Health Care Proxies

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HEALTH CARE PROXIES

Q: What is a Health Care Proxy?
A: A law, called the New York health care proxy law, allows you to appoint someone you trust — for example, a family member or close friend — to decide about treatment if you lose the ability to decide for yourself. You can appoint someone by signing a form called a Health Care Proxy.

You can give the person you select, your "health care agent," as little or as much authority as you want. You can allow your health care agent to decide about all health care or only about certain treatments. You may also give your agent instructions that he or she has to follow. Your agent can then make sure that health care professionals follow your wishes and can decide how your wishes apply as your medical condition changes. Hospitals, doctors and other health care providers must follow your agent's decisions as if they were your own.

Q: Why should I choose a health care agent?
A: If you become too sick to make health care decisions, someone else must decide for you. Under New York’s Family Health Care Decisions Act, if you did not designate a health care agent, the following people (in this order) may make health care decisions for you: a court-appointed guardian under the Mental Hygiene Law; spouse or domestic partner; an adult child; a parent; a brother or sister; a close friend. Appointing an agent gives you more control over your medical treatment by:

- choosing one family member to decide about treatment because you think that person would make the best decisions or because you want to avoid conflict or confusion about who should decide; and

- choosing someone outside your family to decide about treatment because no one in your family is available or because you prefer that someone other than a family member decide about your health care.

You should make sure that the person you choose is someone that you can trust to carry out your wishes.

Q: How can I appoint a health care agent?
A: All competent adults can appoint a health care agent by signing a form called a Health Care Proxy. You don't need a lawyer, just two witnesses eighteen years of age or older.
Q: When would my health care agent begin to make treatment decisions for me?

A: Your health care agent would begin to make treatment decisions after doctors decide that you are not able to make health care decisions for yourself. As long as you are able to make treatment decisions for yourself, you will have the right to do so.

Q: What decisions can my health care agent make?

A: Unless you limit your health care agent's authority, your agent will be able to make any treatment decision that you could have made if you were able to decide for yourself. Your agent can agree that you should receive treatment, choose among different treatments, or decide that treatments should not be provided, in accord with your wishes and interests. If your health care agent is not aware of your wishes about artificial nutrition and hydration (nourishment and water provided by feeding tubes), he or she will not be able to make decisions about these measures. Artificial nutrition and hydration are used in many circumstances, and are often used to continue the life of patients who are in a permanent coma.

Q: How can I give my agent written instructions?

A: You can write instructions on the Health Care Proxy or you can fill out a living will.

Q: How will my health care agent make decisions?

A: If you write instructions on the proxy form or living will, your agent must follow your oral and written instructions, as well as your moral and religious beliefs. If your agent does not know your wishes or beliefs, your agent is legally required to act in your best interests.

Q: Who will pay attention to my agent?

A: All hospitals, doctors and other health care facilities are legally required to obey the decisions made by your agent. If a hospital objects to some treatment options (such as removing certain treatment) they must tell you or your agent IN ADVANCE.

Q: What if my health care agent is not available when decisions must be made?

A: You can appoint an alternate agent to decide for you if your health care agent is not available or able to act when decisions must be made. Otherwise, health care providers will make treatment decisions for you that follow instructions you gave while you were still able to do so. Any instructions that you write on your Health Care Proxy form will guide health care providers under these circumstances.

Q: What if I change my mind?

A: It is easy to cancel the proxy, to change the person you have chosen as your health care agent, or to change any treatment instructions you have written on your Health Care Proxy form. Just fill out a new form. In addition, you can require that the Health Care Proxy
expire on a specified date or if certain events occur. Otherwise, the Health Care Proxy will be valid indefinitely. If you choose your spouse as your health care agent and you get divorced or legally separated, the proxy is automatically cancelled.

Q: Can my health care agent be legally liable for decisions made on my behalf?

A: No. Your health care agent will not be liable for treatment decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs of your care, just because he or she is your agent.

Q: Is a health care proxy the same as a living will?

A: No. A living will is a document that provides specific instructions about health care treatment. It is generally used to declare wishes to refuse life-sustaining treatment under certain circumstances.

In contrast, the health care proxy allows you to choose someone you trust to make treatment decisions on your behalf. Unlike a living will, a health care proxy does not require that you know in advance all the decisions that may arise. Instead, your health care agent can interpret your wishes as medical circumstances change and can make decisions you could not have known would have to be made. The health care proxy is just as useful for decisions to receive treatment as it is for decisions to stop treatment. If you complete a Health Care Proxy form, and also have a living will, the living will provides instructions for your health care agent, and will guide his or her decisions.

Q: Where should I keep the proxy form after it is signed?

A: Give a copy to your agent, your doctor and any other family members or close friends you want. Keep a copy on your refrigerator door since Emergency Medical Services look there first for the proxy. You can also keep a copy in your wallet or purse or with other important papers.

APPOINTING A HEALTH CARE AGENT IS A SERIOUS DECISION. MAKE SURE YOU TALK ABOUT IT WITH YOUR FAMILY, CLOSE FRIENDS AND YOUR DOCTOR.

DO IT IN ADVANCE, NOT JUST WHEN YOU ARE PLANNING TO ENTER THE HOSPITAL.

Updated 2013
Health Care Proxy

Appointing Your Health Care Agent in New York State

The New York Health Care Proxy Law allows you to appoint someone you trust — for example, a family member or close friend — to make health care decisions for you if you lose the ability to make decisions yourself. By appointing a health care agent, you can make sure that health care providers follow your wishes. Your agent can also decide how your wishes apply as your medical condition changes. Hospitals, doctors and other health care providers must follow your agent’s decisions as if they were your own. You may give the person you select as your health care agent as little or as much authority as you want. You may allow your agent to make all health care decisions or only certain ones. You may also give your agent instructions that he or she has to follow. This form can also be used to document your wishes or instructions with regard to organ and/or tissue donation.
About the Health Care Proxy Form

This is an important legal document. Before signing, you should understand the following facts:

1. This form gives the person you choose as your agent the authority to make all health care decisions for you, including the decision to remove or provide life-sustaining treatment, unless you say otherwise in this form. “Health care” means any treatment, service or procedure to diagnose or treat your physical or mental condition.

2. Unless your agent reasonably knows your wishes about artificial nutrition and hydration (nourishment and water provided by a feeding tube or intravenous line), he or she will not be allowed to refuse or consent to those measures for you.

3. Your agent will start making decisions for you when your doctor determines that you are not able to make health care decisions for yourself.

4. You may write on this form examples of the types of treatments that you would not desire and/or those treatments that you want to make sure you receive. The instructions may be used to limit the decision-making power of the agent. Your agent must follow your instructions when making decisions for you.

5. You do not need a lawyer to fill out this form.

6. You may choose any adult (18 years of age or older), including a family member or close friend, to be your agent. If you select a doctor as your agent, he or she will have to choose between acting as your agent or as your attending doctor because a doctor cannot do both at the same time. Also, if you are a patient or resident of a hospital, nursing home or mental hygiene facility, there are special restrictions about naming someone who works for that facility as your agent. Ask staff at the facility to explain those restrictions.

7. Before appointing someone as your health care agent, discuss it with him or her to make sure that he or she is willing to act as your agent. Tell the person you choose that he or she will be your health care agent. Discuss your health care wishes and this form with your agent. Be sure to give him or her a signed copy. Your agent cannot be sued for health care decisions made in good faith.

8. If you have named your spouse as your health care agent and you later become divorced or legally separated, your former spouse can no longer be your agent by law, unless you state otherwise. If you would like your former spouse to remain your agent, you may note this on your current form and date it or complete a new form naming your former spouse.

9. Even though you have signed this form, you have the right to make health care decisions for yourself as long as you are able to do so, and treatment cannot be given to you or stopped if you object, nor will your agent have any power to object.

10. You may cancel the authority given to your agent by telling him or her or your health care provider orally or in writing.

11. Appointing a health care agent is voluntary. No one can require you to appoint one.

12. You may express your wishes or instructions regarding organ and/or tissue donation on this form.
Frequently Asked Questions

Why should I choose a health care agent?
If you become unable, even temporarily, to make health care decisions, someone else must decide for you. Health care providers often look to family members for guidance. Family members may express what they think your wishes are related to a particular treatment. Appointing an agent lets you control your medical treatment by:
- allowing your agent to make health care decisions on your behalf as you would want them decided;
- choosing one person to make health care decisions because you think that person would make the best decisions;
- choosing one person to avoid conflict or confusion among family members and/or significant others.
You may also appoint an alternate agent to take over if your first choice cannot make decisions for you.

Who can be a health care agent?
Anyone 18 years of age or older can be a health care agent. The person you are appointing as your agent or your alternate agent cannot sign as a witness on your Health Care Proxy form.

How do I appoint a health care agent?
All competent adults, 18 years of age or older, can appoint a health care agent by signing a form called a Health Care Proxy. You don’t need a lawyer or a notary, just two adult witnesses. Your agent cannot sign as a witness. You can use the form printed here, but you don’t have to use this form.

When would my health care agent begin to make health care decisions for me?
Your health care agent would begin to make health care decisions after your doctor decides that you are not able to make your own health care decisions. As long as you are able to make health care decisions for yourself, you will have the right to do so.

What decisions can my health care agent make?
Unless you limit your health care agent’s authority, your agent will be able to make any health care decision that you could have made if you were able to decide for yourself. Your agent can agree that you should receive treatment, choose among different treatments and decide that treatments should not be provided, in accordance with your wishes and interests. However, your agent can only make decisions about artificial nutrition and hydration (nourishment and water provided by feeding tube or intravenous line) if he or she knows your wishes from what you have said or what you have written. The Health Care Proxy form does not give your agent the power to make non-health care decisions for you, such as financial decisions.

Why do I need to appoint a health care agent if I’m young and healthy?
Appointing a health care agent is a good idea even though you are not elderly or terminally ill. A health care agent can act on your behalf if you become even temporarily unable to make your own health care decisions (such as might occur if you are under general anesthesia or have become comatose because of an accident). When you again become able to make your own health care decisions, your health care agent will no longer be authorized to act.

How will my health care agent make decisions?
Your agent must follow your wishes, as well as your moral and religious beliefs. You may write instructions on your Health Care Proxy form or simply discuss them with your agent.

How will my health care agent know my wishes?
Having an open and frank discussion about your wishes with your health care agent will put him or her in a better position to serve your interests. If your agent does not know your wishes or beliefs, your agent is legally required to act in your best interest. Because this is a major responsibility for the person you appoint as your health care
Frequently Asked Questions, continued

agent, you should have a discussion with the person about what types of treatments you would or would not want under different types of circumstances, such as:

- whether you would want life support initiated/continued/removed if you are in a permanent coma;
- whether you would want treatments initiated/continued/removed if you have a terminal illness;
- whether you would want artificial nutrition and hydration initiated/withheld or continued or withdrawn and under what types of circumstances.

**Can my health care agent overrule my wishes or prior treatment instructions?**

No. Your agent is obligated to make decisions based on your wishes. If you clearly expressed particular wishes, or gave particular treatment instructions, your agent has a duty to follow those wishes or instructions unless he or she has a good faith basis for believing that your wishes changed or do not apply to the circumstances.

**Who will pay attention to my agent?**

All hospitals, nursing homes, doctors and other health care providers are legally required to provide your health care agent with the same information that would be provided to you and to honor the decisions by your agent as if they were made by you. If a hospital or nursing home objects to some treatment options (such as removing certain treatment) they must tell you or your agent BEFORE or upon admission, if reasonably possible.

**What if my health care agent is not available when decisions must be made?**

You may appoint an alternate agent to decide for you if your health care agent is unavailable, unable or unwilling to act when decisions must be made. Otherwise, health care providers will make health care decisions for you that follow instructions you gave while you were still able to do so. Any instructions that you write on your Health Care Proxy form will guide health care providers under these circumstances.

**What if I change my mind?**

It is easy to cancel your Health Care Proxy, to change the person you have chosen as your health care agent or to change any instructions or limitations you have included on the form. Simply fill out a new form. In addition, you may indicate that your Health Care Proxy expires on a specified date or if certain events occur. Otherwise, the Health Care Proxy will be valid indefinitely. If you choose your spouse as your health care agent or as your alternate, and you get divorced or legally separated, the appointment is automatically cancelled. However, if you would like your former spouse to remain your agent, you may note this on your current form and date it or complete a new form naming your former spouse.

**Can my health care agent be legally liable for decisions made on my behalf?**

No. Your health care agent will not be liable for health care decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs of your care, just because he or she is your agent.

**Is a Health Care Proxy the same as a living will?**

No. A living will is a document that provides specific instructions about health care decisions. You may put such instructions on your Health Care Proxy form. The Health Care Proxy allows you to choose someone you trust to make health care decisions on your behalf. Unlike a living will, a Health Care Proxy does not require that you know in advance all the decisions that may arise. Instead, your health care agent can interpret your wishes as medical circumstances change and can make decisions you could not have known would have to be made.

**Where should I keep my Health Care Proxy form after it is signed?**

Give a copy to your agent, your doctor, your attorney and any other family members or close friends you want. Keep a copy in your wallet or purse or with other important papers, but not in a location where no one can access it, like a safe
Can my health care agent make decisions for me about organ and/or tissue donation?
Yes. As of August 26, 2009, your health care agent is authorized to make decisions after your death, but only those regarding organ and/or tissue donation. Your health care agent must make such decisions as noted on your Health Care Proxy form.

Who can consent to a donation if I choose not to state my wishes at this time?
It is important to note your wishes about organ and/or tissue donation to your health care agent, the person designated as your decedent’s agent, if one has been appointed, and your family members. New York Law provides a list of individuals who are authorized to consent to organ and/or tissue donation on your behalf. They are listed in order of priority: your health care agent; your decedent’s agent; your spouse, if you are not legally separated, or your domestic partner; a son or daughter 18 years of age or older; either of your parents; a brother or sister 18 years of age or older; or a guardian appointed by a court prior to the donor’s death.

May I use the Health Care Proxy form to express my wishes about organ and/or tissue donation?
Yes. Use the optional organ and tissue donation section on the Health Care Proxy form and be sure to have the section witnessed by two people. You may specify that your organs and/or tissues be used for transplantation, research or educational purposes. Any limitation(s) associated with your wishes should be noted in this section of the proxy. Failure to include your wishes and instructions on your Health Care Proxy form will not be taken to mean that you do not want to be an organ and/or tissue donor.

deposit box. Bring a copy if you are admitted to the hospital, even for minor surgery, or if you undergo outpatient surgery.
Health Care Proxy Form Instructions

**Item (1)**
Write the name, home address and telephone number of the person you are selecting as your agent.

**Item (2)**
If you want to appoint an alternate agent, write the name, home address and telephone number of the person you are selecting as your alternate agent.

**Item (3)**
Your Health Care Proxy will remain valid indefinitely unless you set an expiration date or condition for its expiration. This section is optional and should be filled in only if you want your Health Care Proxy to expire.

**Item (4)**
If you have special instructions for your agent, write them here. Also, if you wish to limit your agent’s authority in any way, you may say so here or discuss them with your health care agent. If you do not state any limitations, your agent will be allowed to make all health care decisions that you could have made, including the decision to consent to or refuse life-sustaining treatment.

If you want to give your agent broad authority, you may do so right on the form. Simply write: *I have discussed my wishes with my health care agent and alternate and they know my wishes including those about artificial nutrition and hydration.*

If you wish to make more specific instructions, you could say:

*If I become terminally ill, I do/don’t want to receive the following types of treatments....*

*If I am in a coma or have little conscious understanding, with no hope of recovery, then I do/don’t want the following types of treatments....*

*If I have brain damage or a brain disease that makes me unable to recognize people or speak and there is no hope that my condition will improve, I do/don’t want the following types of treatments....*

*I have discussed with my agent my wishes about ______________ and I want my agent to make all decisions about these measures.*

Examples of medical treatments about which you may wish to give your agent special instructions are listed below. This is not a complete list:

- artificial respiration
- artificial nutrition and hydration (nourishment and water provided by feeding tube)
- cardiopulmonary resuscitation (CPR)
- antipsychotic medication
- electric shock therapy
- antibiotics
- surgical procedures
- dialysis
- transplantation
- blood transfusions
- abortion
- sterilization

**Item (5)**
You must date and sign this Health Care Proxy form. If you are unable to sign yourself, you may direct someone else to sign in your presence. Be sure to include your address.

**Item (6)**
You may state wishes or instructions about organ and/or tissue donation on this form. New York law does provide for certain individuals in order of priority to consent to an organ and/or tissue donation on your behalf: your health care agent, your decedent’s agent, your spouse, if you are not legally separated, or your domestic partner, a son or daughter 18 years of age or older, either of your parents, a brother or sister 18 years of age or older, a guardian appointed by a court prior to the donor’s death.

**Item (7)**
Two witnesses 18 years of age or older must sign this Health Care Proxy form. The person who is appointed your agent or alternate agent cannot sign as a witness.
Health Care Proxy

(1) I, __________________________________________

hereby appoint __________________________________________

(name, home address and telephone number)

_____________________________________________________

as my health care agent to make any and all health care decisions for me, except to the extent that I state otherwise. This proxy shall take effect only when and if I become unable to make my own health care decisions.

(2) Optional: Alternate Agent
If the person I appoint is unable, unwilling or unavailable to act as my health care agent, I hereby

appoint __________________________________________

(name, home address and telephone number)

_____________________________________________________

as my health care agent to make any and all health care decisions for me, except to the extent that I state otherwise.

(3) Unless I revoke it or state an expiration date or circumstances under which it will expire, this proxy shall remain in effect indefinitely. (Optional: If you want this proxy to expire, state the date or conditions here.) This proxy shall expire (specify date or conditions): _________________________________

_____________________________________________________

(4) Optional: I direct my health care agent to make health care decisions according to my wishes and limitations, as he or she knows or as stated below. (If you want to limit your agent’s authority to make health care decisions for you or to give specific instructions, you may state your wishes or limitations here.) I direct my health care agent to make health care decisions in accordance with the following limitations and/or instructions (attach additional pages as necessary):

_____________________________________________________

In order for your agent to make health care decisions for you about artificial nutrition and hydration (nourishment and water provided by feeding tube and intravenous line), your agent must reasonably know your wishes. You can either tell your agent what your wishes are or include them in this section. See instructions for sample language that you could use if you choose to include your wishes on this form, including your wishes about artificial nutrition and hydration.
(5) Your Identification *(please print)*

Your Name ________________________________

Your Signature ___________________________ Date ________________

Your Address ______________________________

(6) Optional: Organ and/or Tissue Donation

I hereby make an anatomical gift, to be effective upon my death, of:
(check any that apply)

☐ Any needed organs and/or tissues

☐ The following organs and/or tissues ________________________________

☐ Limitations ________________________________

If you do not state your wishes or instructions about organ and/or tissue donation on this form, it will not be taken to mean that you do not wish to make a donation or prevent a person, who is otherwise authorized by law, to consent to a donation on your behalf.

Your Signature ___________________________ Date ________________

(7) Statement by Witnesses *(Witnesses must be 18 years of age or older and cannot be the health care agent or alternate.)*

I declare that the person who signed this document is personally known to me and appears to be of sound mind and acting of his or her own free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Date ________________ Date ________________

Name of Witness 1 (print) ___________________________ Name of Witness 2 (print) ___________________________

Signature ___________________________ Signature ___________________________

Address ___________________________ Address ___________________________
Who Will Speak for You?

The New York Health Care Proxy Law allows you to appoint someone you trust - for example, a family member or close friend - to make health care decisions for you if you lose the ability to make decisions yourself. By appointing a health care agent, you can make sure that health care providers follow your wishes.

Everyone over the age of 18 needs to appoint a health care agent. There are two situations in which a health care agent will be needed:

1. Temporary inability to make health care decisions – no matter what your age is. For example, you are having an outpatient surgical procedure and are under general anesthesia. Something unexpected happens and a health care decision needs to be made. If you have a health care agent, since you are temporarily unable to make your own decisions, the health care agent may make the decision. Once you become conscious again, the health care agent would no longer have any authority to act;

2. Permanent inability to make health care decisions – this would arise if you were comatose from a terminal illness, in a persistent vegetative state, suffered from an illness that left you unable to communicate or, if elderly, suffered from senile dementia or Alzheimer's disease. Under these circumstances you would obviously be unable to make your own health care decisions. If you don't have a health care agent, all appropriate medical treatments will be provided to you. If you have appointed a health care agent, your health care agent can be your voice and make your health care decisions according to your own wishes, or your best interests.

Your agent can also decide how your wishes apply as your medical condition changes. Hospitals, doctors and other health care providers must follow your agent's decisions as if they were your own. You may give the person you select as your health care agent as little or as much authority as you want. You may allow your agent to make all health care decisions or only certain ones. You may also give your agent instructions that he or she must follow. The Health Care Proxy Form may also be used to document your wishes or instructions with regard to organ and/or tissue donation.

Making decisions about how you want to live the remainder of your life and appointing the appropriate person to be your health care agent can be overwhelming. In order to assist in the decision making process, the Department recommends the following steps:

Clarify Values and Beliefs

It is important to consider and to think about your individual wishes as they relate to how you want to live the remainder of your life. Most people don't have any idea how to begin to think about this or begin a discussion about this. Many people are finding that using tools, such as a values assessment, may help to pinpoint key feelings and opinions about how they want to live the remainder of their lives. Such tools can be found at the following web sites:

- Welcome to the Compassion and Support Home Page
- Aging With Dignity - to Help You and Your Family Plan and Receive the Care You Deserve
Choose a Spokesperson

Choosing a health care agent who will speak for you and make decisions when you are unable is a very important task that each adult needs to make, regardless of age or health care status. Your agent will advocate for your preferred treatment and ensure that your wishes are carried out at a point in time when you cannot speak for yourself.

Once your agent is chosen, it is very important to share your wishes, thoughts and opinions about how you want to live the remainder of your life with your agent. A person will not be able to predict every scenario that may present itself in a health care situation. As such, explaining your thoughts, feelings and preferences will give your agent the information necessary to make decisions on your behalf.

Discuss Your Wishes

It is important to discuss your wishes with your health care providers, particularly your primary care provider. This information will enable your providers to care for you in a manner that is consistent with your wishes.

Practical Issues

Accessibility

Guarantee accessibility to your New York Health Care Proxy and Living Will.

- Keep a copy for yourself in a secure place. Do not put the documents in a safe deposit box or any other security box that would keep others from having access to them.
- Give a copy to your Health Care Spokesperson (“Agent”) and Alternate, your primary care physician, all specialist physicians that participate in your care and the primary hospital where you receive care. You may also wish to give a copy to your spiritual advisor.
- A copy should be shared with a central community repository, like an electronic registry, if one exists.
- If you enter a nursing home or hospital, have photocopies of your documents placed in your medical records.

Review and Update

Review and update your forms periodically.

- Review after major life events like divorce, birth of a child, death of a spouse, as you may wish or need to choose a new Spokesperson (“Agent”).
- Reevaluate your wishes if new life-threatening or chronic illnesses develop, as these chronic illnesses progress, and after complicated life-sustaining treatments. Your wishes and desires may change after these events.

Avoid Problems

Problems may arise if you fail to plan or fail to share your wishes with your Health Care Spokesperson (“Agent”), your family or your doctor. Problems may arise if your goals for care or
treatment change but these wishes are not reflected in your documented forms. At times, an individual’s preferences may be unclear or the focus may be too narrow. As a Spokesperson (“Agent”), it is important to avoid making assumptions and to clarify wishes ahead of time.

Be sure to talk to your Health Care Spokesperson (“Agent”), Alternate(s), doctor(s), spiritual advisor, family and friends about your wishes concerning medical treatment. Discuss your wishes with them often, particularly if your medical condition changes.

If your wishes change after your documents have been completed, an entirely new set of documents reflecting your new wishes must be written, signed, and witnessed.

Give a new set of the documents to your Health Care Spokesperson ("Agent") and Alternate, your primary care physician, all specialist physicians that participate in your care and the primary hospital where you receive care. These will replace the old version.

It is important to keep in mind that you can always revoke your New York Health Care Proxy and/or New York Living Will documents at any time.

**Be aware that your New York documents will not be effective in the event of a medical emergency.** Ambulance personnel are required to provide cardiopulmonary resuscitation (CPR) unless they are given a separate order that is called a “Nonhospital DNR Order.” For further information about the Do Not Resuscitate order visit the sections on Life-Sustaining Treatment and Medical Orders for Life-Sustaining Treatment (MOLST) or review the information provided by New York State Department of Health.