

CK

CHAPTER 325

LAWS OF 20 06

SENATE BILL 6365-A

ASSEMBLY BILL _____

STATE OF NEW YORK

6365--A

Cal. No. 175

IN SENATE

January 10, 2006

Introduced by Sens. ALESI, LARKIN, MORAHAN, TRUNZO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

A9479-A - Morelle

DATE RECEIVED BY GOVERNOR:

JUL 14 2006

ACTION MUST BE TAKEN BY:

JUL 26 2006

DATE GOVERNOR'S ACTION TAKEN:

JUL 26 2006

000001

SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

000002

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

BILL NUMBER: S6365A

SPONSOR: ALESI

TITLE OF BILL: 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

PURPOSE: This bill would permit alternative "do-not-resuscitate" DNR forms to specifically include "do-not-intubate" orders and would exclude people with mental illnesses from using such alternative DNR forms.

SUMMARY OF LEGISLATION: Section 1. Subdivision 13 of section 2977 of the public health law, as added by chapter 734 of the laws of 2005, is amended to authorize the Commissioner to use one or more alternative forms for issuing a non-hospital order not to resuscitate and to use one or more forms for issuing an order not to intubate, regardless of the setting, as part of one or more demonstration programs in Monroe or Onondaga counties.

Such alternative form or forms may also be used to issue a non-hospital do-not-intubate order. Any such alternative forms intended for use for persons with mental retardation or developmental disabilities or persons with mental retardation or developmental disabilities or persons with mental illness who are incapable of making their own health care decisions or who have a guardian of the person appointed pursuant to article eighty-one of the mental hygiene law or article seventeen-A of the surrogate's court procedure act must also be approved by the commissioner of mental retardation and developmental disability or the commissioner of mental health, as appropriate.

Nothing contained in this subdivision is to be construed to change any law concerning intubation of persons in a non-hospital setting except for the demonstration counties pursuant to the demonstration authority provided for in this subdivision.

Section 2. Enactment Date

EXISTING LEGISLATION: Chapter 734 of the laws of 2005 authorized the Commissioner of the Department of Health to use one or more alternative forms for issuing a non-hospital DNR order in lieu of the statutorily prescribed form, provided that any such alternative forms must otherwise comply with state and federal law. This chapter further specifies that it does not affect existing statutory provisions permitting use of alternative DNR forms by general hospitals, residential health care facilities, in-patient psychiatric hospitals or schools for the mentally retarded.

JUSTIFICATION: In Monroe and Onondaga county, a new form, known as Medical Orders for Life Sustaining Treatment (MOLST), has been developed and introduced as an alternative DNR form by professionals in the field. Pursuant to Chapter 734 of the laws of 2005, the Commissioner of the Department of Health is authorized to use one or more alternative forms for issuing a non-hospital DNR order. This would allow emergency medical services workers in Monroe and Onondaga county to make use of the MOLST form. However, because this form also permits an individual to instruct that he or she is not to be intubated, an issue that was not addressed in Chapter 734, this legislation permits alternative non-hospital DNR forms, such as MOLST, to specifically include "do-not-intubate orders." Furthermore, permitting an alternative DNR form in a non-hospital setting may not adequately ensure that existing statutory protections regarding end-of-life decisions are provided for persons with mental retardation or development disabilities or mental illnesses who are incapable of making their own health care decisions. Therefore, these persons will be excluded from the use of an alternative DNR form.

LEGISLATIVE HISTORY: 2005 - Chapter 734

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: This act shall take effect immediately, provided, however, that the amendments to subdivision 13 of section 2977 of the public health law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.

B-203

BUDGET REPORT ON BILLS

Session Year 2006

SENATE:
No. 6365-A

NO RECOMMENDATION
Alesi, Larkin, Morahan, Trunzo

ASSEMBLY:
No.

Title: 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 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.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

July 12, 2006

TO: Counsel to Governor
FROM: Kathy A. Ahearn
SUBJECT: S.6365-A
RECOMMENDATION: No Objection
REASON FOR RECOMMENDATION:

The State Education Department has no objection to the enactment of this bill.

000006



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Memorandum

To: Richard Platkin, Counsel to the Governor
From: Dennis Whalen, Executive Deputy Commissioner
Date: July 18, 2006
Subject: Senate Bill 6365-A

Your office has requested the Department of Health's comments on Senate Bill 6365-A, which is before the Governor for executive action. This legislation would amend Public Health Law Section 2977(13) in relation to demonstration programs for alternative forms of nonhospital orders not to resuscitate.

Currently, the Medical Orders for Life-Sustaining Treatment (MOLST) form is used in demonstration programs in Monroe and Onondaga counties. This legislation would make technical corrections to permit the MOLST alternative "do-not-resuscitate" (DNR) forms to specifically include "do-not-intubate" orders. The bill would also require approval by the Commissioners of Mental Health or Mental Retardation and Developmental Disability, as appropriate, of any MOLST forms intended for use by mentally disabled persons incapable of making their own health care decisions.

The Department of Health recommends approval of Senate Bill 6365-A.

000007



OFFICE OF MENTAL HEALTH

COUNSEL

Sharon E. Carpinello, RN, Ph.D.
Commissioner

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229
(518) 474-1331 • FAX (518) 473-7863 • TDD (518) 473-2714

JOHN V. TAURIELLO
Deputy Commissioner and Counsel

July 13, 2006

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

RE: Senate Bill #6365-A

Dear Mr. Platkin:

The Office of Mental Health ("OMH") supports the above-referenced bill, which is before the Governor for Executive action. This bill amends Section 2977 of the Public Health Law which allows the Commissioner of the Department of Health to authorize the use of alternative non-hospital do not resuscitate ("DNR") forms in demonstration programs operating in Monroe and Onondaga counties. The statutory authority for the use of alternative DNR forms in these counties was established by Chapter 734 of the Laws of 2005. This bill amends that law to require OMH approval of any such authorized alternative DNR forms intended for use for persons with mental illness who are incapable or making their own health care decisions or who have a "guardian of the person" appointed pursuant to article 81 of the Mental Hygiene Law.

OMH believes that this bill is an appropriate and necessary amendment to the law to adequately ensure that the existing statutory protections are maintained for end-of-life decisions for persons with mental illness.

Thank you for the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in cursive script that reads "John V. Tauriello".

John V. Tauriello
Deputy Commissioner and Counsel

000008



STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694
www.omr.state.ny.us

July 7, 2006

Honorable Richard Platkin, Esq.
Counsel to the Governor
State Capitol Building
Executive Chamber
Albany, NY 12224

Re: A. 9479a/S.6365 – amends Chapter 734 of the Laws of 2005 regarding a demonstration program for the use of alternative non-hospital Do No Resuscitate and Do Not Intubate orders

Dear Mr. Platkin:

The Office of Mental Retardation and Developmental Disabilities (“OMRDD”) has reviewed the above-referenced bill awaiting executive action.

Please be advised that OMRDD respectfully states that it supports this bill which amends Chapter 734 of the Laws of 2005 pertaining to a demonstration program administered by the Department of Health regarding the use of alternative non-hospital Do Not Resuscitate (“DNR”) or Do Not Intubate orders (“DNI”). This chapter amendment would require the Commissioners of the Offices of Mental Retardation and Developmental Disabilities and the Office of Mental Health to approve any such alternative forms for use by OMRDD consumers or OMH patients who lack capacity to make their own health care decisions or by their guardians.

The demonstration program authorized by Chapter 734, also known as the MOLST (“Medical Orders for Life Sustaining Treatment”) program operating in Monroe and Onondaga counties, uses a number of forms for persons to issue non-hospital DNR or DNI orders and to make other end of life treatment decisions, including the decision to withhold or withdraw life sustaining treatments. However, the MOLST forms do not incorporate the many legal and procedural safeguards that guardians authorized under Article 81 MHL or Article 17-A SCPA must undertake prior to using such forms to issue such orders on behalf of their wards who lack capacity to make their own health care decisions. Consequently, to avoid unnecessary confusion and to insure that the proper legal safeguards are employed for persons with mental retardation and developmental disabilities or mental illness and their guardians regarding the use of the MOSLT forms to make these highly important decisions, OMRDD recommends support of this chapter amendment.

Thank you for the opportunity to review and comment on this bill.

Sincerely,

/s/

Cynthia E. McDonough
Associate Attorney

cc: Paul Kietzman



bcc: Thomas Maul
Helene DeSanto
Tracy Durfee
Eileen Zibell

076 7/14/06

WEINGARTEN, REID & McNALLY, LLC

1 Commerce Plaza, Suite 1103

Albany, NY 12210

Telephone: (518) 465-7330

Facsimile: (518) 465-0273

<http://www.lobbywr.com>

July 20, 2006

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

Dear Governor Pataki:

On behalf of our client, the New York State Academy of Family Physicians, which represents 4,300 family physicians across the State, we are writing to respectfully request your approval of Senate Bill 6365-A. This legislation permits alternative "do-not resuscitate" (DNR) forms to include "do-not-intubate" orders that may be used in non-hospital settings, as part of one or more demonstration program in Monroe and Onondaga counties.

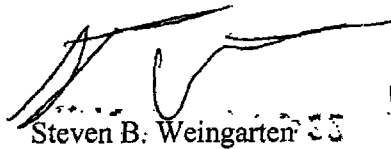
Monroe and Onondaga counties have developed a new form called Medical Orders for Life Sustaining Treatment (MOLST), which has been given statutory authority to be used as an alternative DNR form by professionals in those counties, as part of the demonstration programs created in 2005. S. 6365-A is necessary to authorize forms, including MOLST to include a "do-not-intubate" order.

DNR forms are important to protect the rights of New Yorkers to make their own end of life decisions and may be the only way for some to express their wishes before they die. This bill is essential to allow people to make a decision about intubation in addition to resuscitation, as part of these demonstration programs. S.6365-A does not exclude people with mental illnesses from using these alternative DNR forms without approval by the Commissioner of the Office of Mental Retardation and Developmental Disability or the Commissioner of Mental Health, as appropriate. This legislation has no fiscal implications for the state and would take effect immediately. The New York State Academy of Family Physicians strongly urges your approval of S.6365-A.

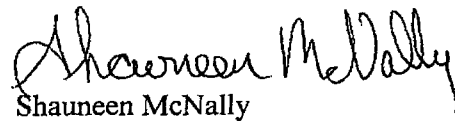
Sincerely,



Robert Reid



Steven B. Weingarten



Shauneen McNally

000011

STATE OF NEW YORK

6365--A

Cal. No. 175

IN SENATE

January 10, 2006

Introduced by Sens. ALESI, LARKIN, MORAHAN, TRUNZO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Subdivision 13 of section 2977 of the public health law, as
2 added by chapter 734 of the laws of 2005, is amended 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 [~~Onondaga~~] Onondaga counties. For the purposes of this demon-
8 stration program only, such alternative form or forms may also be used
9 to issue a non-hospital do not intubate order. Any such alternative
10 forms intended for use for persons with mental retardation or develop-
11 mental disabilities or persons with mental illness who are incapable of
12 making their own health care decisions or who have a guardian of the
13 person appointed pursuant to article eighty-one of the mental hygiene
14 law or article seventeen-A of the surrogate's court procedure act must
15 also be approved by the commissioner of mental retardation and develop-
16 mental disability or the commissioner of mental health, as appropriate.
17 An alternative form under this subdivision shall otherwise conform with
18 applicable federal and state law. Nothing contained in this subdivision
19 is to be construed to change any law concerning intubation of persons in
20 a nonhospital setting except for the demonstration counties pursuant to
21 the demonstration authority provided for in this subdivision. This

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

LBD14273-03-6

S. 6365--A

2

1 subdivision does not limit, restrict or impair the use of an alternative
2 form for issuing an order not to resuscitate in a general hospital or
3 residential health care facility under article twenty-eight of this
4 chapter or a hospital under subdivision ten of section 1.03 of the
5 mental hygiene law or a school under section 13.17 of the mental hygiene
6 law.

7 § 2. This act shall take effect immediately, provided, however, that
8 the amendments to subdivision 13 of section 2977 of the public health
9 law made by section one of this act shall not affect the repeal of such
10 subdivision and shall be deemed repealed therewith.
