

Health care proxy bill may finally be enacted

Measure awaits Assembly action

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The Family Health Care Decisions Act has failed to gain passage in New York State every year since it was first introduced, but its fate may change this year.

On the 16th try, the Senate last week passed the proposed measure that would allow family members to act as decision-makers for young and old patients who lose the capacity to direct their own care.

Now, it just awaits action by the Assembly, which recessed its 2009 session.

Even opponents of the act agree with the intent of the legislation. What has doomed the measure annually is controversy over language about pregnant women and domestic partners, in particular same-sex partners.

This year, with the Assembly and Senate both controlled by Democrats, legislators have crafted one bill instead of competing versions, and critics of some of the language have less influence than when Republicans ran the Senate.

"You never know what's going to happen in Albany, but this is the best chance ever," said Dr. Patricia Bomba, a longtime advocate who is vice president and medical director of geriatrics for Univera Healthcare.

The law would permit an individual's family members, domestic partner and close friends to make medical treatment decisions when that individual no longer has the capacity to make a decision.

Decisions about surgery, medical treatment, or withholding or withdrawing life-sustaining therapies would have to take into account patients' wishes, if known, plus their moral and religious beliefs. The bill also would establish procedures for selecting surrogates.

People often assume otherwise, but, currently, New Yorkers can make decisions for a loved one only when a patient or court has previously appointed someone to make decisions, such as by appointing a health care proxy, or when the treatment decision involves cardiopulmonary resuscitation.

Without these legal measures in place, no one can make treatment decisions for an incapacitated person without "clear and convincing" evidence of a patient's wishes.

As a result, Bomba and others say many dying patients suffer painful and futile treatments, are denied comfort care, or their families are forced to go to court to stop unwanted treatment in hopeless cases. In many instances, parents learn that they do not have the authority to withdraw treatment for children with no hope of recovery.

"We see so many tragic situations and unnecessary suffering because families don't have health care proxies and difficult decisions need to be made," said William Finn, president and chief executive officer of the Center for Hospice & Palliative Care in Cheektowaga.

He has been through it himself with an experience last year of a relative who had no health care proxy, do not resuscitate order or living will as evidence of his wishes. The patient ended up brain-dead after a procedure but was resuscitated and placed on a ventilator.

After a four-way telephone conference call at 5 a. m. with two doctors and family members, the patient was taken off the ventilator and died.

“If we had had an authorized decision-maker, he never would have been ventilated in the first place. He probably suffered,” said Finn, who also serves as president of the Hospice & Palliative Care Association of New York State.

The state in 1991 enacted the health care proxy law, which allows adults to designate someone to make treatment decisions for them if they lose the capacity to do so.

The Governor’s Task Force for Life and the Law proposed a surrogate-decision-making bill in 1992 for patients who do not have a proxy, and a measure was first submitted to the Legislature in 1994.

All but two states — New York and Missouri — have statutes that grant family members and others close to a patient the right to make medical decisions if there is no proxy, or the states have case law that grants similar authority.

Primarily, two issues have blocked the measure in past years.

The New York State Catholic Conference and others have sought language in the measure that required decisions in cases of pregnant women to also consider the interests of the fetus. Abortion rights advocates opposed the language, which has been stripped from the current version of the bill.

In addition, controversy has swirled around whether to include same-sex domestic partners as eligible surrogates.

“Abortion politics is keeping us from supporting the bill. We would like to support the measure. It’s needed. But as it’s currently written, we won’t,” said Dennis Poust, director of communications for the conference, which represents the bishops of New York.

Advocates of the bill argue that language requiring surrogates to consider the interests of the fetus is unnecessary because those interests would be considered as part of appropriate medical care of a pregnant woman, said Liz Hamlin, legislative associate to Assemblyman Richard Gottfried, D-Manhattan, sponsor of the measure.

Nearly nine of 10 upstate New Yorkers surveyed said its 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 have designated a health care proxy to ensure their wishes are actually carried out.

These major findings are part of the most comprehensive survey on advance care planning values and actions ever done in upstate New York. The complete survey results are available on the Web by going to www.univerahealthcare.com and clicking on Policy And Research at the bottom of the page. Then click on Fact Sheets, Surveys & Reports, and scroll down to the section titled End Of Life.

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