STATE OF NEW YORK

6308

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

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

AN ACT to amend the public health law, in relation to prohibiting any substituted consent for a sterilization procedure

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 2806-c to read as follows:

§ 2806-c. Substituted consent for sterilization prohibited. 1. A health care provider shall not perform a procedure resulting in sterilization without the informed consent of the person being sterilized. Substituted consent by a guardian, health care proxy, or other third party shall not authorize a procedure resulting in sterilization in the absence of the informed consent of the person being sterilized.

2. Applicability. This section shall not apply to procedures resulting in sterilization that are necessary to preserve the life of an individual or prevent serious impairment to their physical health.

3. Supported decision-making. A person with a disability may voluntarily and without undue influence or coercion enter into a supported decision-making agreement when considering a sterilization procedure. A supported decision-making agreement shall authorize a supporter to assist the person with a disability with any or all of the following, as determined by the person with a disability, without making the decision on behalf of the individual with a disability:

a. Understand the nature, benefits, risks, and consequences of sterilization and available alternatives;

b. Access, collect, and obtain information relevant to the decision regarding sterilization, including medical, psychological, financial, or treatment records;

c. Understand the information described in paragraph b of subdivision four of this section; and

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

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d. Communicate the person with a disability's choice of a health care provider or other appropriate person, if necessary and specifically requested by the individual.

4. Obligations of health care providers. a. A health care provider shall provide the information and accommodations a person with a disability needs to understand the procedure resulting in sterilization, to make their own decision, and to avoid undue pressure or coercion. Such information and accommodations may include but are not limited to:

(i) Providing explanations in a language or format the individual with a disability understands;

(ii) Using pictures, demonstrations, videos, models, or other techniques that may assist the individual to understand their options; or

(iii) Ascertaining the wishes of the individual without the presence of a guardian, family member, or caregiver.

b. A health care provider shall not perform a sterilization if they reasonably believe that the person with a disability lacks the capacity to provide informed consent even with accommodations and supports. A health care provider shall not presume that a person with a disability lacks the capacity to provide informed consent solely on the basis of:

(i) their disability or diagnosis;

(ii) their use of supported decision-making;

(iii) their current or former placement under guardianship; or

(iv) a court's adjudication that the individual is incapacitated in an area other than health care decision-making.

5. Definitions. As used in this section the following terms shall have the following meanings:

a. "Person with a disability" means any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law.

b. "Supporter" means a person who is not a person with a disability who enters into a supported decision-making agreement with a person with a disability.

c. "Health care provider" shall mean a practitioner in an individual practice, group practice, partnership, professional corporation or other authorized form of association, a hospital or other health care institution issued an operating certificate pursuant to this chapter or the mental hygiene law, a certified home health agency or a licensed home care services agency, and any other purveyor of health or health related items or services including but not limited to a clinical laboratory, a physiological laboratory, a pharmacy, a purveyor of X-ray or imaging services, a purveyor of physical therapy services, a purveyor of health or health related supplies, appliances or equipment, or an ambulance service.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.