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2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. ENGLEBRIGHT, SCHIMMINGER, J. RIVERA, SCHROEDER, FIELDS, PHEFFER -- Multi-Sponsored by -- M. of A. BRENNAN, CAHILL, CLARK, JOHN, McENENY, SWEENEY, TOWNS, WEISENBERG, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing within the department of health a health care proxy registry

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

1 Section 1. Section 2980 of the public health law is amended by adding
2 a new subdivision 16 to read as follows:

3 16. "HEALTH CARE PROXY REGISTRY" OR "REGISTRY" MEANS THE HEALTH CARE
4 PROXY REGISTRY ESTABLISHED BY SECTION TWENTY-NINE HUNDRED NINETY-FOUR-A
5 OF THIS ARTICLE.

6 S 2. Subdivision 1 of section 2984 of the public health law, as added
7 by chapter 752 of the laws of 1990, is amended to read as follows:

8 1. (A) A health care provider who is provided with a health care proxy
9 shall arrange for the proxy or a copy thereof to be inserted in the
10 principal's medical record if the health care proxy has not been
11 included in such record.

12 (B) WHERE THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION HAVE NOT
13 BEEN MET AND THE REQUIREMENTS OF SECTION TWENTY-NINE HUNDRED
14 EIGHTY-THREE OF THIS ARTICLE HAVE BEEN SATISFIED, AN ATTENDING PHYSICIAN
15 OR HEALTH CARE PROVIDER SHALL CONTACT THE REGISTRY TO DETERMINE WHETHER
16 THE INDIVIDUAL HAS TRANSMITTED A HEALTH CARE PROXY TO THE REGISTRY. IN
17 THE EVENT SUCH INDIVIDUAL HAS TRANSMITTED HIS OR HER HEALTH CARE PROXY
18 TO THE REGISTRY, SUCH HEALTH CARE PROXY OR A COPY THEREOF SHALL BE
19 INSERTED IN THE PRINCIPAL'S MEDICAL RECORD.

20 S 3. The public health law is amended by adding a new section 2994-a
21 to read as follows:

22 S 2994-A. HEALTH CARE PROXY REGISTRY. 1. DEFINITIONS. FOR THE PURPOSES
23 OF THIS SECTION, "HEALTH CARE PROXY" OR "HEALTH CARE PROXIES" SHALL MEAN

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

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1 A HEALTH CARE PROXY OR HEALTH CARE PROXIES PROPERLY EXECUTED PURSUANT TO
2 THIS ARTICLE.

3 2. HEALTH CARE PROXY REGISTRY; ESTABLISHMENT. THE DEPARTMENT SHALL
4 ESTABLISH A HEALTH CARE PROXY REGISTRY, WHICH SHALL MAINTAIN HEALTH CARE
5 PROXIES SUBMITTED TO SUCH REGISTRY PURSUANT TO THIS SECTION AND PROVIDE
6 ACCESS TO SUCH REGISTRY BY ATTENDING PHYSICIANS AND HEALTH CARE PROVID-
7 ERS.

8 3. TRANSMISSION OF HEALTH CARE PROXY TO THE REGISTRY. AN INDIVIDUAL,
9 REGARDLESS OF HIS OR HER RESIDENCY, MAY TRANSMIT HIS OR HER HEALTH CARE
10 PROXY TO THE DEPARTMENT FOR PLACEMENT IN THE REGISTRY. SUCH TRANSMISSION
11 MAY BE VIA FIRST CLASS MAIL OR IN ANY OTHER MANNER PRESCRIBED BY THE
12 DEPARTMENT IN REGULATION.

13 4. ACCESS TO THE REGISTRY. THE DEPARTMENT SHALL ESTABLISH A STRAIGHT-
14 FORWARD, EASILY ACCESSIBLE MECHANISM TO PROVIDE HEALTH CARE PROVIDERS
15 ACCESS TO THE REGISTRY. SUCH ACCESS MAY BE THROUGH A WEBSITE-BASED
16 SYSTEM OR A TOLL-FREE CALLING SYSTEM. SUCH REGISTRY SHALL COMPLY WITH
17 ALL STATE AND FEDERAL LAWS AND REGULATIONS RELATED TO MAINTAINING THE
18 PRIVACY AND CONFIDENTIALITY OF RECORDS CONTAINED WITHIN THE REGISTRY.

19 5. REVOCATION OR MODIFICATION OF A HEALTH CARE PROXY. WHEN AN INDIVID-
20 UAL HAS REVOKED OR MODIFIED HIS OR HER HEALTH CARE PROXY, IT SHALL BE
21 SUCH INDIVIDUAL'S RESPONSIBILITY TO NOTIFY THE REGISTRY OF SUCH REVOCATION,
22 OR TO TRANSMIT TO THE REGISTRY SUCH MODIFIED REGISTRY.

23 6. LIABILITY. NEITHER THE DEPARTMENT, NOR THE REGISTRY, SHALL BE
24 CIVILLY OR CRIMINALLY LIABLE FOR PROVIDING, UPON REQUEST, A HEALTH CARE
25 PROXY TO AN ATTENDING HEALTH CARE PROVIDER, IF SUCH HEALTH CARE PROXY
26 BEING PROVIDED PURSUANT TO THIS SECTION HAS BEEN REVOKED OR MODIFIED
27 PURSUANT TO THIS ARTICLE BY THE INDIVIDUAL FOR WHOM THE HEALTH CARE
28 PROXY HAS BEEN CREATED AND SUCH INDIVIDUAL HAS FAILED TO TRANSMIT TO THE
29 REGISTRY PURSUANT TO THIS SECTION NOTIFICATION OF SUCH REVOCATION OR, AS
30 THE CASE MAY BE, FAILED TO TRANSMIT PURSUANT TO THIS SECTION SUCH MODI-
31 FIED HEALTH CARE PROXY.

32 S 4. The department of health shall promulgate regulations to imple-
33 ment the provisions of this act, which shall include, at a minimum,
34 provisions affording attending health care providers reasonable opportu-
35 nity to contact the health care proxy registry, at no cost to the health
36 care provider.

37 S 5. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law; provided that any rules and regulations
39 necessary to implement the provisions of this act on its effective date
40 are authorized and directed to be completed on or before such effective
41 date.