

What's a Healthcare Proxy and Why Should You Have One?

September 13, 2023
By Candace Dellacona

Originally posted on 12/10/2020, content updated on 09/13/2023

It is vital to have a proper health care directive in place in the event you become sick and cannot independently advise your health care providers of your wishes. In 1991, the **New York Health Care Proxy Law** established the right for an adult to nominate another person to make medical decisions for her in the event she is unable to effectively communicate her wishes independently. The goals of establishing this standard in New York was to avoid confusion when a medical decision needed to be made for someone who could not do it herself, to identify the person who could communicate those wishes, to ensure the wishes would be carried out, and most importantly, to withdraw treatment when the proxy decides that it would not be something that the patient would want or that continued care is not in the patient's best interests.

How the Health Care Proxy Works

The Health Care Proxy document only goes into effect when you are unable to effectively communicate your wishes to your health care providers. The proxy allows for the appointment of two people, referred to in the document as "agents", in the order in which they are named. The order of the proxies in the document determines the order in which medical personnel will consult with them about decisions that need to be made about your health. Agents are not permitted to act together in New York because joint action could lead to disagreement, which of course undermines the purpose of the document. The medical decisions that an agent might make on your behalf can range from the most basic like the dispensing of antibiotics to the suspension of artificial ventilation which might end your life. The Health Care Proxy also provides instruction regarding organ and tissue donation in the event of your brain death.

How to Choose Your Agents

Your agent must be 18 years of age and does not have to be someone related to you. While it is true that many choose a family member like a spouse or an adult child for the agent role, there is no requirement that your agent be related to you. In fact, some choose a close friend or trusted advisor to fill the role of an agent so that a family member's emotion does not factor into a health decision, particularly a decision that could end your life. Others nominate their religious advisor so that treatment is based on their faith's doctrine to guide the medical decision.

Regardless of the individual you choose, it is imperative when considering someone for the role that you nominate a person who will speak for you regarding the type of care that *you* would choose for yourself, if you could articulate your own wishes: this person should not substitute *their* wishes for *your* wishes. Instead, you should choose an agent who understands your wishes as they relate to any and all health care decisions, including life-saving measures, and who will articulate those wishes to your health care providers. This person should be someone who understands and respects your feelings about living and about dying, and fully comprehends the quality of life that you wish to live. In addition, the person should be comfortable

advocating for you with health care providers and dissenting family members alike.

How to Communicate Your Wishes

The discussions that you have with your agent are so important because this is the information she will rely on to make decisions for you if the need arises in the future. These discussions with your agent often evolve over time. Your feelings about living and dying and the type of care that you may want are oftentimes influenced by age, a life-limiting diagnosis or even someone else's health crisis that you have witnessed.

Verbal discussions had with a proxy are legally sufficient for the agent to make a decision regarding any and all of your medical care, but many individuals take it a step further and also put a Living Will in place to illustrate certain wishes in writing. In short, Living Wills are documents that explain your thoughts about medical care and heroic measures. Often Living Wills go into detail about "heroic measures" to sustain your life including artificial nutrition, hydration, and ventilation. It is important to note that Living Wills are not substitutes for Health Care Proxies in New York and should only be used to supplement information provided to the agent.

Who Should Have a Copy

It is necessary that your agent not only know that she was appointed by you, but that she also has a copy of the document itself. With the prevalent use of cellphones, it is commonly recommended that your agent take a photo of the Health Care Proxy under which she is nominated so that it is readily accessible in any emergent medical situation. You should also provide copies of your Health Care Proxy to any of your treating physicians for their records, in addition.

Finally, it should be noted that, even if after reading this article, you never get around to completing a Health Care Proxy, all is not lost. New York State passed the Family Health Care Decisions Act ("FHCDA") in 2010 that gives guidance on what to do if someone does not have a Health Care Proxy in place. The FHCDA allows for family members to act as your "surrogate" and make health care decisions for you, including decisions to withdraw life-sustaining treatment. However, you are not able to choose which family member will speak for you, so it is not a sufficient substitute for a Health Care Proxy.