

## Family Health Care Decisions Act Signed Into Law

On March 16, 2010, Governor Patterson signed into law the Family Health Care Decisions Act (FHCDA) which represents a significant change to the current law. The FHCDA allows family members and others to make health care decisions, including decisions about the withholding or withdrawal of life-sustaining treatment (including artificial nutrition and hydration), for incapacitated persons who have not prepared advance directives regarding their wishes. The FHCDA only applies to patients in hospital and nursing home settings. The FHCDA does not apply to patients who have appointed a health care agent pursuant to a health care proxy and decisions made by a health care agent pursuant to the proxy have priority over decisions by any other person. The FHCDA also does not apply to persons with mental retardation or developmental disability, or residents of mental health facilities, where the decisions may be made as otherwise provided by law.

The legislation establishes protocols for health care practitioners to determine whether a patient has decision-making capacity, the selection of a surrogate from a list of individuals ranked in order of priority (including family members, domestic partners, Article 81 guardians and close friends) and the circumstances pursuant to which a surrogate may consent to the withholding or withdrawal of life-sustaining treatment. DNR orders are included in the definition of life-sustaining treatment. The legislation substantially revises the existing DNR law and establishes a new statute for non-hospital orders not to resuscitate.

The FHCDA and related legislation take effect on June 1, 2010. However, hospitals and nursing homes are allowed to immediately adopt policies consistent with the FHCDA, and carry out health care decisions in accordance with such requirements. Policies governing informed consent, DNR, withholding and/or withdrawal of life-sustaining treatment and HIPAA will be affected and will require revision.

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Garfunkel Wild, P.C. can assist you in complying with this new legislation. Please contact the GW attorney with whom you regularly consult for more information on this important change in the law.

### About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 80 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

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