

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:9Y-1 to 52:9Y-6 "Commission on the Legal and Ethical Problems in the Delivery of Health Care"

LAWS OF: 1985 **CHAPTER:** 363

BILL NO: A3316

Sponsor(s): Karcher and others

Date Introduced: February 25, 1985

Committee: Assembly: Judiciary
Senate: Judiciary

Amended during passage: Yes Substituted for S2781 (not attached since identical to A3316). Amendments during passage denoted by asterisks.

Date of Passage: **Assembly:** April 29, 1985
Senate: June 24, 1985

Date of Approval: November 12, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes
Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

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ASSEMBLY, No. 3316

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 25, 1985

By Assemblymen KARCHER, DOYLE, OTLOWSKI, DEVERIN,
LONG, HERMAN, HARDWICK, KERN, SHUSTED, THOMP-
SON and Assemblywoman PERUN

AN ACT creating a *permanent* commission to study legal and
ethical problems in the delivery of health care, and making an
appropriation.

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

1 1. The Legislature finds and declares that:

2 a. New Jersey is a national leader in addressing the legal and
3 ethical dilemmas in the delivery of health care posed by modern
4 advances in science and medicine. In keeping with this leadership
5 responsibility and the principles enunciated by the New Jersey
6 Supreme Court in its landmark decisions in the *Quinlan*, *Grady*
7 and *Conroy* cases, the Legislature seeks, through the establishment
8 of the New Jersey Commission on Legal and Ethical Problems
9 in the Delivery of Health Care to provide a comprehensive and
10 scholarly examination of the impact of advancing technology on
11 health care decisions. The work of this commission will enable
12 government, professionals in the fields of medicine, allied health
13 care, law, and science, and the citizens of New Jersey and other
14 states to better understand the issues presented, their responsi-
15 bilities, and the options available to them.

16 b. Attention must be paid to ways of facilitating appropriate
17 decision making regarding the termination or refusal of life-sus-
18 taining and other forms of care and treatment. Particular attention
19 must be given to how decisions are to be made on behalf of in-
20 competent persons in a variety of residential settings. An appro-

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted April 15, 1985.**

****—Senate committee amendments adopted June 17, 1985.**

21 priate balance must be struck between the need to foster this
 22 decision making and the need to protect persons with severe dis-
 23 abilities from the abuses of arbitrary decision making.

24 c. There is a need to explore and encourage the development of
 25 innovative programs, such as hospices and homemaker services
 26 which are designed to make the final days of terminally ill persons
 27 more comfortable, dignified, and humane.

1 2. There is created a *permanent* commission to be known as the
 2 "New Jersey Commission on Legal and Ethical Problems in the
 3 Delivery of Health Care." The commission shall consist of ***[17]***
 4 ****[*25*]** **27**** members to be appointed as follows: the ***[Com-**
 5 **missioner of]** ****[*Ombudsman for the Institutionalized Elderly**
 6 **in*]** **Commissioner of**** the Department of Community Affairs,
 7 the Commissioner of the Department of Health, the Commissioner
 8 of the Department of Human Services, the Public Advocate, ****the**
 9 ***Ombudsman for the Institutionalized Elderly***** or their designees;
 10 two members of the Senate, to be appointed by the President of
 11 the Senate, not more than one of whom shall be of the same political
 12 party; two members of the General Assembly, to be appointed by
 13 the Speaker of the General Assembly, not more than one of whom
 14 shall be of the same political party; nine public members, two to be
 15 appointed by the President of the Senate; two to be appointed by
 16 the Speaker of the General Assembly and five to be appointed by
 17 the Governor, who are distinguished in one or more of the fields of
 17A medicine, health care and health administration, law, ethics,
 17B theology, the natural sciences, the social sciences, the humanities,
 17C and public affairs.

18 **In addition to the nine public members described above, there*
 19 *shall be on the commission five other public members who shall not*
 20 *be from health-related disciplines nor from the immediate families*
 21 *of persons in health-related disciplines. Of these five members,*
 22 *three shall be appointed by the Governor, one by the President of*
 23 *the Senate, and one by the Speaker of the General Assembly. In*
 24 *appointing these members an effort shall be made to insure that*
 25 *diverse viewpoints are represented on the commission.*

26 *Also on the commission shall be a representative of the New*
 27 *Jersey Hospital Association, a representative of the New Jersey*
 28 *State Nurses' Association, ****[and]**** a representative of the New*
 29 *Jersey Association of Health Care Facilities ****and** a representative*
 30 *of the New Jersey Association of Nonprofit Homes for the Aging,*
 30A *Inc.**. These representatives shall be selected by their organiza-*
 30B *tions.*

31 *Members of the commission shall serve for three-year terms or*

32 *until a successor is appointed. However, the term of every member*
 33 *initially appointed shall expire on December 31, 1988.**

34 Vacancies in the membership of the commission shall be filled
 35 in the same manner as original appointments were made*, and the
 36 term of any person reappointed or appointed to fill a vacancy shall
 37 only run for the balance of the three-year term that had commenced
 38 when the reappointment was made or the vacancy occurred*.

39 ***[**Members shall continue to serve until their successors are
 40 appointed.**]*** Members shall serve without compensation but shall
 41 be reimbursed for the reasonable **travel and other out-of-pocket**
 42 expenses incurred in the performance of their duties.

1 3. It shall be the duty of the commission to:

2 a. Clarify the issues posed by a rapidly developing health and
 3 science technology and highlight the facts that appear to be most
 4 relevant for informed decision making by persons as it relates to
 5 their care and treatment;

6 b. Gather data about how New Jersey and other jurisdictions
 7 handle decision making regarding the termination and refusal of
 8 care and treatment;

9 c. Assess the need for additional programs and services relating
 10 to medical decision making;

11 d. Suggest improvements in public policy relating to medical
 12 treatment at various levels, not exclusively at the level of State
 13 government, and through various means including legislation;

14 e. Through its reports, offer guidance for people involved in
 15 making decisions, though not dictate particular choices on moral
 16 grounds.

1 4. The ***[**commission shall organize as soon after the appointment
 2 of its members as is practicable. The commission shall elect a
 3 chairman from among its members**]*** **organizational meeting of*
 4 *the commission shall be held on the 60th day after the effective*
 5 *date of this act at a time and place to be designated by the Governor.*
 6 *The Governor or his designee shall give at least 10 days' notice of*
 7 *this meeting. A majority of those appointed to the commission shall*
 8 *elect a chairperson from among its members** and shall appoint a
 9 full-time executive director. The executive director shall serve at
 10 the pleasure of the commission and shall be a person qualified by
 11 training and experience to perform the duties of the office.

1 5. a. For purposes of gathering information and the views of
 2 interested parties, the commission shall hold public hearings. The
 3 commission may establish ad hoc panels comprised of physicians,
 4 health care providers and administrators or other persons with
 5 relevant backgrounds to assist with information gathering and

6 analysis of complex issues. Panel members shall serve without
 7 compensation but shall be reimbursed for the reasonable **travel and*
 8 *out-of**-**pocket** expenses incurred in the performance of their
 8A duties.

9 b. The commission shall be entitled to call to its assistance and
 10 avail itself of the services of employees of any State, county or
 11 municipal department, board, bureau, commission or agency as
 12 it may require and as may be available to it for its purposes, and
 13 to employ counsel and stenographic and clerical assistants and incur
 14 traveling and other miscellaneous expenses as it may deem neces-
 15 sary, in order to perform its duties, and as may be within the
 16 limits of funds appropriated or otherwise made available to it for
 17 its purposes.

1 6. The commission shall **[submit a final report to the Governor,*
 2 *Legislature and public within 36 months of the commission's organi-*
 3 *zation. The commission may submit interim reports as it deems*
 4 *desirable. The final report shall include:]* *make its report to the*
 4A *Governor, Legislature and public on December 31, 1988 and every*
 4B *three years thereafter. The commission may submit interim reports*
 4C *as it deems desirable. The initial report and each report submitted*
 4D *at three-year intervals shall include:**

5 a. A report on the current status of the law in New Jersey and
 6 other jurisdictions regarding the termination of treatment, sur-
 7 rogate decision making, and related issues;

8 b. An examination of existing practices and procedures for
 9 decision making, such as *Quinlan* ethics committees and *Grady* and
 10 *Conroy* procedures, and a determination of how well they work
 11 and where change is needed. Successful approaches in decision
 12 making should be identified so that the wider use of these ap-
 13 proaches by the health care profession and other professions may
 14 be encouraged;

15 c. An examination of the use in **this State and** other states of
 16 advance directives, such as living wills, durable powers of attorney,
 17 and a determination of the approach best suited for New Jersey.*
 17A *For example, in this examination, especially with regard to legisla-*
 17B *tion enacted in this State, the commission shall review whether the*
 17C *legislation enacted has reduced the number of applications to*
 17D *the court; whether it has encouraged a better dialogue between*
 17E *hospital administrations, hospital physicians' committees, physi-*
 17F *cians, and patients' families; whether it has promoted the preserva-*
 17G *tion of life; whether the potential conflicting religious issues have*
 17H *been addressed; whether, consistent iwth the preservation of life,*
 17I *organ donor programs have been promoted; and whether it has*
 17J *reduced needless suffering for the terminally ill*;*

18 d. An identification of issues still in need of resolution in the
19 aftermath of *Conroy* and a recommendation of a legislative solu-
20 tion, if necessary;

21 e. An examination of areas of special need, concerning persons
22 with disabilities and a determination of what additional safeguards
23 are required. Particular attention shall be given to the delivery
24 of care to seriously disabled newborns and the implementation of
25 federal legislative requirements in this area;

26 f. An exploration of related issues, such as the determination of
27 death for the purpose of an organ transplant, and the value of
28 hospices as an alternative to hospital care.

29 Accompanying the ***[report]*** *reports*, the commission shall
30 submit any proposed legislation which it may desire to recommend
31 for enactment.

1 7. There is appropriated to the commission from the General
2 Fund the sum of \$95,000.00 to effectuate the purposes of this act.

1 8. This act shall take effect immediately.

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27 death for the purpose of an organ transplant, and the value of
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30 posed legislation which it may desire to recommend for enactment.

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2 Fund the sum of \$95,000.00 to effectuate the purposes of this act.

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STATEMENT

This bill would establish a Commission on the Legal and Ethical Problems in the Delivery of Health Care. The purpose of the commission would be to implement the broad principles enunciated by the New Jersey Supreme Court in a series of landmark decisions, starting with the case of Karen Ann Quinlan, concerning the implications of modern medical technology on health care, decision making by patients and their families.

The commission would also examine the procedures that exist in New Jersey concerning surrogate decision making on behalf of incompetent patients. Particular attention would be given to practices within hospitals, nursing homes, and other health care facilities. The commission, through its reports would identify successful practices and attempt to encourage their widespread acceptance. The commission would pay special attention to the practices arising within nursing homes following the New Jersey Supreme Court's recent decision in the case of Claire Conroy and report to the Governor and the Legislature on whether these practices work as effectively as anticipated, and if not, recommend ways to improve them.

The commission would also examine the impact of health care decision making on persons with severe disabilities. Particular attention will be given to whether the interests of such persons are being adequately protected and to recommendations with regard to how to better protect the interests of such persons.

In conducting its work, the commission will give all interested persons in New Jersey the opportunity to be heard on the wide

variety of issues that are explored. The commission will consolidate these opinions into its reports to ensure that all viewpoints are available to policy makers at all levels of government and the private sector.

The bill also contains a \$95,000.00 appropriation for use by the commission.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3316

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: APRIL 11, 1985

In its original form this bill established a temporary Commission on the Legal and Ethical Problems in the Delivery of Health Care. The Judiciary Committee amended the bill to make the commission permanent. The purpose of the commission would be to implement the broad principles enunciated by the New Jersey Supreme Court in a series of landmark decisions, starting with the case of Karen Ann Quinlan, concerning the implications of modern medical technology on health care, decision making by parents and their families.

The commission would also examine the procedures that exist in New Jersey concerning surrogate decision making on behalf of incompetent patients. Particular attention would be given to practices within hospitals, nursing homes, and other health care facilities. The commission, through its reports, would identify successful practices and attempt to encourage their widespread acceptance. The commission would pay special attention to the practices arising within nursing homes following the New Jersey Supreme Court's recent decision in the case of Claire Conroy and report to the Governor and the Legislature on whether these practices work as effectively as anticipated, and if not, recommend ways to improve them.

The commission would also examine the impact of health care decision making on persons with severe disabilities. Particular attention will be given to whether the interests of such persons are being adequately protected and to recommendations with regard to how to better protect the interests of such persons.

It was the understanding of the committee that passage of this bill would not preclude the passage of other legislation creating procedures for a living will and a medical power of attorney. However, the committee added provisions to ensure continuous review of such legislation passed in this State and others.

In conducting its work, the commission will give all interested persons in New Jersey the opportunity to be heard on the wide variety of issues that are explored. The commission is directed to report its

findings on December 31, 1988 and every three years after that, and may also submit interim reports.

The committee, by amendment, increased the membership of the commission from 17 to 25 members. The increase entails five additional citizen members, as well as a representative of the New Jersey Hospital Association, the New Jersey State Nurses' Association, and the New Jersey Association of Health Care Facilities.

Members of the commission will serve for three-year terms or until their successor is appointed. These terms would be fixed. Therefore, for example, if a person remains on the commission a year past his three-year term, the term of his reappointment or that of the person replacing him would be for the balance of the three-year term which has commenced, or two years. This will result in fixed dates of appointment.

The bill also contains a \$95,000.00 appropriation for use by the commission.



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OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT
292-8956

TRENTON, N.J. 08625

Release: WED., NOV. 13, 1985

Governor Thomas H. Kean has signed legislation creating a New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care. The Commission is charged with exploring the issues surrounding the cutoff of life support systems to those in dire and hopeless physical condition.

The bill, A-3316, was sponsored by Assembly Speaker Alan J. Karcher, D-Middlesex. It establishes a permanent, 27-member Commission to provide a comprehensive and scholarly examination on the impact of modern medical technology on health care decisions, particularly decisions on providing or terminating life-sustaining treatment to terminally ill and incompetent people.

The bill came about as the result of a New Jersey Supreme Court decision (In Re Conroy) in which the court called on the Legislature to formulate standards to govern requests to terminate life-sustaining treatment.

The bill calls for the Commission's first report on December 31, 1988, but provides for interim reports before that date. The Commission is charged with examining all aspects of the issue and suggesting improvements in public policy to deal with it.

The membership of the Commission is as follows:

- o The commissioners of Health, Human Services and Community Affairs, the Public Advocate and the Ombudsman for the Institutionalized Elderly.

- more -

November 13, 1985

o Two State senators, one of each party, appointed by the Senate President, and two members of the General Assembly, one of each party, appointed by the Speaker.

o Nine public members who are distinguished in the fields of medicine, health care, law, ethics, theology, natural sciences, social sciences, the humanities and public affairs, two appointed by the Senate President, two by the Speaker and five by the Governor.

o Five public members not from health-related disciplines, three appointed by the Governor and one each by the Senate President and the Speaker.

o One representative each from the New Jersey Hospitals Association, the New Jersey State Nurses Association, the New Jersey Association of Health Care Facilities and the New Jersey Association of Nonprofit Homes for the Aging, Inc.

The bill directs that the Commission select a chairman from among its members.

The Governor also signed S-2871, sponsored by State Senator Frank X. Graves, D-Passaic, which makes it a fourth degree crime to possess a stun gun, which the bill describes as "any weapon or other devise which emits an electrical charge or current intended to temporarily or permanently disable a person."

The bill also authorizes the Attorney General, at his discretion, to exempt law enforcement officers from the prohibition.