

## **Know Your Rights With the Family Healthcare Decisions Act**

The Family Health Care Decisions Act allows family members or close friends to make medical care decisions for loved ones who are no longer able to make their own decisions due to lack of capacity. This replaces the old laws that used to force doctors to provide aggressive life-sustaining treatment to patients whose wishes were unknown because there wasn't a living will or health care proxy in place. Many times, doctors would make decisions, which resulted in an extraordinary burden of suffering for a patient even when the family objected to such treatment. This new law has been debated for 18 years and is intended to overcome the limitations of the court-developed "clear and convincing evidence" requirement. New York was one of the last two states in the country without a similar law. It is important to understand how this law will affect you and your family.

In order for this law to be triggered, health care practitioners first need to determine whether or not a patient has a decision-making capacity. If the patient lacks capacity, the legislation requires the selection of a surrogate from a list of individuals ranked in order of priority, including spouse, domestic partners, children or close friends.

To protect the incapacitated person, the law has numerous safeguards. These include procedures for a patient's family member, or a physician to assert objections to the selection of a surrogate or to a decision made by the surrogate. Also, the Act states that a life-sustaining treatment can't be withdrawn or withheld from a patient, even if the patient has lost his decision-making capacity; unless there is clear evidence that can be produced to show that the individual would have declined treatment if competent. In nursing homes and hospitals, an ethics committee must review the surrogate's decision to remove life-sustaining treatment.

Nevertheless, it is still important to have a living will and a health care proxy in place to avoid any misunderstandings with your loved ones and to ensure that your wishes will be carried out. It is important to work with an experienced elder law attorney to help create the proper documents for you, before it is too late.

For more information regarding the Family Healthcare Decisions Act, please visit [www.aging.ny.gov](http://www.aging.ny.gov)

To schedule a meeting with one of Tully Rinckey PLLC's estate planning attorneys call 1-888-LAW-4-LIFE.