

Family Health Care Decisions Act Finally Takes Effect

On March 16th 2010, the Family Health Care Decisions Act was signed into law by Gov. David Paterson and it will change and reform how medical care decisions are made for those that are incapacitated and do not have a living will or health care proxy.

The Family Health Care Decisions Act allows family members or close friends to make medical care decisions for loved ones who are incapacitated. 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 by legal experts, doctors, and health care professionals, and is intended to overcome limitations of the Do-Not-Resuscitate Law, Health Care Proxy Law and the court-developed "clear and convincing evidence" requirement. New York was one of the last two states in the country without a similar law.

Statistics show that less than 20 percent of individuals sign a health care proxy. This meant that 80 percent of individuals were left without an opportunity for medical treatment and/or life sustaining treatment decisions to be made on their behalf when they became incapacitated.

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

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.