

## **New York Health Care Proxy Update**

On March 16, 2010, Governor Paterson signed into law the Family Health Care Decisions Act (FHCDA). The FHCDA allows family members to make healthcare decisions on behalf of a person who is unable to do so. The healthcare decisions family members are allowed to make includes the withholding or the withdrawing of life-sustaining treatment.

When the health care practitioners determine a patient in a general hospital or nursing home no longer has his or her decision-making capacity, the new legislation requires that a surrogate be selected from a list of individuals ranked in order of priority. The list of individuals includes family members, domestic partners and close friends.

The FHCDA incorporates various safeguards and decision-making standards to ensure that the surrogate makes proper decisions. For example, the surrogate must make healthcare decisions in accordance with the patient's wishes, religious and moral beliefs. If the patient's wishes are not reasonably known, then surrogate must act in the patient's best interests. A person can continue to make his or her wishes known by designating a health care proxy and drafting a living will, which serves as clear evidence of a patient's wishes.

Additional considerations must be met for decisions to withhold or withdraw life-sustaining support. These considerations include the (1) creation of an extraordinary burden to the patient and the patient would also have to have an illness or injury that can be expected to cause death within six months, whether or not treatment is provided, or the patient is permanently unconscious or (2) that the treatment would cause an inhumane amount of pain and suffering and the patient has an irreversible or incurable condition.

The most important thing to note is that a person can still designate his or her own health care proxy and this advanced planning is still recommended. The new legislation simply provides a general safeguard for those who have not designated a health care proxy and the FHCDA does not trump or replace a healthcare proxy.