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

5259--A

Cal. No. 1134

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the public health law, in relation to extending the provisions of the Family Health Care Decisions act to decisions regarding hospice care

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

Section 1. Subdivision 18 of section 2994-a of the public health law, as added by chapter 8 of the laws of 2010 is amended, and two new subdivisions 5-a and 17-a are added to read as follows:

5-A. "DECISIONS REGARDING HOSPICE CARE" MEANS THE DECISION TO ENROLL OR DISENROLL IN HOSPICE, AND CONSENT TO THE HOSPICE PLAN OF CARE AND MODIFICATIONS TO THAT PLAN.

17-A. "HOSPICE" MEANS A HOSPICE AS DEFINED IN ARTICLE FORTY OF THIS CHAPTER, WITHOUT REGARD TO WHERE THE HOSPICE CARE IS PROVIDED.

18. "Hospital" means a general hospital [or], a residential health care facility, OR HOSPICE.

S 2. Subdivision 1 of section 2994-b of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

1. This article shall apply to health care decisions regarding health care provided in a hospital [to], AND TO DECISIONS REGARDING HOSPICE CARE WITHOUT REGARD TO WHERE THE DECISION IS MADE OR WHERE THE CARE IS PROVIDED, FOR a patient who lacks decision-making capacity, except as limited by this section.

S 3. Paragraph (b) of subdivision 3 of section 2994-c of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

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

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(b) (i) In a residential health care facility, a health or social services practitioner employed by or otherwise formally affiliated with the facility must independently determine whether an adult patient lacks decision-making capacity.

(ii) In a general hospital a health or social services practitioner employed by or otherwise formally affiliated with the facility must independently determine whether an adult patient lacks decision-making capacity if the surrogate's decision concerns the withdrawal or withholding of life-sustaining treatment.

(III) WITH RESPECT TO DECISIONS REGARDING HOSPICE CARE FOR A PATIENT IN A GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY, THE HEALTH OR SOCIAL SERVICES PRACTITIONER MUST BE EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY.

S 4. The opening paragraph of subdivision 5 of section 2994-d of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

Decisions to withhold or withdraw life-sustaining treatment. In addition to the standards set forth in subdivision four of this section, decisions by surrogates to withhold or withdraw life-sustaining treatment (INCLUDING DECISIONS TO ACCEPT A HOSPICE PLAN OF CARE THAT PROVIDES FOR THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT) shall be authorized only if the following conditions are satisfied, as applicable:

S 5. Subparagraph (iii) of paragraph (b) of subdivision 4 of section 2994-g of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

(iii) In a residential health care facility, AND FOR A HOSPICE PATIENT NOT IN A GENERAL HOSPITAL, the medical director of the facility OR HOSPICE, or a physician designated by the medical director, must independently determine that he or she concurs that the recommendation is appropriate; provided that if the medical director is the patient's attending physician, a different physician designated by the residential health care facility OR HOSPICE must make this independent determination. Any health or social services practitioner employed by or otherwise formally affiliated with the facility OR HOSPICE may provide a second opinion for decisions about physical restraints made pursuant to this subdivision.

S 6. Subdivision 5 of section 2994-g of the public health law is amended by adding a new paragraph (c) to read as follows:

(C) WITH RESPECT TO A DECISION REGARDING HOSPICE CARE FOR A PATIENT IN A GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY, THE SECOND PHYSICIAN MUST BE DESIGNATED BY THE GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY.

S 7. Subdivision 4 of section 2994-m of the public health law is amended by adding a new paragraph (c) to read as follows:

(C) WHEN AN ETHICS REVIEW COMMITTEE IS CONVENED TO REVIEW DECISIONS REGARDING HOSPICE CARE FOR A PATIENT IN A GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY, THE RESPONSIBILITIES OF THIS SECTION SHALL BE CARRIED OUT BY THE ETHICS REVIEW COMMITTEE OF THE GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE FACILITY, PROVIDED THAT SUCH COMMITTEE SHALL INVITE A REPRESENTATIVE FROM HOSPICE TO PARTICIPATE.

S 8. Subdivision 13 of section 2994-aa of the public health law, as added by chapter 8 of the laws of 2010, is amended to read as follows:

13. "Nonhospital order not to resuscitate" means an order that directs emergency medical services personnel, HOSPICE PERSONNEL and hospital

emergency services personnel not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest.

S 9. This act shall take effect on the sixtieth day after it shall have become a law.