

Health Care Proxy (HCP)

David Polanik

Southern New Hampshire University

What is a health care proxy?

Someone who can be your voice if you are unable to make or express healthcare decisions for yourself

- Surrogate Decision Maker
- Agent

Why do I need a proxy?

There are multiple scenarios where you may not be able to make your own healthcare decisions

- Loss of consciousness – head injury - fall off bike, hit tree skiing, car accident
- Encephalopathy – disease that affects the function or structure of your brain – metabolic, hepatic, hypoxic, uremic, septic, etc.
- Dementia
- Alzheimer's disease

How do I pick a proxy?

Choose someone who understands and respects your values and wishes about healthcare

- Family member – not necessarily
- Able to communicate your wishes - absolutely
- 18 years of age – yes
- Your doctor or your nurse – if related and not currently caring for you

It is important that you communicate your wishes to your proxy prior to your loss of ability to make your own decisions

What happens when I get to the hospital?

Doctor will determine if you have the capacity to make healthcare decisions. If appropriate, he/she will invoke the HCP

- Clinical determination
- Patients can regain capacity
- Standard for assessment varies according to context

Capacity

Capacity is the ability to understand the nature and consequences of a procedure, its risks, possible complications, alternatives, and to make an informed, **reasoned** and consistent choice

Capacity Varies

Capacity is variable and depends on what decisions need to be made

- The level of capacity necessary for giving consent to blood draws or non-invasive tests is different from what is necessary for more **complex** interventions (e.g., amputation)
- An individual can lack capacity to make medical decisions, but still have capacity to name a Health Care Proxy

Health Care Proxy

Execute a Health Care Proxy

(Available throughout most hospitals and on MASS.GOV website <https://www.mass.gov/info-details/massachusetts-legal-forms-for-subjects-e-h#health-care-proxy-/-living-will->)

- A Health Care Proxy is a document that appoints a surrogate decision-maker without having to go to court
- You will need two witnesses to sign the form in addition to the patient when executing the Health Care Proxy

Health Care Proxy

Unless specifically limited by its terms, the form **gives** the agent **the authority** to make ALL medical decisions for the patient, including:

- Nursing facility placement
- Treatment with anti-psychotics
- End-of-life decisions (**attempted resuscitation, intubation**, withdrawing treatment, etc.)

Access patient's medical information for purposes of making medical decisions

Health Care Proxy

If the patient's **preferences** are known or knowable

- Proxy makes medical care decisions based on Proxy's understanding of what patient would want **under the circumstances**

If the patient's **preferences** are unknown

- Proxy makes medical care decisions based on Proxy's own judgment of what the Proxy believes is in the best interest of patient **under the circumstances**

What happens if I don't have a HCP?

Family Decides

- Family may be asked to make decisions, but this is hospital specific – not a MA Law, and those decisions are applicable only in the hospital
- Family members often don't agree on the same course of action

May need to go to court to have a guardian appointed

Can a Health Care Proxy be Revoked?

- Yes - If you execute a new form
- Divorce or legal separation from the named agent (unless executed or re-affirmed post-separation/divorce)
- Physically ripping, crossing out writing, acting to revoke
- Verbally disavowing
- **By doing anything that reflects a desire to negate or revoke the proxy**

The patient always has the right to disagree with the Proxy's decision, even when lacking capacity