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## **Legislative Update: New law, New rights for patients' families**

**By Patricia Bomba, MD, FACP**

Physicians practicing in New York State need to be aware that beginning June 1, a patient's family member — including his or her domestic partner — will be able to make health care decisions when the patient is not able to do so. June 1<sup>st</sup> is the date the Family Health Care Decisions Act becomes law.

Complete information on the Family Health Care Decisions Act can be found online at [www.CompassionAndSupport.org](http://www.CompassionAndSupport.org).

### **Family Health Care Decisions Act**

The Family Health Care Decisions Act allows family members and others who are closest to the patient to act as surrogates and make decisions regarding medical treatment for a loved one in certain limited situations. The law includes numerous safeguards to ensure sound medical treatment and that decisions are made consistent with the patient's wishes and best interests.

The legislation was 17 years in the making. Each year, about 75,000 people in New York die lacking the capacity to make their own health care decisions and without a designated a health care proxy.

New York had been one of the few states that prohibited family members from making health care decisions for incapacitated loved ones unless the patient had signed a health care proxy or left "clear and convincing evidence" of his or her treatment wishes.

As a result, some incapacitated patients were denied appropriate palliative treatment that improved quality of life and reduced suffering, while others were subjected to burdensome, highly invasive treatment that potentially violated their wishes and prolonged their suffering.

For example, loved ones weren't able to have a patient moved from acute care to palliative care.

Many people never complete a health care proxy or leave "clear and convincing evidence" of their wishes for health care treatment. A survey conducted by Excellus BlueCross BlueShield showed that nearly nine of 10 upstate New Yorkers surveyed said

it is important to have someone close to them making medical care decisions on their behalf if they were to have an irreversible terminal condition and were unable to communicate or make decisions. Yet, only 42 percent had designated a health care proxy to ensure that their wishes are actually carried out.

It is important to note that the Family Health Care Decisions Act does not eliminate the need for open and honest conversations with loved ones about wishes and desires for medical care. And it does not eliminate the need for individuals to have advance directives on file with doctors, attorneys and family members.

Advance directives are the necessary legal forms to document health care preferences and legally designate someone to represent the patient during a medical crisis when he or she can't speak for himself/herself. These documents include a health care proxy and a New York State Living Will. In recent years, a third form was added to the advance directives portfolio — the Medical Order for Life Sustaining Treatment, commonly known as "the MOLST form."

### **MOLST**

The MOLST form was approved for use in all healthcare facilities in 2005 by the New York State Department of Health. In 2008, Gov. David A. Paterson signed into law a bill that expanded the use of the MOLST form to include all health care settings including the patient's home, nursing homes and other non-hospital settings. The MOLST form was also re-written to incorporate "plain language."

Complete details on MOLST can be found online at [www.CompassionAndSupport.org](http://www.CompassionAndSupport.org).

MOLST is generally for patients with serious health conditions. Consider the MOLST form for those who want to avoid or receive any or all life-sustaining treatment, those who reside in a long-term care facility or who require long-term care services. It is also appropriate for those patients whose health status indicates that they may die within the year. The MOLST form is signed by a doctor and is unique in that it follows a patient as he/she transfers through various facilities or levels of care. It is bright pink so it is easy to spot in a patient's medical file.

The MOLST form was created to help patients understand the choices available to them when it comes to their care, and then document their wishes and goals so that they are clearly understood and honored by all of their health care providers. It was an important addition to advance care planning since surveys show that people aren't dying in the setting of their choice, most don't have advance directives, the majority referred to hospice arrive too late to fully benefit, and many fear dying in pain and without dignity or control.

### **REFERENCE**

The best resource for information the new Family Health Care Decisions Act and the newly revised MOLST form, along with complete information on advance care planning, is online at [www.CompassionAndSupport.org](http://www.CompassionAndSupport.org).

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