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

5014--A

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the authority of an agent to act outside a hospital setting to make certain decisions regarding the transport of the principal to a particular medical setting when such principal is unconscious or unresponsive

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

Section 1. 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 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 IF THE PRINCIPAL IS NOT FOUND WITHIN A HOSPITAL, MENTAL HYGIENE FACILITY OR RESIDENTIAL HEALTH CARE FACILITY AND IS IN AN UNCONSCIOUS OR UNRESPONSIVE STATE.

S 2. Paragraph (a) of subdivision 1 of section 2983 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

(a) A determination that a principal lacks capacity to make health care decisions shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be made in writing and shall contain such attending physician's opinion regarding the cause and nature of the principal's incapacity as well as its extent and probable duration. The determination shall be included in the patient's medical record. For a decision to withdraw or withhold life-sustaining treatment, the attending physician who makes the determination that a principal lacks capacity to make health care decisions must consult with

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

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another physician to confirm such determination. Such consultation shall also be included within the patient's medical record. NO DETERMINATION BY THE PHYSICIAN SHALL BE REQUIRED WHERE THE PRINCIPAL IS FOUND OUTSIDE OF A HOSPITAL, MENTAL HYGIENE FACILITY OR RESIDENTIAL HEALTH CARE FACILITY AND THE PRINCIPAL IS UNCONSCIOUS OR UNRESPONSIVE AS THERE SHALL BE A PRESUMPTION OF INCAPACITY FOR THE LIMITED PURPOSE OF EMPOWERING THE HEALTH CARE AGENT TO MAKE HEALTH CARE DECISIONS IN REGARD TO THE CHOICE OF WHICH HOSPITAL, MENTAL HYGIENE FACILITY, OR RESIDENTIAL HEALTH CARE PROVIDER WHERE THE PRINCIPAL SHOULD BE TRANSPORTED.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized to be made on or before such effective date.