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

655

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, GANTT, MAGNARELLI, MAYERSOHN, McENENY, PAULIN, PERRY, GALEF -- Multi-Sponsored by -- M. of A. BRENNAN, COLTON, DINOWITZ, HOOPER, JACOBS, J. MILLER, PHEFFER, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requiring health care providers to inform patients or their representatives of certain errors in diagnosis, treatment or other services

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

Section 1. Legislative findings. The legislature finds that the American Medical Association (AMA) has expressed its support for physicians providing full disclosure to their patients regarding their medical treatments and conditions. The AMA's council on ethical and judicial affairs has stated: "It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions. Situations occasionally occur in which a patient suffers significant medical complications that may have resulted from the physician's mistake or judgment. In these situations, the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred. Only through full disclosure is a patient able to make informed decisions regarding future medical care." The AMA adds: "Concern regarding legal liability which might result following truthful disclosure should not affect the physician's honesty with a patient." (code of medical ethics: current opinions of the council on ethical and judicial affairs, AMA Policy Finder, E-8.12, updated June, 1994.) The legislature further finds that this ethical mandate ought to have the support of law, and ought to apply not only to physicians, but to all health care providers.

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

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S 2. The public health law is amended by adding a new section 2805-u to read as follows:

S 2805-U. HEALTH CARE PROVIDER; DUTY TO INFORM PATIENT OF ERROR. 1. DEFINITION. AS USED IN THIS SECTION, "HEALTH CARE PROVIDER" MEANS AN ENTITY LICENSED OR CERTIFIED UNDER THIS ARTICLE OR ARTICLE THIRTY-SIX OF THIS CHAPTER OR UNDER ARTICLE THIRTY-ONE OR THIRTY-TWO OF THE MENTAL HYGIENE LAW, A HEALTH CARE PRACTITIONER LICENSED, REGISTERED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW, OR A PROVIDER OF PHARMACEUTICAL PRODUCTS OR SERVICES OR DURABLE MEDICAL EQUIPMENT.

2. A HEALTH CARE PROVIDER SHALL DISCLOSE TO HIS, HER, OR ITS PATIENT OR THE PATIENT'S REPRESENTATIVE, ANY ERROR IN DIAGNOSIS, TREATMENT OR OTHER SERVICE BY THE HEALTH CARE PROVIDER THAT THE HEALTH CARE PROVIDER KNOWS HAS CAUSED SUBSTANTIAL HARM OR SIGNIFICANT RISK OF SUBSTANTIAL HARM TO THE PATIENT. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE HEALTH CARE PROVIDER KNEW OF SUCH ERROR AND OF SUCH HARM OR RISK OF HARM IF, UNDER THE CIRCUMSTANCES, THE HEALTH CARE PROVIDER REASONABLY SHOULD HAVE HAD KNOWLEDGE THEREOF. THE DISCLOSURE SHALL BE MADE WITHIN A REASONABLE PERIOD OF TIME AND BE REASONABLY UNDERSTANDABLE TO THE PATIENT OR THE PATIENT'S REPRESENTATIVE, AND SHALL INCLUDE A STATEMENT OF THE HARM OR RISK OF HARM.

3. A HEALTH CARE PROVIDER SHALL NOT BE LIABLE FOR FAILURE TO DISCLOSE AN ERROR, HARM OR RISK OF HARM UNDER THIS SECTION IF THE HEALTH CARE PROVIDER REASONABLY BELIEVES THAT SUCH DISCLOSURE HAS ALREADY BEEN MADE BY ANOTHER HEALTH CARE PROVIDER.

S 3. This act shall take effect immediately.