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Assembly must pass the Family Health Care Decisions Act

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Unlike virtually every other state, New York has no law allowing a family member, partner or trusted friend to act as a surrogate medical decision-maker on behalf of a patient who has become incapacitated without leaving specific instructions about medical care. This is unacceptable as the vast majority of our citizens have not completed an advance directive.

Legislation termed the Family Health Care Decisions Act would correct this problem by allowing loved ones to make health decisions for those who have lost the ability to make them. Tragically, to the detriment of dying patients, in particular, and loved ones, this bill has been languishing in the New York Legislature for more than 15 years. The Senate, which is to be congratulated, passed the bill this year; it is now time for the Assembly to act. It has passed a bill in the past, but not in its current form. This should be a priority for local legislators, seven of whom are sponsoring the Assembly bill, A. 7729C.

More than 150,000 people die in New York yearly, including more than 7,000 in Westchester County. Too many die bad deaths, too many suffer needlessly, often because they are kept alive in situations where health-care professionals believe they have no other legal choice. Imagine that a devastating auto accident has left you completely incapacitated, unable to talk to your doctors about life-and-death medical decisions. You don't have a health-care proxy or a living will spelling out your wishes. But, no matter, because a loved one could step in and speak for you, right? Not in New York. This is the problem.

Or, imagine that your 105-year-old mother, who suffered a stroke five years earlier, from which she has never recovered, is suffering from severe dementia and is receiving artificial nutrition and hydration. She has not communicated in years and does not appear to recognize you or anyone else and seems, by facial expression, to be unhappy. She now has pneumonia. Do you want mom to be given antibiotics? If your mom has not communicated her wishes in an advance directive or if you cannot prove her specific wishes by clear and convincing evidence (a very high legal standard), your mom may well be given the antibiotics.

Regardless of what you think your mom would want or what you would want for her in accordance with her values and in her best interest, health-care professionals are the only ones who can legally decide what now happens with mom. This is not the way decisions should be made.

Simply stated, health-care decisions for patients who can no longer make them should be made by loved ones even in the absence of explicit directions, as almost every state but New York

permits. For that to happen in New York, enactment of the Family Health Care Decisions Act is necessary.

The legislation has numerous safeguards. The bill enables family members or other close loved ones to make health-care decisions for you only if an attending physician and a second health-care professional determine that you lack capacity to decide for yourself. Decisions must be consistent with your wishes (including your religious and moral beliefs) or, if your wishes are not reasonably known, decisions must be made in your best interest. Life-sustaining treatment decisions can be refused only in limited situations, when you are terminally ill or permanently unconscious, or you have an irreversible or incurable condition and treatment would involve such suffering or other burden that it would be deemed excessively burdensome under the circumstances.

Not surprisingly, this bill has the support of almost all major medical groups across the state and numerous civic and community organizations. Who could be opposed to us making health decisions for our incapacitated loved ones?

Passage of the Family Health Care Decisions Act is long overdue. Please urge your Assembly member to help to ensure that the Assembly passes this bill before the end of the year.

The writer, who lives in Pelham, is executive director of Compassion & Choices of New York and serves on the board of directors of the Westchester End-of-Life Coalition.