been appointed pursuant to section seventeen hundred fifty or seventeen hundred fifty-a of this article, a "guardian" shall also mean a family member of a person who (i) has mental retardation, or (ii) has a developmental disability, as defined in section 1.03 of the mental hygiene law, which (A) includes mental retardation, or (B) results in a similar impairment of general intellectual functioning or adaptive behavior so that such person is incapable of managing himself or herself, and/or his or her affairs by reason of such developmental disability. Qualified family members shall be included in a prioritized list OF SAID FAMILY MEMBERS pursuant to regulations established by the commissioner of mental retardation and developmental disabilities. Such family members must have a significant and ongoing involvement in a person's life so as to have sufficient knowledge of their needs and, when reasonably known or ascertainable, the person's wishes, including moral and religious beliefs. IN THE CASE OF A PERSON WHO WAS A RESIDENT OF THE FORMER WILLOWBROOK STATE SCHOOL ON MARCH SEVENTEENTH, NINETEEN HUNDRED SEVENTY-TWO AND THOSE ONE HUNDRED

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

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FOUR INDIVIDUALS WHO WERE IN COMMUNITY CARE STATUS ON THAT DATE AND SUBSEQUENTLY RETURNED TO WILLOWBROOK OR A RELATED FACILITY, WHO ARE FULLY REPRESENTED BY THE CONSUMER ADVISORY BOARD AND WHO HAVE NO GUARDIANS APPOINTED PURSUANT TO THIS ARTICLE OR HAVE NO QUALIFIED FAMILY MEMBERS TO MAKE SUCH A DECISION, THEN A "GUARDIAN" SHALL ALSO MEAN THE CONSUMER ADVISORY BOARD. A decision of such family members OR THE CONSUMER ADVISORY BOARD to withhold or withdraw life-sustaining treatment shall be subject to all of the protections, procedures and safeguards which apply to the decision of a guardian to withhold or withdraw life-sustaining treatment pursuant to this section.

In the case of a person for whom no guardian has been appointed pursuant to this article or for whom there is no qualified family member OR THE CONSUMER ADVISORY BOARD available to make such a decision, a "guardian" shall also mean, notwithstanding the definitions in section 80.03 of the mental hygiene law, a surrogate [court] decision-making committee, as defined in article eighty of the mental hygiene law. All declarations and procedures, including expedited procedures, to comply with this section shall be established by regulations promulgated by the commission on quality of care and advocacy for persons with disabilities.

(b) Regulations establishing the prioritized list OF QUALIFIED FAMILY MEMBERS required by paragraph (a) of this subdivision shall be developed by the commissioner of mental retardation and developmental disabilities in conjunction with parents, advocates and family members of persons who are mentally retarded. REGULATIONS TO IMPLEMENT THE AUTHORITY OF THE CONSUMER ADVISORY BOARD PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION MAY BE PROMULGATED BY THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WITH ADVICE FROM THE CONSUMER ADVISORY BOARD.

S 2. This act shall take effect immediately.