

**A02634 Memo:**

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

**BILL NUMBER:** A2634

**SPONSOR:** Rosenthal L

**TITLE OF BILL:**

An act to amend the public health law, in relation to the artificial hydration and nutrition decision standard

**PURPOSE:**

This is one of a series of seven bills, informally referred to as the "Surrogate Decision-Making Improvement Acts." The bills make technical/minor, clarifying and coordinating amendments and other improvements to the Family Health Care Decisions Act (FHCDA) (Ch. 8, Laws of 2010) and other laws that govern health care decisions, including life-sustaining treatment decisions, for patients who lack decision-making capacity. This bill makes the standards for a health care agent's decision regarding artificial nutrition and hydration consistent with the Family Health Care Decision Act (FHCDA).

**SUMMARY OF SPECIFIC PROVISIONS:**

Section one amends subdivision 4 of section 2980 of the public health law, as added by chapter 752 of the laws of 1990.

Section two amends the fourth undesignated paragraph of paragraph (d) of subdivision 5 of section 2981 of the public health law, as added by chapter 752 of the laws of 1990.

Section three amends subdivision 2 of section 2982 of the public health law, as amended by chapter 230 of the laws of 2004.

Section four sets forth the effective date.

### **JUSTIFICATION:**

This bill makes the decision-making standard for an agent under the Health Care Proxy Law similar to the standard for a surrogate under the Family Health Care Decisions Act (FHCDA).

Specifically; the FHCDA provides that a surrogate must make decisions about life-sustaining treatment, including artificial nutrition and hydration, based on the patient's wishes or, if the patient's wishes are not reasonably known, based on the patient's best interests. In contrast, the 1990 Health Care Proxy Law allows the patient's designated agent to make decisions about artificial nutrition and hydration only if the decision is based on the patient's reasonably known wishes, and not if the decision is based on the patient's best interests. There is little basis for this disparity in standards. Moreover, the special rule for decisions about artificial nutrition and hydration in the Health Care Proxy Law has been a source of enduring confusion and misinterpretation.

This amendment would make the FHCDA standard, with its careful definition of "best interests," and which no applies to decisions by surrogates, applicable to decisions by health care agents.

### **LEGISLATIVE HISTORY:**

2019-20: A.730-A - Referred to Health

2017-18: A.4055 - Referred to Health

2015-16: A.674 - Referred to Health

2013-14: A.9566-B - Reported to Rules; S.7154-A - Referred to Health

### **FISCAL IMPLICATIONS:**

None to the State.

### **EFFECTIVE DATE:**

This bill shall take effect ninety days after the date on which this act shall have become a law. The amendments to article 29-C of the public

health law shall apply to decisions made pursuant to health care proxies created prior to this act becoming law as well as those created thereafter.

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**A02634 Text:**

## STATE OF NEW YORK

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2634

2021-2022 Regular Sessions

**IN ASSEMBLY**

January 19, 2021

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Introduced by M. of A. L. ROSENTHAL, GOTTFRIED, BRONSON --  
read once and  
referred to the Committee on Health

AN ACT to amend the public health law, in relation to the  
artificial  
hydration and nutrition decision standard

**The People of the State of New York, represented in Senate  
and Assem-  
bly, do enact as follows:**

1 Section 1. Subdivision 4 of section 2980 of the public  
health law, as  
2 added by chapter 752 of the laws of 1990, is amended to read  
as follows:  
3 4. "Health care" means any treatment, service or procedure  
to diagnose  
4 or treat an individual's physical or mental condition,  
**including**  
5 **hydration and nutrition.**  
6 § 2. The fourth undesignated paragraph of paragraph (d) of  
subdivision  
7 5 of section 2981 of the public health law, as added by  
chapter 752 of  
8 the laws of 1990, is amended to read as follows:

9 NOTE: Although not necessary, and neither encouraged nor  
discouraged,  
10 you may wish to state instructions or wishes, and limit  
your agent's  
11 authority. [~~Unless your agent knows your wishes about~~  
~~artificial nutri-~~  
12 ~~tion and hydration, your agent will not have authority to~~  
~~decide about~~  
13 ~~artificial nutrition and hydration.~~] For example, you may  
state your  
14 wishes regarding withholding or withdrawing life-sustaining  
treatment  
15 (including hydration and nutrition) to guide your agent's  
decisions. If  
16 you choose to state instructions, wishes, or limits, please do  
so below:  
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20 § 3. Subdivision 2 of section 2982 of the public  
health law, as  
21 amended by chapter 230 of the laws of 2004, is amended to  
read as  
22 follows:  
23 2. Decision-making standard. After consultation with a  
licensed physi-  
24 cian, registered nurse, licensed psychologist, licensed  
master social  
25 worker, or a licensed clinical social worker, the agent  
shall make

EXPLANATION--Matter in italics (underscored) is new; matter  
in brackets

[~~-~~] is old law to be omitted.

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1 health care decisions: (a) in accordance with the  
principal's wishes,  
2 including the principal's religious and moral beliefs; or  
(b) if the  
3 principal's wishes are not reasonably known and cannot with  
reasonable  
4 diligence be ascertained, in accordance with the principal's  
best inter-  
5 ests[~~;~~ ~~provided, however, that if the principal's wishes~~  
~~regarding the~~

~~6 administration of artificial nutrition and hydration are not~~  
~~reasonably~~  
~~7 known and cannot with reasonable diligence be ascertained,~~  
~~the agent~~  
~~8 shall not have the authority to make decisions regarding~~  
~~these meas-~~

~~9 ures].~~

10 § 4. This act shall take effect on the ninetieth day  
after it shall

11 have become a law, provided that the amendments to sections  
2981 and

12 2982 of the public health law made by sections two and three  
of this act

13 shall apply to decisions made pursuant to health care  
proxies created

14 prior to the effective date of this act as well as those  
created there-

15 after.