ASSEMBLY, No. 4098

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED MAY 23, 2011

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington and Camden)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Provides for designation of surrogates to make health care decisions for certain patients and decision-making process for patients without surrogates; establishes demonstration program for transition of isolated patients from inpatient care to post-acute care.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/24/2011)

AN ACT concerning the making of health care decisions for certain patients and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in sections 1 through 6 of this act:

"Advance directive" means an advance directive for health care as defined in section 3 of P.L.1991, c.201 (C.26:2H-55).

"Close friend" means a person, 18 years of age or older, who is a friend of the patient, or a relative of the patient other than a spouse, partner in a civil union couple, domestic partner, child, parent, brother, or sister, who has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious or moral beliefs, and who presents a signed statement to that effect to the patient's attending physician.

"Commissioner" means the Commissioner of Health and Senior Services.

"Decision-making capacity" means a patient's ability to understand and appreciate the nature and consequences of a particular health care decision, including the benefits and risks of that decision, and alternatives to any proposed health care, and to reach an informed decision.

"Department" means the Department of Health and Senior Services.

"Emergency" means a sudden, acute, and unanticipated medical crisis that requires that treatment be provided to the patient in order to avoid injury, impairment, or death.

"Health care decision" means a decision to accept, withdraw, or refuse a treatment, service, or procedure used to diagnose, treat, or care for a person's physical or mental condition, including life-sustaining treatment.

"Health care facility" means a general hospital, nursing home, or assisted living facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

"Health care professional" means a health care professional who is licensed or otherwise authorized to practice a health care profession pursuant to Titles 45 or 52 of the Revised Statutes and is currently engaged in that practice.

"Health or social service practitioner" means a physician, advanced practice nurse, physician assistant, psychologist, or licensed clinical social worker who is authorized to practice pursuant to law and acting within that person's scope of practice.

"Life-sustaining treatment" means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore, or supplant a vital bodily function, and thereby increase the expected life span of a patient.

"Major medical treatment" means a treatment, service, or procedure used to diagnose or treat a patient's physical or mental condition that involves any of the following: the use of general anesthesia; any significant risk to the patient; any significant invasion of bodily integrity requiring an incision, producing substantial pain, discomfort, or debilitation, or having a significant recovery period; the transfer of the patient to a different health care facility; the use of physical restraints, as specified in regulations adopted by the commissioner, except in an emergency; or the use of psychoactive medications, except when provided as part of post-operative care or in response to an acute illness and when treatment is reasonably expected to be administered over a period of 48 hours or less, or when provided in an emergency.

"Patient" means a person who is under the care of a physician.

"Patient's representative" means a person who is designated by a patient or otherwise authorized under law to make health care decisions on the patient's behalf if the patient lacks decision-making capacity.

"Physician" means a person who is licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes.

"Resuscitative measures" means cardiopulmonary resuscitation provided in the event that a patient suffers a cardiac or respiratory arrest.

"Routine medical treatment" means a treatment, service, or procedure used to diagnose or treat a patient's physical or mental condition, such as the administration of medication, the extraction of bodily fluids for analysis, or dental care performed with a local anesthetic, for which a health care facility or health care professional does not ordinarily seek specific consent from a patient or the patient's representative. "Routine medical treatment" shall not include the long-term provision of treatment, such as ventilator support or a nasogastric tube, but shall include such treatment when it is provided as part of post-operative care or in response to an acute illness and recovery is reasonably expected within one month or less.

"Surrogate" means a person who is designated by a health care facility pursuant to this act to make health care decisions for a patient who is determined to lack decision-making capacity.

2. a. A health care facility shall establish policies and procedures, in accordance with the provisions of this section, to provide for the making of health care decisions by a surrogate, who shall be designated by the health care facility, for an adult patient who is determined, pursuant to this section, to meet all of the following conditions:

(1) lacks decision-making capacity;

(2) does not have a patient's representative; and

(3) has not executed an advance directive.

b. (1) The patient's attending physician shall make an initial determination that the patient lacks decision-making capacity to a reasonable degree of medical certainty, including, but not limited to, an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity.

(2) An initial determination that a patient lacks decision-making capacity shall be subject to a concurring determination that the patient lacks decision-making capacity to a reasonable degree of medical certainty, independently made by a health or social service practitioner, if the health care decision concerns the withdrawal or withholding of life-sustaining treatment.

(3) The concurring determination shall include, but not be limited to, an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity.

(4) A record of the concurring determination shall be included in the patient's medical record.

(5) A health care facility shall adopt written policies identifying the training and credentials of health or social service practitioners qualified to provide concurring determinations of incapacity.

(6) A determination that a patient lacks decision-making capacity because the person has a mental illness as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2) shall only be made if the patient's attending physician who makes the initial determination, or another physician who independently makes a concurring determination, is: a diplomate of, or eligible to be certified by, the American Board of Psychiatry and Neurology; or certified, or eligible to be certified, by the American Osteopathic Board of Neurology and Psychiatry.

(7) A determination that a patient lacks decision-making capacity because the person has a developmental disability as defined in section 3 of P.L.1977, c.82 (C.30:6D-3) shall only be made if the patient's attending physician who makes the initial determination, or another health care professional who independently makes a concurring determination, is a physician or clinical psychologist who: has been employed for a minimum of two years to render care and service in a facility for persons with developmental disabilities as defined in section 3 of P.L.1977, c.82 (C.30:6D-3); or has been approved by the Director of the Division of Developmental Disabilities in the Department of Human Services in accordance with regulations adopted by the director. The regulations shall require that a physician or clinical psychologist possess specialized training or three years of experience in treating developmental disabilities.

(8) If the patient's attending physician has determined that the patient lacks decision-making capacity but the person making a

concurring determination pursuant to this subsection disagrees with the attending physician's determination, they shall seek to resolve the disagreement by means of procedures and practices established by the health care facility, including, but not limited to, consultation with an institutional ethics committee, or with a person designated by the health care facility for this purpose.

c. A health care facility is authorized to designate a surrogate to make health care decisions for an adult patient who has been determined to lack decision-making capacity pursuant to this section, and shall provide prompt notice of that determination and designation to:

(1) the patient, if the health care facility has any indication of the patient's ability to comprehend the information; and

(2) at least one person on the surrogate list, set forth in subsection g. of this section, who is highest in order of priority listed when persons in prior classes are not reasonably available pursuant to this section.

d. A determination made pursuant to this section that an adult patient lacks decision-making capacity shall not be construed as a finding that the patient lacks capacity for any other purpose.

e. Notwithstanding a determination pursuant to this section that an adult patient lacks decision-making capacity, if the patient objects to the determination of incapacity, or to the choice of a surrogate or to a health care decision made for that patient pursuant to this section, the patient's objection shall prevail, unless:

(1) a court of competent jurisdiction has determined that the patient lacks decision-making capacity or the patient is or has been adjudged incapacitated, in accordance with N.J.S.3B:1-2, for all purposes and, in the case of a patient's objection to treatment, makes any other finding required by law to authorize the treatment, or

(2) another legal basis exists for overriding the patient's decision.

f. An adult patient’s attending physician shall confirm the patient’s continued lack of decision-making capacity before complying with health care decisions made pursuant to this section, other than those decisions made at or about the time of the initial determination that the patient lacks decision-making capacity. Neither the health care facility nor any person shall be required to inform the patient or surrogate of any such confirmation. A concurring determination of the patient's continued lack of decision-making capacity shall be required if the subsequent health care decision concerns the withholding or withdrawal of life-sustaining treatment.

g. A health care facility shall designate one person from the following list, as applicable, from the class highest in priority when persons in prior classes are not reasonably available, willing, and competent to act, to serve as surrogate for an adult patient who is determined to lack decision-making capacity pursuant to this

section; except that the designated person may designate any other person on the list to be surrogate, provided no one in a class higher in priority than the person so designated objects:

(1) the patient’s spouse, partner in a civil union couple, or domestic partner, if not legally separated from the patient;

(2) the patient’s son or daughter 18 years of age or older;

(3) the patient’s parent;

(4) the patient’s brother or sister 18 years of age or older;

(5) a close friend of the patient.

h. An operator, administrator, or employee of a health care facility to which a patient has been admitted or from which a patient was transferred, or a physician who has privileges at such a health care facility, or a health care professional or other person under contract with such a health care facility may not serve as the surrogate for an adult who is a patient at that facility, unless that person is related to the patient by blood, marriage, civil union, domestic partnership, or adoption, or is a close friend of the patient whose friendship with the patient preceded the patient's admission to the facility. If a physician serves as surrogate, the physician shall not act as the patient's attending physician after his authority as surrogate begins.

i. (1) A surrogate who is designated pursuant to this section shall, subject to the provisions thereof, have the authority to make any health care decision on the adult patient's behalf that the patient could make.

(2) Nothing in this section shall obligate a health care facility or a health care professional to seek the consent of a surrogate if an adult patient has already made a decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining treatment, expressed either orally during the patient’s stay in the health care facility in the presence of two witnesses 18 years of age or older, at least one of whom is a health or social service practitioner affiliated with the health care facility, or in writing. If an attending physician relies on the patient's prior decision, the physician shall record the prior decision in the patient's medical record. If a surrogate has already been designated for the patient, the attending physician shall make reasonable efforts to notify the surrogate prior to implementing the decision; provided that in the case of a decision to withdraw or withhold life-sustaining treatment, the attending physician shall make diligent efforts to notify the surrogate and, if unable to notify the surrogate, shall document the efforts that were made to do so.

(3) The surrogate's authority shall commence upon a determination, made pursuant to this section, that the adult patient lacks decision-making capacity and upon identification of a surrogate pursuant to this section. In the event that an attending physician determines that the patient has regained decision-making capacity, the authority of the surrogate shall cease.

(4) Notwithstanding any law to the contrary, the surrogate shall have the right to receive medical information and medical records necessary to make informed decisions about the patient's health care. The surrogate shall seek, and the applicable health care facility or health care professional shall provide, information necessary to make such decisions, including information about: the patient's diagnosis and prognosis; the nature and consequences of proposed health care for the patient; and alternatives to the proposed health care, including the benefits and risks thereof.

j. (1) The surrogate shall make health care decisions for the patient:

(a) in accordance with the patient's wishes or values, including, but not limited to, the patient's religious or moral beliefs; or

(b) if the patient's wishes or values are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests.

(2) Pursuant to subparagraph (b) of paragraph (1) of this subsection, the surrogate shall include in his assessment of the patient's best interests:

(a) consideration of the dignity and uniqueness of the patient;

(b) the possibility and extent of preserving the patient's life;

(c) the preservation, improvement, or restoration of the patient's health or functioning;

(d) the relief of the patient's suffering; and

(e) any medical condition and such other concerns and values as a reasonable person in the patient's circumstances would wish to consider.

k. (1) A decision by the surrogate to withhold or withdraw life-sustaining treatment from the patient shall be authorized only if the attending physician determines, with the independent concurrence of another physician and to a reasonable degree of medical certainty and in accordance with accepted medical standards, that:

(a) the patient has an illness or injury that can be expected to cause death within six months, whether or not treatment is provided, or that the patient is permanently unconscious, and the provision or continuation of treatment would be an extraordinary burden to the patient; or

(b) the patient has an irreversible or incurable condition, and the provision or continuation of treatment would involve such pain or suffering for, or otherwise be so extraordinarily burdensome to, the patient that it would reasonably be deemed inhumane under the circumstances.

(2) A surrogate shall have the authority to refuse life-sustaining treatment for a patient in a health care facility other than a general hospital only if the institutional ethics committee, including at least one physician who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and

determines that it meets the standards set forth in this section. This requirement shall not apply to a decision to withhold resuscitative measures.

(3) If the attending physician of a patient in a general hospital objects to a surrogate's decision to withhold or withdraw nutrition and hydration provided by means of medical treatment from the patient, the decision shall not be implemented until the institutional ethics committee, including at least one physician who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and determines that it meets the standards set forth in this section. The provisions of this paragraph shall not be construed to apply to nutrition and hydration that is provided to a patient orally and without reliance on medical treatment.

(4) The surrogate shall express a decision to withdraw or withhold life-sustaining treatment from the patient either orally to the attending physician or in writing.

l. (1) The parent or guardian of a minor patient shall have the authority to make decisions about life-sustaining treatment, including decisions to withhold or withdraw such treatment, subject to the provisions of this subsection.

(2) The parent or guardian of a minor patient shall make decisions in accordance with the minor's best interests, consistent with the standards set forth in subsection j. of this section, taking into account the minor's wishes, as appropriate under the circumstances.

(3) (a) An attending physician, in consultation with a minor's parent or guardian, shall determine whether a minor patient has decision-making capacity for a decision to withhold or withdraw life-sustaining treatment. If the minor has such capacity, a parent's or guardian's decision to withhold or withdraw life-sustaining treatment for the minor may not be implemented without the minor's consent.

(b) When a parent or guardian of a minor patient has made a decision to withhold or withdraw life-sustaining treatment and an attending physician has reason to believe that the minor patient has a parent or guardian who has not been informed of the decision, including a noncustodial parent or guardian, the attending physician or someone acting on his behalf shall make reasonable efforts to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the minor and, if so, shall make diligent efforts to notify that parent or guardian prior to implementing the decision.

m. (a) An attending physician, upon being informed of a decision to withdraw or withhold life-sustaining treatment made pursuant to the standards of this section, shall record the decision in the patient's medical record, review the medical basis for the decision, and either:

(i) implement the decision, or

(ii) promptly make his objection to the decision and the reasons for the objection known to the decision-maker, and either make all reasonable efforts to arrange for the transfer of the patient to another physician, if necessary, or promptly refer the matter to the institutional ethics committee.

(b) An attending physician who has actual notice of any of the following objections or disagreements shall promptly refer the matter to the institutional ethics committee if the objection or disagreement cannot otherwise be resolved:

(i) a health or social service practitioner consulted for a concurring determination that an adult patient lacks decision-making capacity disagrees with the attending physician's determination;

(ii) a person on the surrogate list objects to the designation of the surrogate pursuant to subsection g. of this section;

(iii) A person on the surrogate list objects to a health care decision made by the surrogate; or

(iv) a parent or guardian of a minor patient objects to a health care decision made by another parent or guardian of the minor.

n. Notwithstanding the provisions of this section to the contrary, if a surrogate directs the provision of life-sustaining treatment for a patient, the denial of which in reasonable medical judgment would be likely to result in the patient’s death, a health care facility or health care professional that does not wish to provide that treatment shall comply with the surrogate's decision pending: transfer of the patient to a health care facility or health care professional willing to receive the patient; or a review of the matter by a court of competent jurisdiction.

o. Within a reasonable period of time after an adult patient’s admission to a health care facility, the facility shall make reasonable efforts to determine if there is a patient’s representative designated for that individual, or if at least one person is available to serve as a surrogate in the event that the patient is determined to lack decision-making capacity. If the health care facility is unable to identify a patient’s representative or potential surrogate for a patient who is determined to lack decision-making capacity, it shall seek to identify, to the extent reasonably possible, the patient's wishes and preferences, including, but not limited to, the patient's religious or moral beliefs or values, in regard to pending health care decisions concerning that patient, and shall record its findings in the patient's medical record.

3. The procedures specified in this section shall apply to health care decisions for an adult patient who would qualify for surrogate decision-making under this act but for whom no surrogate is identified as reasonably available, willing, or competent to act. A health care decision made pursuant to this section shall be made in

accordance with the standards set forth in section 2 of this act and shall not be based on the financial interests of the health care facility or any other health care provider. The specific procedures to be followed shall depend on whether the decision involves routine medical treatment, major medical treatment, or the withholding or withdrawal of life-sustaining treatment, and the location where the treatment is provided.

a. (1) An attending physician shall be authorized to decide about the provision of routine medical treatment for an adult patient who has been determined to lack decision-making capacity pursuant to this act. Nothing in this subsection shall require a health care facility or a health care professional to obtain specific consent for treatment when specific consent is not otherwise required by law.

(2) A decision to provide major medical treatment, made in accordance with the following requirements, shall be authorized for an adult patient who has been determined to lack decision-making capacity pursuant to this act.

(a) An attending physician shall make a recommendation in consultation with health care facility staff directly responsible for the patient's care.

(b) In a general hospital, at least one other physician designated by the hospital shall independently make a concurring determination that the recommendation is appropriate.

(c) In a health care facility other than a general hospital, the medical director of the facility, or a physician designated by the medical director, shall independently make a concurring determination that the recommendation is appropriate; except that if the medical director is the patient's attending physician, a different physician designated by the facility shall make the independent determination. A health or social service practitioner employed by or otherwise formally affiliated with the facility may provide a second opinion for decisions about physical restraints made pursuant to this subsection.

b. (1) A court of competent jurisdiction may make a decision to withhold or withdraw life-sustaining treatment for an adult patient who has been determined to lack decision-making capacity pursuant to this act if the court finds that the decision accords with standards for decisions for adult patients set forth in subsections j. and k. of section 2 of this act.

(2) Life-sustaining treatment may be withdrawn or withheld from an adult patient who has been determined to lack decision-making capacity pursuant to this act, without judicial approval, if the patient’s attending physician determines to a reasonable degree of medical certainty, and at least one other physician independently makes a concurring determination, that the provision of such treatment:

(a) offers the patient no medical benefit because the patient will die imminently, even if the treatment is provided; and

(b) would violate accepted medical standards.

(3) The provisions of this subsection shall not apply to any treatment necessary to alleviate the patient’s pain or discomfort.

c. If a physician who is consulted for a concurring determination objects to the attending physician's recommendation or determination made pursuant to this section, or a member of the health care facility staff directly responsible for the patient's care objects to the attending physician's recommendation about major medical treatment or treatment without medical benefit, the matter shall be referred to the institutional ethics committee if it cannot be otherwise resolved.

d. A physician's written order not to attempt cardiopulmonary resuscitation in the event the patient suffers a cardiac or respiratory arrest shall be written in the patient's medical record. Consent to such an order not to resuscitate shall not constitute consent to withhold or withdraw treatment other than resuscitative measures.

e. (1) A patient may at any time revoke his consent to withhold or withdraw life-sustaining treatment by informing the attending physician or a member of the medical or nursing staff of the health care facility of the revocation.

(2) A member of the medical or nursing staff who is informed of such a revocation shall immediately notify the attending physician of the revocation; and the attending physician, when informed thereof, shall immediately:

(a) record the revocation in the patient's medical record;

(b) cancel any orders to withhold or withdraw treatment; and

(c) notify the health care facility staff directly responsible for the patient's care of the revocation and any such cancellation.

f. If a decision to withhold or withdraw life-sustaining treatment has been made pursuant to this section, and an attending physician determines at any time that the decision is no longer appropriate or authorized because the patient has regained decision-making capacity or because the patient's condition has otherwise improved, the physician shall immediately:

(1) include such determination in the patient's medical record;

(2) cancel any order or plan of care to withhold or withdraw life-sustaining treatment;

(3) notify the person who made the decision to withhold or withdraw treatment; and

(4) notify the health care facility staff directly responsible for the patient's care of any cancelled order or plan of care.

g. (1) If a patient with an order to withhold or withdraw life-sustaining treatment is transferred from one health care facility to another, any such order shall remain in effect until an attending physician examines the transferred patient, whereupon the attending physician shall:

(a) issue an appropriate order to continue the prior order, which may be done without obtaining another consent to withhold or withdraw life-sustaining treatment pursuant to this section; or

(b) cancel the prior order, if the attending physician determines that the order is no longer appropriate or authorized.

(2) Before canceling an order to withhold or withdraw life-sustaining treatment pursuant to paragraph (1) of this subsection, the attending physician shall make reasonable efforts to notify the person who made the decision to withhold or withdraw treatment and the staff directly responsible for the patient's care of the cancellation. If such notice cannot reasonably be provided prior to canceling the order or plan, the attending physician shall provide such notice as soon as is reasonably practicable after cancellation.

4. Nothing in this act shall be construed to:

a. alter the rights or responsibilities of a health care professional as provided in section 10 of P.L.1991, c.201 (C.26:2H-62) or a private, religiously-affiliated health care facility as provided in section 13 of P.L.1991, c.201 (C.26:2H-65);

b. make a person liable for the cost of health care provided to an adult patient pursuant to this act who would not be so liable if the health care were provided pursuant to the patient's decision;

c. make a person liable for the cost of health care for a minor solely by virtue of making a decision as a guardian of a minor pursuant to this act;

d. create, expand, diminish, impair, or supersede any authority that a person may have under law to make or express decisions, wishes, or instructions regarding health care on his behalf, including decisions about life-sustaining treatment;

e. permit or promote suicide, assisted suicide, or euthanasia;

f. diminish the duty of a parent or legal guardian under existing law to consent to treatment for a minor; or

g. limit the authority of a court of competent jurisdiction to appoint a special guardian for a patient or take any other action as set forth by court rule or otherwise authorized by law with respect to providing for the making of health care decisions for a patient who is determined to lack decision-making capacity.

5. a. A surrogate shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act.

b. A health care professional shall not be subject to criminal or civil liability or to discipline by a health care facility or a State professional and occupational licensing board for professional misconduct for any actions performed in good faith and in accordance with the provisions of this act, any rules and regulations established by the department pursuant to this act, and accepted professional standards for that health care professional.

c. A health care facility or institutional ethics committee shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act.

6. The commissioner:

a. shall prepare a notice summarizing the rights, duties, and requirements of this act and shall require that a copy of that notice be furnished to a patient or to a person on the surrogate list known to a health care facility to which the patient is admitted, or to the parent or guardian of a minor patient, upon, or prior to, the patient's admission, or within a reasonable time thereafter, and to each member of the staff directly involved with patient care;

b. may take such actions to ensure compliance with the provisions of this act by a health care facility as the commissioner deems necessary and within his statutory authority to effectuate the purposes thereof; and

c. pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt such rules and regulations as are necessary to effectuate the purposes of this act, including, but not limited to, requirements for the adoption by health care facilities of written policies, in accordance with accepted medical standards, governing the implementation and regular review of decisions to withhold or withdrew life-sustaining treatment and the documentation of clinical determinations and decisions by surrogates and health care professionals pursuant to this act.

7. a. As used in this section:

"Administrator" means the administrator of the program for a participating hospital designated pursuant to this section.

"Commissioner" means the Commissioner of Health and Senior Services.

"Developmental center" means a State developmental center listed in R.S.30:1-7.

"Eligible patient" means an adult inpatient at a participating hospital who, according to the patient's attending physician:

(1) is ready to be discharged as an inpatient, but needs to be transitioned to post-acute care;

(2) lacks capacity to consent to the discharge and to admission to post-acute care;

(3) does not have a guardian, health care representative, surrogate, family member, friend, or other representative who is reasonably available and willing to make a transition decision on the patient's behalf, whose consent would be accepted by a proposed post-acute care provider, and who is legally authorized to make all required transition-related financial arrangements;

(4) has a discharge plan that identifies an appropriate post-acute care provider that is or may be willing to admit the patient if a transition authorization panel, established pursuant to this section,

were to authorize the transition and, if necessary, make transition-related financial arrangements; and

(5) has not expressed an objection to any of the foregoing findings or to being transitioned to the proposed post-acute facility or service or, if applicable, the proposed transition-related financial arrangements.

"Financial institution" means a State or federally chartered bank, savings bank, savings and loan association, or any other financial services company or provider, including, but not limited to, a broker-dealer, investment company, money market or mutual fund, credit union, or insurer.

"Health care representative" means a health care representative designated pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.).

"Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Participating hospital" means a hospital that is selected by the commissioner to participate in the program, upon the chief executive officer of the hospital notifying the commissioner in writing that the hospital elects to participate in the program, and until such time as the chief executive officer of the hospital notifies the commissioner in writing that the hospital elects to cease its participation in the program.

"Post-acute care" means care provided by a nursing home, assisted living residence or comprehensive personal care home, residential health care facility, hospice, special hospital, psychiatric facility, developmental center, inpatient or residential substance abuse treatment program, or home health care agency.

"Program" means the transition authorization panel demonstration program established pursuant to this section.

"Psychiatric facility" means a psychiatric facility as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2).

"Surrogate" means a surrogate designated pursuant to section 2 of this act.

"Transition authorization" means a decision, made by a transition authorization panel pursuant to this section, to authorize the transition of an eligible patient from a participating hospital to a specific post-acute care provider.

"Transition authorization panel" or "panel" means a three-person panel, convened pursuant to this section, to authorize the transition of an eligible patient from a participating hospital to a specific post-acute care provider, and to make transition-related financial arrangements.

"Transition authorization panel agent" or "agent" means a person authorized by a transition authorization panel to carry out transition-related financial arrangements.

"Transition authorization panel pool" means the full pool of persons qualified and designated to serve on transition authorization panels at a program site.

"Transition-related financial arrangements" means those acts that are necessary to:

(1) expend the eligible patient's funds for post-acute care for a period of up to 120 days or until the court appointment of a guardian of the property, whichever occurs first;

(2) apply for the eligible patient's enrollment in Medicaid or the federal Medicare program established pursuant to Title XVIII of the "Social Security Act," Pub.L.89-97 (42 U.S.C. s.1395 et seq.); and

(3) access financial information about the eligible patient from financial institutions to the extent necessary for the purposes of this section.

b. There is established a transition authorization panel demonstration program, to be conducted at six program sites, two each in the northern, central, and southern regions of the State, for the purpose of evaluating an approach to making decisions relating to the transition of eligible patients from inpatient care to post-acute care.

c. Each participating hospital shall:

(1) designate a person as administrator of the program for that program site;

(2) carry out, and bear the costs of, the administrative responsibilities of the program as set forth in this section, for that program site; and

(3) create and maintain records of all requests made, panels convened, transition-related financial arrangements made, and other actions taken pursuant to this section, which records shall be made available to the Department of Health and Senior Services upon request.

d. (1) A participating hospital shall create a transition authorization panel pool at a program site, which shall have three classes of members, as follows:

(a) one class to comprise persons designated by the hospital;

(b) one class to comprise persons designated by the director of the county social services agency of the county in which the hospital is located; and

(c) one class to comprise persons designated by the Ombudsman for the Institutionalized Elderly.

(2) Each person designated as a member of a transition authorization panel pool shall be an adult with recognized expertise or demonstrated interest in the care and treatment of hospital and post-acute care patients, and who can be expected to apply the standards of this section in good faith and in the best interests of the eligible patient.

(3) The participating hospital and the director of the applicable county social services agency shall jointly appoint one member as chair of the transition authorization panel pool.

e. (1) The review of each request made for transition authorization and for transition-related financial arrangements made

pursuant to this section shall be undertaken by a panel of three members drawn from the transition authorization panel pool, one from each class as set forth in paragraph (1) of subsection d. of this section. The participating hospital shall appoint one member as panel chair.

(2) No person who is a health care professional actively involved in the treatment of the patient whose case is under consideration by a panel may serve on the panel considering that patient's case, although other hospital personnel may serve on the panel if otherwise qualified to do so.

f. An eligible patient's attending physician may request that a panel be convened by submitting a written request to the administrator of the participating hospital that:

(1) indicates that it is a request for the panel to authorize the patient's transition to post-acute care and, if applicable, make transition-related financial arrangements;

(2) sets forth the reasons for believing that the patient is an eligible patient; and

(3) identifies the proposed post-acute care provider or providers to whom an application would be made for that patient.

g. Upon receipt of the request from an eligible patient's attending physician, the administrator shall:

(1) decline the request and notify the attending physician of the reason therefor, which may include, but not be limited to, the fact that although the patient is eligible, a transition can be accomplished without the need to convene a panel, or

(2) take the actions set forth in subsection h. of this section to convene a panel.

h. The administrator shall take the following actions in order to convene a panel pursuant to the request of an eligible patient's attending physician:

(1) set a date, time, and place for the panel to review the request, which review may be scheduled for any date and time at least three days after the administrator's receipt of the request and send notice as provided in paragraph (2) of this subsection; however, the review shall be held earlier or later than the date set forth in the notice if all persons who are entitled to notice, as set forth in this paragraph, agree, in writing or verbally, as documented by the administrator, to the date, time, and place of the review; and

(2) send a copy of the request and notice, by hand, mail, fax or e-mail, and notice of the provisions of paragraph (3) of subsection j. of this section, to the following persons:

(a) three members of the transition authorization panel pool, one from each class, selected by the pool chair, who are willing and able to serve as a panel for the purpose of this review;

(b) the patient, if there is any indication of the patient's ability to comprehend the request and notice;

(c) a guardian, health care representative, surrogate, family member, friend, or other representative of the patient who may be reasonably available and willing to make a transition decision on the patient's behalf, if there is any such person;

(d) if the patient was admitted to the hospital from a psychiatric facility or developmental center, the chief administrative officer of the psychiatric facility or developmental center; and

(e) the patient's attending physician.

i. Prior to or during the review by the panel, the panel chair may request and, notwithstanding any other law to the contrary, shall be entitled to receive from any health care provider and disclose to the panel any information that is relevant to the review. The panel shall maintain the confidentiality of any such information and comply with any limitations on the further release of that information, as required by any applicable provisions of State or federal law.

j. The panel shall comply with the provisions of this subsection in the conduct of its review:

(1) The panel shall meet in person or by video conference to conduct its review.

(2) The panel chair may request the attendance at the review of any person who might assist the panel in its review.

(3) (a) Any of the persons described in subparagraphs (b) through (e) of paragraph (2) of subsection h. of this section, as applicable, shall be afforded an opportunity to address the panel and may be present for such other parts of the panel review as the chair may permit.

(b) The patient may be present when any other person addresses the panel.

(c) No person described in subparagraphs (b) through (e) of paragraph (2) of subsection h. of this section shall be permitted to be present during the deliberations of the panel.

(4) Where practicable, the panel members shall personally interview and observe the patient prior to making their decision.

(5) The panel chair may adjourn and reconvene the panel as necessary.

(6) The administrator shall arrange for minutes to be taken and maintained of any panel meeting, but no recording or transcription shall be required.

(7) In its review, the panel shall consider whether the proposed transition is to a facility or program that appears able to meet the patient's needs in the least restrictive setting reasonably available to the patient.

k. Upon concluding its review, the panel, by majority vote, shall make a written determination, which shall be signed by the chair on behalf of the panel and made part of the patient's medical record, as to:

(1) whether the patient is an eligible patient;

(2) whether to authorize the proposed transition; except that, if the patient has a guardian, health care representative, surrogate, family member, friend, or other representative who is reasonably available and willing to make a transition decision on the patient's behalf, but who is not legally authorized to make transition-related financial arrangements, then that person, rather than the panel, shall decide whether to authorize the proposed transition; and

(3) whether to authorize transition-related financial arrangements.

l. (1) If the panel determines to authorize the proposed transition, the authorization shall be set forth in an order, signed by the chair on behalf of the panel and made part of the patient's medical record, which shall describe the scope of such authorization and, if it authorizes transition-related financial arrangements, designate a transition authorization panel agent.

(2) Notwithstanding any law to the contrary, the administrator and the agent shall disclose the order to such persons as necessary for the purpose of carrying out its terms.

(3) The order authorizing the proposed transition shall constitute, and may be relied upon by the participating hospital, post-acute care providers, financial institutions, and other third parties as, legal authority for them to perform or cooperate in the performance of those actions authorized pursuant to this section, including legal authority for:

(a) the participating hospital to discharge the patient;

(b) the post-acute care provider to admit the patient;

(c) the transition authorization panel agent to make transition-related financial arrangements; and

(d) Medicaid, financial institutions, and other parties to provide financial and other personal information about the patient related to the transition and transition-related financial arrangements to the administrator or agent, and to otherwise cooperate in the transition-related financial arrangements.

m. A transition authorization panel agent, in the performance of his duties under this section, shall be deemed the personal representative of the patient for the purposes of the federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

n. No person or entity shall be subject to civil or criminal liability or sanction by a governmental agency for actions taken reasonably and in good faith pursuant to this section:

(a) as a member or agent of a transition authorization panel, or as administrator of a transition authorization program;

(b) for the purpose of discharging, transferring, or admitting a patient from or to a facility or program pursuant to an order of a transition authorization panel; or

(c) for the purpose of disclosing financial or other personal information about a patient or disbursing patient funds, or otherwise

cooperating in transition-related financial arrangements, pursuant to an order of a transition authorization panel.

o. (1) Each administrator shall submit an annual report to the commissioner, on a form and in a manner to be prescribed by the commissioner, no later than 30 days prior to each anniversary of the effective date of this act, which shall include with respect to each request for a review by a panel at that hospital: the type of post-acute care requested; the length of time from the date of the request until the panel convened, the panel issued its determination, and the patient was discharged from the participating hospital if the determination approved the transition, respectively; the categories of persons who addressed the panel; the number of unanimous and non-unanimous panel votes; whether the order called for transition-related financial arrangements and, if so, whether those arrangements were successfully made; whether the patient or another person objected to the panel's decision; and any data or other information available to the administrator regarding the impact of the demonstration on the average inpatient length of stay at that hospital;

(2) No later than 30 days prior to the third anniversary of the effective date of this act, the commissioner shall present a report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the results of the program, which shall include, at a minimum:

(a) an evaluation by each participating hospital and its applicable county social services agency, and by the Ombudsman for the Institutionalized Elderly, regarding whether transition authorization panels adequately protected the interests and rights of patients, including their interest in being transitioned to the least restrictive setting reasonably available, and the success of the transition plans approved by the program in meeting the needs of patients; and

(b) any recommendations that the commissioner desires to make for legislative action or to extend the program or adopt a permanent Statewide transition authorization program.

8. This act shall take effect on the first day of the seventh month next following the date of enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act. Section 7 of this act shall expire three years after the effective date.

STATEMENT

The purpose of this bill is to facilitate the making of health care decisions for patients in a general hospital, nursing home, or

assisted living facility (health care facility) who have lost decision-making capacity.

The bill provides specifically as follows:

- A health care facility is to establish policies and procedures, in accordance with the provisions of this bill, to provide for the making of health care decisions by a surrogate, who is to be designated by the health care facility, for an adult patient who is determined, pursuant to this bill, to: lack decision-making capacity; not have a patient's representative; and not have executed an advance directive.
- The patient's attending physician is to make an initial determination that the patient lacks decision-making capacity to a reasonable degree of medical certainty, including, but not limited to, an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity. An initial determination that a patient lacks decision-making capacity is subject to a concurring determination that the patient lacks decision-making capacity to a reasonable degree of medical certainty, independently made by a health or social service practitioner, if the health care decision concerns the withdrawal or withholding of life-sustaining treatment. The concurring determination is to: include, but not be limited to, an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity; and be included in the patient's medical record.
- If the patient's attending physician has determined that the patient lacks decision-making capacity but the person making a concurring determination disagrees with the attending physician's determination, they are to seek to resolve the disagreement by means of procedures and practices established by the health care facility, including, but not limited to, consultation with an institutional ethics committee, or with a person designated by the health care facility for this purpose.
- A health care facility is authorized to designate a surrogate to make health care decisions for an adult patient who has been determined to lack decision-making capacity, and is to provide prompt notice of that determination and designation to: the patient, if the health care facility has any indication of the patient's ability to comprehend the information; and at least one person on the surrogate list, set in this bill, who is highest in order of priority listed when persons in prior classes are not reasonably available.
- A determination made pursuant to the bill that an adult patient lacks decision-making capacity is not to be construed as a finding that the patient lacks capacity for any other purpose.
- Notwithstanding a determination that an adult patient lacks decision-making capacity, if the patient objects to the

determination of incapacity, or to the choice of a surrogate or to a health care decision made for that patient pursuant to the bill, the patient's objection is to prevail, unless overruled by a court of competent jurisdiction or if another legal basis exists for overriding the patient's decision.

- An adult patient's attending physician is to confirm the patient's continued lack of decision-making capacity before complying with health care decisions made pursuant to the bill.
- A health care facility is to designate one person from the following list, as applicable, from the class highest in priority when persons in prior classes are not reasonably available, willing, and competent to act, to serve as surrogate for an adult patient who is determined to lack decision-making capacity pursuant to the bill; except that the designated person may designate any other person on the list to be surrogate, provided no one in a class higher in priority than the person so designated objects:

(1) the patient's spouse, partner in a civil union couple, or domestic partner, if not legally separated from the patient;

(2) the patient's son or daughter 18 years of age or older;

(3) the patient's parent;

(4) the patient's brother or sister 18 years of age or older;

(5) a close friend of the patient.

- An operator, administrator, or employee of a health care facility to which a patient has been admitted or from which a patient was transferred, or a physician who has privileges at such a health care facility or a health care professional or other person under contract with such a health care facility may not serve as the surrogate for an adult who is a patient at that facility, unless that person is related to the patient by blood, marriage, civil union, domestic partnership, or adoption, or is a close friend of the patient whose friendship with the patient preceded the patient's admission to the facility. If a physician serves as surrogate, the physician is not to act as the patient's attending physician after his authority as surrogate begins.
- A surrogate who is designated pursuant to the bill will, subject to the provisions thereof, have the authority to make any health care decision on the adult patient's behalf that the patient could make.
- A health care facility or a health care professional is not obligated to seek the consent of a surrogate if an adult patient has already made a decision about the proposed health care, expressed orally or in writing or, with respect to a decision to withdraw or withhold life-sustaining treatment, expressed either orally during the patient's stay in the health care facility in the presence of two witnesses 18 years of age or older, at least one of whom is a health or social service practitioner affiliated with the health care facility, or in writing.

- In the event that an attending physician determines that the patient has regained decision-making capacity, the authority of the surrogate will cease.
- Notwithstanding any law to the contrary, the surrogate will have the right to receive medical information and medical records necessary to make informed decisions about the patient's health care.
- The surrogate is to make health care decisions for the patient: in accordance with the patient's wishes or values, including, but not limited to, the patient's religious or moral beliefs; or if the patient's wishes or values are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests.
- A decision by the surrogate to withhold or withdraw life-sustaining treatment from the patient is to be authorized only if the attending physician determines, with the independent concurrence of another physician and to a reasonable degree of medical certainty and in accordance with accepted medical standards, that:

-- the patient has an illness or injury which can be expected to cause death within six months, whether or not treatment is provided, or that the patient is permanently unconscious, and the provision or continuation of treatment would be an extraordinary burden to the patient; or

-- the patient has an irreversible or incurable condition, and the provision or continuation of treatment would involve such pain or suffering for, or otherwise be so extraordinarily burdensome to, the patient that it would reasonably be deemed inhumane under the circumstances.

- If the attending physician of a patient in a general hospital objects to a surrogate’s decision to withhold or withdraw nutrition and hydration provided by means of medical treatment from the patient, the decision is not to be implemented until the institutional ethics committee, including at least one physician who is not directly responsible for the patient's care, or a court of competent jurisdiction, reviews the decision and determines that it meets the standards set forth in the bill. This provision would not apply to nutrition and hydration provided to a patient orally and without reliance on medical treatment.
- The parent or guardian of a minor patient has the authority to make decisions about life-sustaining treatment, including decisions to withhold or withdraw such treatment, subject to the provisions of the bill. The parent or guardian of a minor patient is to make decisions in accordance with the minor's best interests, taking into account the minor's wishes as appropriate under the circumstances. An attending physician, in consultation with a minor's parent or guardian, is to determine whether a minor patient has decision-making capacity for a decision to withhold or

withdraw life-sustaining treatment; and, if the minor has such capacity, a parent's or guardian's decision to withhold or withdraw life-sustaining treatment for the minor may not be implemented without the minor's consent.

- An attending physician, upon being informed of a decision to withdraw or withhold life-sustaining treatment, made pursuant to the bill, is to record the decision in the patient's medical record, review the medical basis for the decision, and either: implement the decision, or promptly make his objection to the decision and the reasons for the objection known to the decision-maker, and either make all reasonable efforts to arrange for the transfer of the patient to another physician, if necessary, or promptly refer the matter to the institutional ethics committee.
- Notwithstanding the provisions of the bill to the contrary, if a surrogate directs the provision of life-sustaining treatment for a patient, the denial of which in reasonable medical judgment would be likely to result in the patient’s death, a health care facility or health care professional not wishing to provide that treatment is to comply with the surrogate's decision pending: transfer of the patient to a health care facility or health care professional willing to receive the patient; or a review of the matter by a court of competent jurisdiction.
- Within a reasonable period of time after an adult patient’s admission to a health care facility, the facility is to make reasonable efforts to determine if there is a patient’s representative designated for that individual, or if at least one person is available to serve as a surrogate in the event that the patient is determined to lack decision-making capacity. If the health care facility is unable to identify a patient’s representative or potential surrogate for a patient who is determined to lack decision-making capacity, it is to seek to identify and act upon, to the extent reasonably possible, the patient's wishes and preferences, including, but not limited to, the patient's religious or moral beliefs or values, in regard to pending health care decisions concerning that patient. The specific procedures to be followed will depend on whether the decision involves routine medical treatment, major medical treatment, or the withholding or withdrawal of life-sustaining treatment, and the location where the treatment is provided.
- A court of competent jurisdiction may make a decision to withhold or withdraw life-sustaining treatment for an adult patient who has been determined to lack decision-making capacity, pursuant to the bill, if the court finds that the decision accords with standards for decisions for adult patients set forth in the bill.
- Life-sustaining treatment may be withdrawn or withheld from an adult patient who has been determined to lack decision-making capacity pursuant to the bill, without judicial approval, if the

patient's attending physician determines to a reasonable degree of medical certainty, and at least one other physician independently makes a concurring determination, that the provision of such treatment: offers the patient no medical benefit because the patient will die imminently, even if the treatment is provided; and would violate accepted medical standards. These provisions will not apply to any treatment necessary to alleviate the patient's pain or discomfort.

- A patient, surrogate, or parent or guardian of a minor patient may at any time revoke his consent to withhold or withdraw life-sustaining treatment by informing the attending physician or a member of the medical or nursing staff of the health care facility of the revocation.
- Nothing in the bill is to be construed to:

-- alter the rights or responsibilities of a health care professional or a private, religiously-affiliated health care facility as provided in the "New Jersey Advance Directives for Health Care Act";

-- make a person liable for the cost of health care provided to an adult patient, pursuant to the bill, who would not be so liable if the health care were provided pursuant to the patient's decision;

-- make a person liable for the cost of health care for a minor solely by virtue of making a decision as a guardian of a minor pursuant to the bill;

-- create, expand, diminish, impair, or supersede any authority that a person may have under law to make or express decisions, wishes, or instructions regarding health care on his behalf, including decisions about life-sustaining treatment;

-- permit or promote suicide, assisted suicide, or euthanasia;

-- diminish the duty of a parent or legal guardian under existing law to consent to treatment for a minor; or

-- limit the authority of a court of competent jurisdiction to appoint a special guardian for a patient or take any other action as set forth by court rule or otherwise authorized by law with respect to providing for the making of health care decisions for a patient who is determined to lack decision-making capacity.

- A surrogate, health care professional, health care facility, or institutional ethics committee will not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of the bill; nor will a health care professional be subject to criminal or civil liability or to discipline by a health care facility or the respective State licensing board for professional misconduct for any actions performed in good faith and in accordance with the provisions of the bill, any rules and regulations adopted pursuant thereto, and accepted professional standards for that health care professional.
- The bill also establishes a three-year transition authorization panel demonstration program, to be conducted at six program sites, two each in the northern, central, and southern regions of

the State, for the purpose of evaluating an approach to making decisions relating to the transition of eligible patients from inpatient care to post-acute care.

-- For the purposes of the demonstration program, the bill defines "eligible patient" to mean an adult inpatient at a participating hospital who, according to the patient's attending physician:

(1) is ready to be discharged as an inpatient, but needs to be transitioned to post-acute care;

(2) lacks capacity to consent to the discharge and to admission to post-acute care;

(3) does not have a representative who is reasonably available and willing to make a transition decision on the patient's behalf, whose consent would be accepted by a proposed post-acute care provider, and who is legally authorized to make all required transition-related financial arrangements;

(4) has a discharge plan that identifies an appropriate post-acute care provider that is or may be willing to admit the patient if a transition authorization panel, established under the program, were to authorize the transition and, if necessary, make transition-related financial arrangements; and

(5) has not expressed an objection to any of the foregoing findings or to being transitioned to the proposed post-acute facility or service or, if applicable, the proposed transition-related financial arrangements.

-- A participating hospital is to create a transition authorization panel pool at a program site, which will have three classes of members, one each to comprise persons designated by the hospital, the director of the applicable county social services agency, and the Ombudsman for the Institutionalized Elderly, respectively, and each member of which is to be an adult with recognized expertise or demonstrated interest in the care and treatment of hospital and post-acute care patients, and who can be expected to apply the standards of the program in good faith and in the best interests of the eligible patient.

-- The review of each request made for transition authorization and for transition-related financial arrangements made under the program is to be undertaken by a panel of three members drawn from the transition authorization panel pool, one from each class as set forth above.

-- An eligible patient's attending physician may request that a panel be convened by submitting a written request to the administrator of the participating hospital, for the panel to authorize an eligible patient's transition to post-acute care and, if applicable, make transition-related financial arrangements.

-- Upon receipt of the request from an eligible patient's attending physician, the administrator is required to: decline the request and notify the attending physician of the reason therefor; or take the actions set forth in the bill to convene a panel.

-- The panel is to meet in person or by video conference to conduct its review and may request the attendance at the review of any person who might assist the panel in its review.

-- Any of the persons provided notice of the convening of the panel, pursuant to the bill, are to be afforded an opportunity to address the panel and may be present for such other parts of the panel review as the chair may permit; and the patient may be present when any other person addresses the panel. These individuals are not permitted to be present during the deliberations of the panel.

-- Where practicable, the panel members are to personally interview and observe the patient prior to making their decision.

-- In its review, the panel is to consider whether the proposed transition is to a facility or program that appears able to meet the patient's needs in the least restrictive setting reasonably available to the patient.

-- Upon concluding its review, the panel, by majority vote, is to make a written determination, signed by the chair on behalf of the panel and made part of the patient's medical record, as to:

(1) whether the patient is an eligible patient;

(2) whether to authorize the proposed transition; except that, if the patient has a representative who is reasonably available and willing to make a transition decision on the patient's behalf, but who is not legally authorized to make transition-related financial arrangements, then that person, rather than the panel, will decide whether to authorize the proposed transition; and

(3) whether to authorize transition-related financial arrangements.

-- If the panel determines to authorize the proposed transition, the authorization is to be set forth in an order, signed by the chair on behalf of the panel and made part of the patient's medical record, which may be relied upon by the participating hospital, post-acute care providers, financial institutions, and other third parties as legal authority for them to perform or cooperate in the performance of those actions authorized by the bill.

-- No person or entity will be subject to civil or criminal liability or sanction by a governmental agency for actions taken reasonably and in good faith, pursuant to the provisions of the bill, governing the demonstration program.

-- The Commissioner of Health and Senior Services, no later than 30 days prior to the third anniversary of the effective date of the bill, will present a report to the Governor and the Legislature on the results of the demonstration program.

- The bill takes effect on the first day of the seventh month after enactment, but authorizes the Commissioner of Health and Senior Services to take administrative action in advance as necessary for its implementation.