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

5036

2011-2012 Regular Sessions

I N A S S E M B L Y

February 10, 2011

Introduced by M. of A. GOTTFRIED, JACOBS, DINOWITZ, PAULIN, LAVINE, JAFFEE, MILLMAN, GUNTHER, WEPRIN, P. RIVERA -- Multi-Sponsored by -- M. of A. ABINANTI, BRENNAN, GABRYSZAK, GLICK, McENENY, PHEFFER, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to allowing an adult to opt to make a health care agent's authority effective without a determination of incapacity

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

Section 1. The legislature finds that the health care proxy has proven invaluable as a means for an adult to appoint a health care agent to protect his or her wishes and interests in the event the adult loses the capacity to make those decisions personally. Yet in some instances an adult may wish the assistance of a health care agent even while he or she still has decisional capacity. For example, an adult who finds it very difficult to make health care decisions personally because of a chronic illness or disability may wish a trusted family member's assistance in making some or all such decisions for him or her, even though the adult does not lack decision-making capacity.

The legislature finds that allowing adults to opt to make their health care proxy become effective immediately or upon some other event defined by the adult, as opposed to only upon a determination of incapacity, would enable adults to secure that needed assistance. This "enhanced health care proxy" would also help patients overcome the reluctance of some health care professionals to share health information with a patient's family member or friend, or involve such person in decision-making, unless such person has effective authority under a health care proxy.

At the same time, the legislature recognizes that health care providers must always involve an adult patient who has capacity in significant

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

LBD02456-01-1

health care decisions, even if the patient had empowered an agent to act for him or her.

S 2. Subdivision 4 of section 2981 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

4. Commencement of agent's authority. The agent's authority shall commence (I) upon a determination, made pursuant to subdivision one of section two thousand nine hundred eighty-three of this article, that the principal lacks capacity to make health care decisions; OR (II) WITHOUT A DETERMINATION THAT THE PRINCIPAL LACKS CAPACITY, IF AND AS SPECIFIED IN THE HEALTH CARE PROXY.

S 3. Subdivision 1 of section 2982 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

1. Scope of authority. Subject to any express limitations in the health care proxy, an agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make. Such authority shall be subject to the provisions of section twenty-nine hundred eighty-nine of this article. WHEN AN AGENT'S AUTHORITY HAS COMMENCED WITHOUT A DETERMINATION THAT THE PRINCIPAL LACKS CAPACITY, THE AGENT'S HEALTH CARE DECISION IS SUBJECT TO THE HEALTH CARE PROVIDER'S OBLIGATION TO CONSULT WITH THE PATIENT AND SECURE THE PATIENT'S CONSENT OR NON-OBJECTION, AS PROVIDED BY PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION TWENTY-NINE HUNDRED EIGHTY-FOUR OF THIS ARTICLE.

S 4. Subdivision 2 of section 2984 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

2. (A) A health care provider shall comply with health care decisions made by an agent in good faith under a health care proxy to the same extent as if such decisions had been made by the principal, subject to any limitations in the health care proxy and pursuant to the provisions of subdivision five of section [two thousand nine] TWENTY-NINE hundred eighty-three of this article.

(B) NOTWITHSTANDING THE FOREGOING, WHEN A PATIENT'S HEALTH CARE PROXY PROVIDES FOR AN AGENT'S AUTHORITY TO COMMENCE WITHOUT A DETERMINATION THAT THE PRINCIPAL LACKS CAPACITY, BEFORE IMPLEMENTING A DECISION THAT REQUIRES INFORMED CONSENT (INCLUDING A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT) WITH RESPECT TO A PATIENT WHO HAS CAPACITY, THE HEALTH CARE PROVIDER MUST EITHER:

(I) SECURE AND DOCUMENT THE INFORMED CONSENT OF THE PATIENT TO THE TREATMENT DECISION; OR

(II) SECURE AND DOCUMENT THE INFORMED CONSENT OF THE AGENT AND, TO THE EXTENT REASONABLY PRACTICABLE, CONSULT WITH THE PATIENT ABOUT THE AGENT'S DECISION AND SECURE AND DOCUMENT THE NON-OBJECTION OF THE PATIENT TO THE AGENT'S DECISION.

S 5. This act shall take effect immediately.