

A chance for families to make medical decisions

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Last Friday, the state Senate did something remarkable and admirable. In its last action of the session, it unanimously passed the Family Health Care Decisions Act. Supporters of the bill, including numerous patients' rights groups, as well as hospital, medical, nursing and legal associations, were elated. They have been fighting for this bill for 16 years.

To become law, the bill still must be passed by the Assembly and signed by Gov. David Paterson. But Senate passage was an enormous step forward. The Assembly has passed the bill before; the Senate never had.

The bill addresses how health care decisions can be made for hospital and nursing home patients who lack decision-making capacity. It would apply in cases where the patient had not previously made the decision for himself or herself, or appointed a health care agent.

The Family Health Care Decisions Act would generally authorize the patient's closest family member (or where there is no family, a close friend) to make a treatment on behalf of the patient. In keeping with broadly accepted principles of medical ethics, the surrogate decision-maker would have to decide based on the patient's wishes, if reasonably known, or else the patient's best interests.

More dramatically, the act would allow decisions to end life-sustaining treatment in carefully limited circumstances. The law in New York regarding end of life decision-making for incapable patients who did not appoint a health care agent is extraordinarily harsh. In general, family members have no legal authority to make decisions about life-sustaining treatment (with exceptions for certain treatments and certain patient populations). Instead, under strict New York court decisions, life-sustaining treatment must be started and continued in all cases unless there is "clear and convincing evidence" that the patient would decline the treatment under the circumstances. New York's unrealistic rule is stricter than the rule in nearly every other state.

Each day somewhere in this state, this grim situation is taking place: An elderly patient is dying and has lost decision-making capacity, and the patient's doctor is discussing with the patient's adult children the treatment options, from most aggressive to comfort care only. After the doctor explains the limited value of aggressive care and the burden it would impose on the patient, the

family concludes that their mom has reached the point where she would want comfort care. The doctor agrees that such a decision is the most medically she would want comfort care. The doctor agrees that such a decision is the most medically appropriate course.

New York law does not provide support for their decision. That needs to change. The Family Health Care Decision Act would allow family members to make decisions such as this, when specific clinical criteria are satisfied. Put differently, it would bring New York law into closer conformity with accepted medical practice and good medical ethics in end-of-life decisions.

The Senate is to be congratulated for finally passing the Family Health Care Decision Act. Now the Assembly needs to act.

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