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

5309--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 22, 2013

Introduced by M. of A. SKOUFIS, ZEBROWSKI, GUNTHER, RAIA, SCHIMMINGER, GALEF, JAFFEE, MONTESANO, TITONE, BRONSON, ROBERTS, OTIS -- Multi-Sponsored by -- M. of A. ARROYO, COOK, DUPREY, GIBSON, JACOBS, PERRY, ROBINSON, SCHIMEL, SEPULVEDA, WEISENBERG -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to certain health care agents or surrogates and protecting patients

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

Section 1. Section 2992 of the public health law, as added by chapter 752 of the laws of 1990, is amended to read as follows:

S 2992. Special proceeding authorized. The health care provider, the conservator for, or committee of the principal, members of the principal's family, a close friend of the principal as defined in subdivision five of section two thousand nine hundred sixty-one of this chapter, or the commissioner of health, mental health, or [mental retardation and] developmental disabilities may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, with respect to any dispute arising under this article, including, but not limited to, a proceeding to:

1. determine the validity of the health care proxy;

2. have the agent removed on the ground that the agent (a) is not reasonably available, willing and competent to fulfill his or her obligations under this article [or]; (b) is acting in bad faith; OR (C) IS THE SUBJECT OF AN ORDER OF PROTECTION PROTECTING THE PRINCIPAL OR HAS BEEN ARRESTED OR CHARGED FOR A CRIMINAL ACT THAT ALLEGEDLY CAUSED THE PRINCIPAL'S LACK OF CAPACITY OR SUBSTANTIALLY INJURED OR IMPAIRED THE HEALTH STATUS OF THE PRINCIPAL, PROVIDED THAT THE APPLICATION OF THIS

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

LBD05345-02-3

PROVISION IN A PARTICULAR CASE MAY BE WAIVED OR MODIFIED IN THE INTEREST OF JUSTICE; or

3. override the agent's decision about health care treatment on the grounds that: (a) the decision was made in bad faith or (b) the decision is not in accordance with the standards set forth in subdivision one or two of section two thousand nine hundred eighty-two of this article.

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

2. Court orders designating surrogate. A court of competent jurisdiction may designate any individual from the surrogate list to act as surrogate, regardless of that individual's priority on the list, if the court determines that such appointment would best accord with the patient's wishes or, if the patient's wishes are not reasonably known, with the patient's best interests. THE COURT MAY REMOVE A SURROGATE ON THE GROUND THAT THE SURROGATE: (A) IS NOT REASONABLY AVAILABLE, WILLING AND COMPETENT TO FULFILL HIS OR HER OBLIGATIONS UNDER THIS ARTICLE; (B) IS ACTING IN BAD FAITH; OR (C) IS THE SUBJECT OF AN ORDER OF PROTECTION PROTECTING THE PATIENT OR HAS BEEN ARRESTED OR CHARGED FOR A CRIMINAL ACT THAT ALLEGEDLY CAUSED THE PATIENT'S LACK OF CAPACITY OR SUBSTANTIALLY INJURED OR IMPAIRED THE HEALTH STATUS OF THE PATIENT, PROVIDED THAT THE APPLICATION OF THIS PROVISION IN A PARTICULAR CASE MAY BE WAIVED OR MODIFIED IN THE INTEREST OF JUSTICE. Unless otherwise determined by a court, no surrogate decision made prior to an order designating a surrogate shall be deemed to have been invalid because of the issuance of a designating order.

S 3. This act shall take effect immediately.