

Health Care Proxy

Introduction

Today's advanced medical technology may result in your facing the possibility of being subjected to various invasive medical procedures, particularly life support systems, which may serve no purpose other than to prolong the process of dying, if not put off natural death for many years. But each of us has the right to state his or her wishes while our faculties are still in command and when our judgment will not be challenged. This statement of is known as a Health Care Proxy.

New York State's Health Care Proxy Law

A "Health Care Proxy" is a document which allows you, as a competent adult, to appoint another person as "agent" or "attorney in fact" to make decisions for you regarding your health care in the event you lose your decision-making capacity or the ability to understand and appreciate the nature and consequences of health care decisions.

A New York State law called the Health Care Proxy Law allows you to appoint someone you trust to decide about treatment if you are unable to make that decision yourself. The term "agent" is defined as a person has authority to substitute their judgment as if it were yours. This law gives you the power to insure that health care professionals 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 decision as if you made them yourself. You can give the agent as much authority as you want. You can allow your agent to decide about all health treatments, or only certain treatments. You may also give your agent detailed instructions that he or she is compelled to follow. Some states limit the applicability of detailed instructions in certain situations.

Why Should I Choose A Health Care Agent?

If you become too sick to make health care decisions, someone else must decide for you. Health care professionals often look to family members for guidance. But family members are not allowed to decide to stop treatment, even when they believe that is what you would choose or what is best for you under the circumstances.

When Does the Proxy Become Effective?

Your agent gains authority to make health care decisions only upon a determination by the principal's attending physician, to a reasonable degree of medical certainty, that the principal has sustained loss of his or her capacity to make such decisions. As long as you are able to make treatment decisions for yourself, you will maintain the authority to do so.

When Does the Agent Have the Authority to Decide to Withhold or Withdraw Life-Sustaining Treatment?

Your agent's authority to make life-sustaining decisions comes into effect only after a SECOND physician's opinion that you lack capacity is obtained. If you are hospitalized and a lack of capacity results from mental illness, then the second opinion must be that of a Board Certified psychiatrist or neurologist.

Will My Proxy Be Considered?

All hospitals, doctors and other health care facilities are legally required to honor the decisions by you and your agent. If a hospital objects to some treatment options they must tell you or your agent in advance.

Can I Appoint Multiple Agents?

The New York State Department of Health has stated that each person can appoint only one agent. Although the statute, as written, does not expressly state that one person exclusively holds that authority. The statute does allow for the appointment of an alternate agent, which any person signing a proxy form should consider. If an alternate is not available, health care providers will make treatment decisions for you that follow instructions you gave to the agent. Any information that you write on the Health Care Proxy form will guide doctors under these limited circumstances.

When Does the Health Care Proxy Expire?

Unless you indicate otherwise, the proxy will remain effective until your death. If you wish, you could state a date, or the occurrence of any condition, which would terminate the proxy. The duration of the proxy is entirely dependent upon your wishes.

You should sign the Health Care Proxy in the presence of two witnesses, who must also sign and give their names and addresses. New York requires the witnesses to state that the principal made the decision to execute a proxy willingly, and free from duress. The person designated as the alternate cannot act as a witness. A proxy signed in a health care facility has special witness requirements.

Can My Health Care Agent Be Liable for Decisions Made on My Behalf?

Your agent will not be liable for any treatment decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs of your care – even if they are serving as the decision-maker.

What If I move?

In New York, if a Health Care Proxy or similar document from another state complies with the laws of that state, it will be honored in New York. Most states generally consider New York Health Care Proxy forms valid and will accept documents properly executed in another state. Even if you do not move, if you spend significant time in another state, you should have documents that comply with the laws of that state.

What if I Change My Mind?

Periodic reviews are important to ensure that the documents you have signed are still in harmony with your intentions. You can modify or revoke your agent or appoint a different person at any time, by destroying the original document or executing a new agent. You should also notify your previous agent, attorney, physician and any other effected party. New York provides that the proxy can be revoked by

notifying the agent or doctor verbally and in writing of your intention revoke by executing a subsequent proxy, or by any other act evidencing a specific intent to revoke. Amending the proxy is much easier if you send a copy to all parties involved. If you choose your spouse as your health care agent and you get divorced or legally separated, the appointment is automatically cancelled.

Conclusion

Possessing a Health Care Proxy and agent is a substantial, life-altering decision. Attached are two copies of valid New York State Health Care Proxy forms. The decision is yours and yours alone.

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Researched and composed by John Menard.

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SBI Legal Assistance Director: Alex Melville