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CHAPTER 734

LAWS OF 20 05

SENATE BILL 5785

ASSEMBLY BILL _____

STATE OF NEW YORK

5785

2005-2006 Regular Sessions

IN SENATE

June 17, 2005

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to demonstration programs for alternative forms for nonhospital orders not to-resuscitate and providing for the repeal of such provisions upon the expiration thereof

A 8892 Rules (Morelle)

DATE RECEIVED BY GOVERNOR:

SEP 29 2005

ACTION MUST BE TAKEN BY:

OCT 11 2005

DATE GOVERNOR'S ACTION TAKEN:

OCT 11 2005

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SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

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THE SENATE
STATE OF NEW YORK



JAMES S. ALESI
Senator, 55th District

October 4, 2005

CHAIRMAN
COMMERCE, ECONOMIC DEVELOPMENT
& SMALL BUSINESS

COMMITTEE MEMBER
BANKS
CRIME VICTIMS, CRIME & CORRECTION
ENERGY & TELECOMMUNICATIONS

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www.senatoralesi.com

Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Platkin:

I am writing to respectfully request that the Governor sign into law S. 5785, which would authorize the Commissioner of the Department of Health to use one or more alternative forms for issuing non hospital do not resuscitate orders.

Currently, the Department of Health may only approve one standard non hospital do not resuscitate form. Emergency medical providers in Monroe and Onondaga Counties have developed a new form that they feel is more accurately designed to meet the needs of patients who may wish to declare their desires not to be resuscitated in settings outside of the hospital, such as home based health care situations or nursing homes. The new form, Medical Orders for Life Sustaining Treatment (MOLST), has been introduced in Monroe and Onondaga Counties as a standardized form. This legislation would allow the Department of Health to sanction the use of this form in non hospital settings as part of a demonstration project to be conducted in Monroe and Onondaga Counties.

By signing this legislation into law, the Governor would take one step further in guaranteeing individuals the ability to honor their health care choices. Thank you for considering my views on this matter. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

JAMES S. ALESI
New York State Senate

JSA/mhp



RICHARD N. GOTTFRIED
75TH ASSEMBLY DISTRICT

CHAIR
COMMITTEE ON HEALTH

NEW YORK STATE ASSEMBLY

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COMMITTEES:
RULES
HEALTH
HIGHER EDUCATION
MAJORITY STEERING

CHAIR
MANHATTAN DELEGATION

July 8, 2005

Richard Platkin
Counsel to the Governor
Executive Chamber, State Capitol
Albany, NY 12224

Re: S. 5785 (Alesi), A.8892 (Morelle); non-hospital DNR form demonstration

Dear Mr. Platkin:

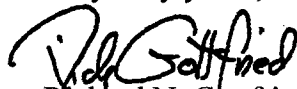
This bill would provide for a demonstration program in Monroe and Onondaga counties allowing the use of alternative forms for non-hospital orders not to resuscitate ("do not resuscitate" or DNR). I urge the Governor to sign it into law.

The Public Health Law only allows the use of the Department of Health's official standard non-hospital DNR form. A new form, known as the Medical Orders for Life Sustaining Treatment (MOLST), has been adopted by the Excellus Health Plan in conjunction with health care providers in Monroe and Onondaga counties. This form, which covers several treatment options in addition to resuscitation, makes it easier for the patient to have more say in treatment decisions. It has been introduced in Monroe and Onondaga counties as a standardized form. While it has been successful within the hospital setting, the MOLST form is not authorized for use in non-hospital settings and emergency medical services workers have been unable to honor it, because the Public Health Law only allows use of the one official form.

The Department of Health, local hospitals, the State Emergency Medical Advisory Council, and Excellus Health Plan all feel that the MOLST form could prove to be a superior form. However, without legislative action, the Department cannot authorize the use of an alternative form, even as a demonstration. This legislation would provide DOH with the authority to review and approve this alternative form as a demonstration program. I expect that this demonstration will lead to a recommendation to amend the statute to allow the Department to authorize alternative forms.

I urge the Governor to sign this legislation into law. Please do not hesitate to contact me or Bryan O'Malley in my Albany office if you have any questions.

Very truly yours,


Richard N. Gottfried
Chair
Assembly Committee on Health

cc: Joseph D. Morelle
James S. Alesi

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**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5785

SPONSOR: ALESI

TITLE OF BILL:

An act to amend the public health law, in relation to demonstration programs for alternative forms for non-hospital orders not to resuscitate and providing for the repeal of such provisions upon the expiration thereof

PURPOSE OR GENERAL IDEA OF BILL:

Allows the Department of Health to authorize the use of one or more alternative forms for issuing a non-hospital order not to resuscitate as part of one or more demonstration programs in Monroe or Onondaga counties.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1. Authorizes the Commissioner to use one or more alternative forms for issuing a non-hospital order not to resuscitate as part of one or more demonstration programs in Monroe or Onondaga counties.

Section 2. Provides for an immediate effective date and sunset on March 31, 2007.

JUSTIFICATION:

Under existing law, the Department of Health may only approve one standard non-hospital order not to resuscitate. A new form, known as the Medical Orders for Life Sustaining Treatment (MOLST) has been developed by those in the field. This form allows the patient to have more say in treatment decisions and has been introduced in Monroe and Onondaga counties as a standardized form. Because the non-hospital order not to resuscitate is the only form that is authorized for use in non-hospital settings, emergency medical Services workers have been unable to honor this new form.

This legislation will allow for the use of the MOLST form as a demonstration program in Monroe and Onondaga Counties.

PRIOR LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS: None.

Immediately.

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B-203

BUDGET REPORT ON BILLS

Session Year 2005

SENATE:
No. 5785

NO RECOMMENDATION
Senator Alesi

ASSEMBLY:
No.

Title: AN ACT to amend the Public Health Law in relation to establishing a demonstration program in Monroe and Onondaga counties to allow alternative forms of non-hospital orders not to resuscitate.

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and/or this office does not have the technical expertise to make a recommendation on the bill.

We therefore make no recommendation.

A handwritten signature in black ink, appearing to be "Alesi", is located in the lower right quadrant of the page.

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**STATE OF NEW YORK****GEORGE E. PATAKI**
Governor**Commission on Quality of Care and Advocacy
for Persons with Disabilities**401 State Street
Schenectady, NY 12305-2397
(Voice/TTY) 800-624-4143
www.cqc.state.ny.us**GARY O'BRIEN**
Chair**ANGELO MUCCIGROSSO**
Commissioners

October 4, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: Senate Bill No. 5785

Dear Mr. Platkin:

The Commission on Quality of Care and Advocacy for Persons with Disabilities has concerns with this bill and recommends that the Governor disapprove the proposed demonstration program for alternative forms for nonhospital orders not to resuscitate.

The MOLST form that has been developed merges the authority of a health care agent with those of other surrogates. The Public Health Law articles that govern a health care proxy and a do not resuscitate order are discrete and provide different standards to protect the rights of the individual who is the subject of the decision. For example, a health care agent is appointed and selected by a competent individual to stand in his/her shoes if and when s/he becomes incompetent. Accordingly, Article 29-C does not require that the person meet specific medical conditions for a DNR order to be put in place absent any specific instructions from the principal, the individual. Article 29-B governing DNR orders requires that a surrogate decision is authorized for a person without capacity if s/he has a terminal condition, is permanently unconscious, resuscitation is medically futile, or it is an extraordinary burden given the medical condition of the person.

In the context of persons with disabilities, our experience has demonstrated that the attending physicians and hospitals need to work with the patient case managers or the hospital risk managers to assure that the statutory protections for people without capacity are provided. We have observed instances wherein an out of state next of kin was elevated in the medical record to the label of health care agent without any such intent or execution of a proxy by the patient. Accordingly, the DNR law was not complied with and it is unknown whether or not the person would have recovered. The MOLST form appears to confuse who has placed limitations on the care and treatment—the individual, the agent, or a statutory DNR surrogate. In this, the breadth of authority to a surrogate may be overstated on the form.

Similarly, the DNR law provides that in the absence of an arrest, intubation to provide comfort measures to an individual are to be provided and a surrogate requested DNR order cannot prevent the provision of such measures. The MOLST forms references to a "DNI", Do Not Intubate order, obfuscate the necessary considerations to comply with the law for persons without capacity or advance directive.

The form does not provide a definition of medical futility for the purposes of DNR. Given its narrow definition that the person will rearrest in a short period of time, such definition is needed for

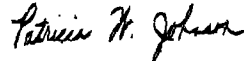
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persons who have a terminal illness but are not likely to rearrest.

Given the fact that two physicians may certify a medical incapacity but special experience, expertise or training is required for a physician who certifies the incapacity of an individual due to a developmental disability, the form is misleading in regard to limiting references to persons in a mental hygiene facility and by not setting forth the need to obtain such qualified physicians or psychologists in instances of incapacity due to mental disability.

If you need further assistance or information, please contact us.

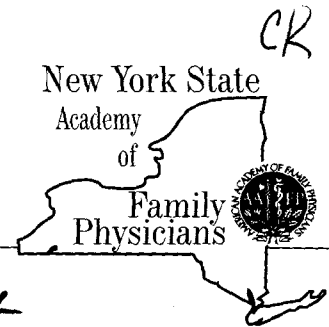
Very truly yours,



Patricia W. Johnson
Assistant Counsel
518-388-1270

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New York State Academy of Family Physicians



for Bill jacket

October 5, 2005

Governor George E. Pataki
State Capitol
Executive Chamber
Albany, New York 12224

Dear Governor Pataki:

We are writing to request your approval of legislation (S.5785, Alesi/ A.8892, Morelle) to allow the New York State Department of Health to authorize one or more demonstration programs in Monroe and Onondaga counties, which would provide a trial for the use of alternative forms for issuing a non-hospital order not to resuscitate.

Under current law, the Department of Health may only approve one standard non-hospital order not to resuscitate. However due to patient interest in having more involvement in their treatment decisions, a new form known as the Medical Orders for Life Sustaining Treatment (MOLST) has been developed, by those in the field. This form has been introduced in Monroe and Onondaga counties as a standardized form, but since the non-hospital order not to resuscitate is the only form that is authorized for use in non-hospital settings, emergency medical services workers have been unable to honor this new form.

This legislation would allow for the use of the MOLST form as a demonstration program in Monroe and Onondaga counties until the sunset date of March 31, 2007. At which time, the program can be evaluated and a determination can be made as to whether to continue and expand the use of such alternative forms.

The New York State Academy of Family Physicians strongly urges your approval of this legislation. Please do not hesitate to contact us with any questions or for additional information. Thank you for your consideration of this important request.

Sincerely,

Marianne LaBarbera, MD
President

Cc: Richard Platkin

MEDICAL SOCIETY
of the
STATE OF NEW YORK

Gerard L. Conway, Esq.
Director

Division of Governmental Affairs

55785

MEMORANDUM IN SUPPORT

**ON ASSEMBLY HEALTH
COMMITTEE AGENDA**

**A. 8892 (RULES, REQUEST OF
MORELLE, GOTTFRIED)**

**IN SENATE RULES
COMMITTEE**

S. 5785 (ALESI)

**AN ACT to amend the public health
law, in relation to demonstration
programs for alternative forms for
nonhospital orders not to resuscitate
and providing for the repeal of such
provisions upon the expiration thereof**

This measure authorizes the New York State Commissioner of Health to designate one or more alternative forms for issuing a nonhospital order not to resuscitate (DNR) under one or more demonstration programs operating in Monroe or Onondaga counties. **The Medical Society of the State of New York supports this bill.**

Community wide efforts have been undertaken in Monroe and Onondaga counties to create and promote the use of an advance directive form to facilitate the ability of patients to make appropriate choices regarding their end of life care. While these forms are currently being revised to address legal issues raised by the Department of Health, once these issues are resolved, these advance directive forms will be promoted in the hospital and nursing home settings. Unfortunately, these forms may not be used in the non-hospital setting because current law does not permit alternative DNR forms other than the form currently prescribed by the commissioner to be used in a non-hospital setting. This bill would authorize the commissioner of health to permit the use of an alternative non-hospital DNR form in Monroe or Onondaga counties, which would help facilitate the use of the advance directive forms noted above. This, in turn, would help better facilitate the ability of all patients in all care settings in these regions to make choices regarding their end of life care. This alternative form would be required to conform to existing federal and state law. The provisions of this bill will sunset in 2008.

For all of the reasons state above, the Medical Society supports this legislation.

Respectfully submitted,

GERARD L. CONWAY, ESQ.

6/20/05 – support
PFC

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MEDICAL SOCIETY OF THE STATE OF NEW YORK



DIVISION OF
GOVERNMENTAL AFFAIRS

William R. Abrams
Executive Director

GERARD L. CONWAY, ESQ.
Senior Vice President &
Chief Legislative Counsel

July 26, 2005

ELIZABETH DEARS KENT, ESQ.
Senior Vice President
Legislative and Regulatory Affairs

MORRIS M. AUSTER, ESQ.
Associate Counsel

PAT CLANCY
Senior Associate Director
for Public Health

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Senior Associate Director for
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JACQUELINE S. L. WILLIAMS
Assistant Director for Fiscal Policy
and Communications

SUSAN E. SAVAGE
Legislative Consultant

Richard Platkin, Esq.
Counsel to the Governor
State Capitol, Executive Chamber
Albany, New York 12224

RE: A. 8892 (MORELLE)/S. 5785 (ALESI)
AN ACT to amend the public health law, in relation to demonstration programs for alternative forms for nonhospital orders not to resuscitate and providing for the repeal of such provisions upon the expiration thereof

Dear Mr. Platkin:

We are writing to you to urge the Governor to sign the above-referenced measure into law. This bill would permit the New York State Commissioner of Health to authorize one or more alternative forms for issuing an order not to resuscitate (DNR) in non-hospital settings under one or more demonstration programs operating in Monroe or Onondaga counties.

Community wide efforts have been undertaken in the Monroe and Onondaga county regions to create and promote the use of an advance directive form to facilitate the ability of patients to make appropriate choices regarding their end of life care, including creating a health care proxy or living will. Most importantly, the form is intended to stimulate and routinize discussion between the physician and the patient (or the patient's representative) concerning whether a DNR order is appropriate. While legal issues have been raised concerning some of the content of these forms by the Department of Health (DOH), the effort to create and promote the use of these advance directive forms is laudable. To that end, MSSNY and other groups have been working with the DOH to address the possible legal defects in these forms so that they may be appropriately used. Once these issues are resolved, these advance directive forms will also be promoted in the hospital and nursing home settings.

Unfortunately, these forms may not be used in the non-hospital setting because current law does not permit alternative DNR forms different from the form currently prescribed by the commissioner to be used in a non-hospital setting. This bill would authorize the commissioner of health to permit the use of an alternative non-hospital DNR form in Monroe or Onondaga counties, which would help facilitate the use of the advance directive forms noted above.

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This, in turn, would better facilitate the ability of all patients in all care settings in these regions to make choices regarding their end of life care. This alternative form would be required to conform to existing federal and state law.

For all of the reasons state above, the Medical Society urges that this legislation be signed into law.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard L. Conway". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

GERARD L. CONWAY, ESQ.

GLC:mma

STATE OF NEW YORK

5785

2005-2006 Regular Sessions

IN SENATE

June 17, 2005

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to demonstration programs for alternative forms for nonhospital orders not to resuscitate and providing for the repeal of such provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2977 of the public health law is amended by adding
2 a new subdivision 13 to read as follows:

3 13. The commissioner may authorize the use of one or more alternative
4 forms for issuing a nonhospital order not to resuscitate (in place of
5 the standard form prescribed by the commissioner under subdivision six
6 of this section) under one or more demonstration programs operating in
7 Monroe or Onondoga counties. An alternative form under this subdivision
8 shall otherwise conform with applicable federal and state law. This
9 subdivision does not limit, restrict or impair the use of an alternative
10 form for issuing an order not to resuscitate in a general hospital or
11 residential health care facility under article twenty-eight of this
12 chapter or a hospital under subdivision ten of section 1.03 of the
13 mental hygiene law or a school under section 13.17 of the mental hygiene
14 law.

15 § 2. This act shall take effect immediately and shall expire June 30,
16 2008 when upon such date the provisions of this act shall be deemed
17 repealed.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13385-01-5