

## LAWS OF NEW YORK, 2015

## CHAPTER 107

AN ACT to amend the public health law, in relation to providing for a decision regarding hospice care on behalf of a hospice-eligible incapable adult patient without a surrogate; and to repeal paragraph (c) of subdivision 5 of section 2994-g of such law relating thereto

Became a law August 13, 2015, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2994-g of the public health law is amended by adding a new subdivision 5-a to read as follows:

5-a. Decisions regarding hospice care. An attending physician shall be authorized to make decisions regarding hospice care and execute appropriate documents for such decisions (including a hospice election form) for an adult patient under this section who is hospice eligible in accordance with the following requirements.

(a) The attending physician shall make decisions under this section in consultation with staff directly responsible for the patient's care, and shall base his or her decisions on the standards for surrogate decisions set forth in subdivisions four and five of section twenty-nine hundred ninety-four-d of this article;

(b) There is a concurring opinion as follows:

(i) in a general hospital, at least one other physician designated by the hospital must independently determine that he or she concurs that the recommendation is consistent with such standards for surrogate decisions;

(ii) in a residential health care facility, the medical director of the facility, or a physician designated by the medical director, must independently determine that he or she concurs that the recommendation is consistent with such standards for surrogate decisions; provided that if the medical director is the patient's attending physician, a different physician designated by the residential health care facility must make this independent determination; or

(iii) in settings other than a general hospital or residential health care facility, the medical director of the hospice, or a physician designated by the medical director, must independently determine that he or she concurs that the recommendation is medically appropriate and consistent with such standards for surrogate decisions; provided that if the medical director is the patient's attending physician, a different physician designated by the hospice must make this independent determination; and

(c) The ethics review committee of the general hospital, residential health care facility or hospice, as applicable, including at least one physician who is not the patient's attending physician, or a court of competent jurisdiction, must review the decision and determine that it is consistent with such standards for surrogate decisions.

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

CHAP. 107

2

§ 2. Paragraph (c) of subdivision 5 of section 2994-g of the public health law is REPEALED.

§ 3. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN

Temporary President of the Senate

CARL E. HEASTIE

Speaker of the Assembly

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A2150

**SPONSOR:** Gottfried (MS)

**TITLE OF BILL:** An act to amend the public health law, in relation to providing for a decision regarding hospice care on behalf of a hospice-eligible incapable adult patient without a surrogate; and to repeal paragraph (c) of subdivision 5 of section 2994-g of such law relating thereto

**PURPOSE:** This bill addresses a gap in the Family Health Care Decisions Act (PHL Article 29-cc) by authorizing decisions regarding hospice for hospice-eligible incapable adult patients without surrogates.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill amends NY Public Health Law § 2994-g, a section of the Family Health Care Decisions Act (FHCDA) relating to health care decisions for adult patients without surrogates, by adding a new subdivision 7 entitled "Decisions to elect hospice." New subdivision 7 sets forth a process for an attending physician to elect hospice for an incapable hospice-eligible adult patient without a surrogate.

The attending physician must make a recommendation in consultation with staff directly responsible for the patient's care, and must base his or her recommendation on the standards for surrogate decisions set forth PHL § 2994-d, another section of the FHCDA.

The decision also requires the concurring opinion of a second physician, subject to certain requirements, and the review and approval of the ethics review committee of the general hospital, residential healthcare facility or hospice, as applicable, subject to certain requirements.

Section 2 makes a technical change to repeal paragraph (c) of subdivision 5 of section 2994-g of the Public Health Law which is no longer necessary.

Section 3 provides for an immediate effective date.

**JUSTIFICATION:** The Family Health Care Decisions Act (Public Health Law Article 29-CC) governs health care decisions for patients who lack capacity and who did not appoint a health care agent. Initially, the FHCDA applied only to patients in hospitals and nursing homes. In 2011, based on recommendations of the NYS Task Force on Life and the Law, the FHCDA was amended to apply to decisions for hospice patients as well.

Section 2994-g of the FHCDA governs decisions for incapable adult patients who do not have a guardian, family member or friend to act as

their surrogate. Specifically, it provides a mechanism for securing decisions regarding (i) routine medical treatment; (ii) major medical treatment decision and (iii) the withholding or withdrawal of life-sustaining treatment.

However, Section 2994-g does not expressly create a means to elect hospice on behalf of hospice-eligible incapable adult patients. Such decisions do not comfortably fall within the statutory categories "routine medical treatment," "major medical decision" or "withdrawal or withholding of life-sustaining treatment."

As a result, isolated, incapable dying adult patients are deprived of the comfort and benefit of hospice care toward the end of life. Health care professionals are dismayed by the inability to provide the type and level of care they would recommend if the patient had a surrogate.

This bill would address that gap by creating a process to secure an election for hospice for a hospice-eligible incapable adult patient.

The process requires:

- \* a determination of incapacity in accordance with the provisions of the FHCDA

- \* a recommendation by the attending physician in accordance with the decision-making standards of the FHCDA. Those standards, in addition to including clinical criteria, provide that the decision must be made:

- (i) in accordance with the patient's wishes, including the patient's religious and moral beliefs; or

- (ii) if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests . . . . (b) In all cases, the surrogate's assessment of the patient's wishes and best interests shall be patient centered; health care decisions shall be made on an individualized basis for each patient, and shall be consistent with the values of the patient, including the patient's religious and moral beliefs, to the extent reasonably possible.

- \* a concurring opinion by another physician

- \* approval by the hospital, nursing home or hospice ethics committee, as applicable.

The physician may also include in the hospice plan of care provisions for the withdrawal or withholding of life-sustaining treatment (e.g., a DNR order), in accordance with the clinical and decision-making standards that would apply to a surrogate decision under the FHCDA. Such orders are often consistent with the hospice election.

This bill will make it possible for hospice-eligible dying isolated incapable patients to be enrolled in hospice programs.

**LEGISLATIVE HISTORY:** 2014: A9709 - reported to Rules

**FISCAL IMPLICATIONS:** None.

**EFFECTIVE DATE**: This act shall take effect immediately.