

Health Care Proxies

What is a Health Care Proxy?

A health care proxy is a document where you appoint another person as your health care agent to make medical decisions for you when you are not able to make those decisions yourself.

What kind of medical decisions can a health care proxy make?

A health care agent can make medical decisions in accordance with your wishes, including your religious and moral beliefs, if they are known to your agent. If your agent does not know your wishes, they will be required to make medical decisions that are "in your best interest".

Can my health care agent make decisions concerning artificial nutrition (use of a feeding tube) and hydration (use of an intravenous line)?

In order for your health care agent to make these types of medical decisions for you, they must have specific knowledge of your wishes, otherwise, they will not have authority to make those decisions.

Is a health care proxy the same as a power of attorney?

No. In NYS, a health care proxy document is limited to appointing someone to make medical decisions for you when you are not able to communicate those wishes yourself. A Power of Attorney document applies to only financial matters. Although some states refer to their health care proxy document as a "medical power of attorney", do not get that confused with a financial power of attorney.

When does a health care agent's authority go into effect?

A health care agent's authority goes into effect when and if you are not able to communicate your medical wishes to your medical providers. Until that time, you maintain the right to tell your medical providers what treatment you want and don't want.

How old must a health care agent be?

A health care agent must be 18 years of age or older and NOT your treating physician.

Can I have co-health care agents?

No. You can only appoint one person at a time to act as your health care agent. It is a good idea to have an alternate health care agent named in the event your first choice is not able to act for you.

Who should have a copy of my health care proxy document?

After signing your health care proxy document, you should make sure that your health care agent(s) are given a copy as well as all of your medical providers. It is not necessary that they receive an original document. A photocopy will be acceptable. Make sure to keep a copy for yourself.

Can a health care agent be held responsible for the costs of my medical care?

No. A health care agent cannot be held responsible for the costs of your medical care.

Tips to keep in mind when appointing a health care agent:

1. Be sure to first talk with the person(s) whom you are considering appointing as your health care agent(s) before appointing them. You want to make sure that they will be able to carry out your medical wishes.
2. Make sure that you have an open and frank discussion with the person(s) you are appointing as your health care agent(s) about your medical wishes. If you agent(s) do not know your medical wishes, they will be required to make decisions that are in your best interest.
3. If you are choosing someone other than a family member as your health care agent(s), you should also discuss your medical wishes with your family.

Is there a health care proxy form?

Yes. In NYS, to get a health care proxy form, you can go online to the NYS Department of Health website at: www.health.gov/forms.

When does a health care proxy document expire?

Unless you indicate otherwise on a health care proxy document, the document will remain in effect until your death. If you wish, you can state a date or the occurrence of any condition on the health care proxy document which would terminate the proxy.

Is a health care proxy required to be witnessed?

Yes. In NYS, a health care proxy must be signed in the presence of two (2) disinterested witnesses who are not the appointed health care agent(s). You can sign a health care proxy at any time as long as you have capacity. After signing a health care proxy, you should make sure that your health care agent(s) are given a copy as well as your medical providers. Make sure to keep a copy for your records.

What if I go into the hospital and I do not have a health care proxy?

In June, 2010, NYS enacted the "Family Health Care Decisions Act" (FHCDA). This new law provides an order of priority as to who may make medical decisions for someone who does not have a health care proxy document and now lacks capacity. Under the FHCDA, if there is no health care agent, your attending physician will determine whether you lack decision making capacity, the extent of the incapacity and the likelihood that you will regain such capacity. If it is determined that you lack capacity and that you will not regain your decision making ability, then a "health care surrogate" will be appointed for you by your attending physician in the following order of priority:

- a. A court appointed guardian
- b. The spouse or domestic partner of the individual
- c. A child older than 18 years of age
- d. A parent
- e. A sibling
- f. A close friend

While this new law provides a default for those without a health care proxy, it is still wise to have your own health care proxy document.

I have a health care proxy. Can I change it or revoke it?

Yes. You can change or revoke your health care proxy document at any time. If you do, make sure to tell your agent(s) and your medical providers that you have revoked or changed your health care proxy document.

How many copies of a health care proxy document should I have prepared and signed?

You may sign more than one copy and provide either originals or photocopies of your health care proxy document to your agent(s) and medical providers. It is not necessary to give them originals. Make sure that you keep a copy for your records.

Do I need an attorney to help me prepare a health care proxy?

No. You do not need an attorney to prepare a health care proxy. You may want to have an attorney review the health care proxy document, together with your living will document, to make sure they are consistent with your wishes, however.