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

9693

I N A S S E M B L Y

May 16, 2014

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to protecting patient health care decisions

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

Section 1. The public health law is amended by adding a new section 2999-a-1 to read as follows:

S 2999-A-1. PROTECTION OF PATIENT HEALTH CARE DECISIONS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANING:

(A) "PATIENT HEALTH CARE DECISION" MEANS AN INDIVIDUAL'S DECISION (HOWEVER EXPRESSED OR RECORDED) TO CONSENT TO, REFUSE CONSENT TO, WITHDRAW CONSENT TO, OR DEMAND ANY HEALTH CARE SERVICE OR TREATMENT OR HEALTH CARE RESEARCH TO BE PROVIDED TO OR PARTICIPATED IN BY THE INDIVIDUAL, WHICH A HEALTH CARE PROVIDER IS LEGALLY REQUIRED TO ADHERE TO OR ACCOMMODATE, AND OF WHICH THE HEALTH CARE PROVIDER KNOWS OR REASONABLY SHOULD KNOW.

(B) "PATIENT" MEANS THE INDIVIDUAL WHO IS OR WOULD BE THE RECIPIENT OF THE HEALTH CARE SERVICE OR TREATMENT OR THE SUBJECT OF THE HEALTH CARE RESEARCH. WHERE A PATIENT LACKS CAPACITY TO MAKE A PATIENT HEALTH CARE DECISION AND AN INDIVIDUAL WHO HAS LEGAL AUTHORITY TO DO SO LAWFULLY MAKES THE PATIENT HEALTH CARE DECISION, THE PATIENT HEALTH CARE DECISION SHALL BE DEEMED, FOR PURPOSES OF THIS SECTION, TO BE THE PATIENT HEALTH CARE DECISION OF THE PATIENT.

(C) "HEALTH CARE" INCLUDES BOTH PHYSICAL AND MENTAL HEALTH CARE.

(D) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL OR ENTITY LEGALLY AUTHORIZED TO PROVIDE A HEALTH CARE SERVICE OR TREATMENT OR ENGAGE IN HEALTH CARE RESEARCH.

2. IN A JUDICIAL OR ADMINISTRATIVE ACTION OR PROCEEDING RELATING TO A HEALTH CARE PROVIDER'S FAILURE OR REFUSAL TO ADHERE TO OR ACCOMMODATE A PATIENT'S PATIENT HEALTH CARE DECISION:

(A) THE ACTION OR PROCEEDING SHALL NOT BE BARRED BECAUSE THE HEALTH CARE SERVICE OR TREATMENT OR HEALTH CARE RESEARCH (I) DID NOT CAUSE

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

LBD15039-01-4

PHYSICAL, MENTAL, EMOTIONAL, OR ECONOMIC INJURY TO THE PATIENT OR (II) IMPROVED THE PHYSICAL, MENTAL, OR EMOTIONAL CONDITION OF THE PATIENT. HOWEVER, THE PRESENCE OR ABSENCE OF SUCH INJURY OR IMPROVEMENT MAY BE CONSIDERED IN THE MEASURE OF DAMAGES, PENALTY OR OTHER RELIEF.

(B) A COURT MAY AWARD DAMAGES FOR EACH DAY THE PATIENT IS SUBJECTED TO A HEALTH CARE SERVICE OR TREATMENT OR HEALTH CARE RESEARCH IN VIOLATION OF THE PATIENT'S PATIENT HEALTH CARE DECISION, IN THE AMOUNT OF TWO THOUSAND DOLLARS FOR EACH DAY OR SUCH OTHER AMOUNT AS THE COURT MAY DEEM JUST.

(C) A WAIVER BY OR ON BEHALF OF A PATIENT OF THE RIGHT TO BRING AN ACTION OR PROCEEDING UNDER THIS SUBDIVISION SHALL BE AGAINST PUBLIC POLICY AND SHALL BE VOID.

(D) LAWS AND RULES RELATING TO CIVIL ACTIONS OR PROCEEDINGS SHALL APPLY, EXCEPT AS EXPLICITLY PROVIDED OTHERWISE IN THIS SECTION.

3. THIS SECTION SHALL NOT CHANGE THE AUTHORITY OF A HEALTH CARE PROVIDER AUTHORIZED BY LAW TO PROVIDE A HEALTH CARE SERVICE OR TREATMENT IN THE ABSENCE OF OR CONTRARY TO A PATIENT'S CONSENT.

4. NO HEALTH CARE PROVIDER SHALL SEEK OR ACCEPT PAYMENT OR REIMBURSEMENT FROM OR ON BEHALF OF THE PATIENT OR A THIRD-PARTY PAYER FOR A HEALTH CARE SERVICE OR TREATMENT THAT IS PROVIDED IN THE ABSENCE OF OR CONTRARY TO THE PATIENT'S CONSENT, UNLESS IT WAS AUTHORIZED BY LAW TO BE PROVIDED IN THE ABSENCE OF OR CONTRARY TO THE PATIENT'S CONSENT.

S 2. This act shall take effect immediately.