Dear Neighbor,

When patients are not able to make their own health care decisions, who decides for them? In New York, you can appoint someone to make health care decisions for you if you lose decision-making capacity. The Health Care Proxy Law allows you to sign a "health care proxy" and name your "health care agent." This simple form also allows you to include other wishes and instructions, including whether you want to be an organ and tissue donor.

Because many people never sign a health care proxy (and some do not have the capacity to do so), in 2010 the legislature enacted another bill, the Family Health Care Decisions Act (FHCDA). This new law empowers family members to make decisions in those difficult cases.

However, even with the new law, signing a health care proxy is still best. This brochure explains all about health care proxies and the FHCDA. It also contains an actual health care proxy form for you to fill out and discuss with your loved ones.

Sincerely,

Alfred C. Graf
Member of Assembly

grafa@assembly.state.ny.us

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991 Main Street, Suite 202
Holbrook, NY 11741
631-585-0230

Room 433, LOB
Albany, NY 12248
518-455-5937

If a patient can't make health care decisions...
WHO DECIDES?

From Assemblyman Alfred C. Graf

New York's Health Care Proxy Law & Family Health Care Decisions Act

...can help guide your care when you can't

Family Health Care Decisions Act, Health Care Proxy Law

What is a health care proxy?

The Health Care Proxy Law lets you appoint a competent adult to make decisions about your medical treatment in the event you lose the ability to decide for yourself – including decisions to remove or provide life-sustaining treatment. You can appoint a family member, a close friend, or anyone you choose.

You can give your health care agent as little or as much authority as you want to decide about all or only specific health care treatments. You may include your wishes or instructions if you choose to. You can also use your health care proxy to say whether you want your organs (or certain organs) to be donated if you die.

Hospitals, doctors and other health care providers must follow your agent's decisions as if they were your own. Your agent must act according to your known wishes. If your wishes are not known, your agent must act in your best interests.

It is important to name a health care agent because we all face health conditions we do not expect. Your agent can decide how your wishes apply as your medical condition changes. Also, your choice of decision-maker might be different from the list in the Family Health Care Decisions Act (FHCDA).

If you expect to be in another state, you should see whether its law will accept a New York health care proxy.

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

No. A "living will" is just a written statement of your wishes or instructions about health care treatment. You may include this information in your health care proxy.

Why should I choose a health care agent?

If you become too sick to make health care decisions, someone must decide for you. The health care proxy lets you control your medical treatment by:

- choosing one person over the age of 18 – even a non-family member if you feel it's best – to make decisions for you;
- avoiding conflict or confusion;
- ensuring your wishes are correctly carried out; and
- giving your agent the power to stop treatment when he or she decides it's what you would want or what is best for you under the circumstances.

What decisions can my health care agent make?

Unless you limit your agent's authority, he or she can make any treatment decisions you could make. 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.

If you want your agent to be able to make decisions about artificial nutrition and hydration (nourishment and water by feeding tube and intravenous lines), he or she must be aware of your wishes about that. There is a section on the NYS health care proxy form for this type of information.

What about organ donation?

Organ donation saves lives. To make it easier for people to say they want to be an organ donor, the law allows you to include your wishes about organ donation on your health care proxy. You may donate all your organs, only specific organs, or none. You may also say whether you want your organs to be used only for transplantation, or also for medical education or research.

How will my health care agent make decisions?

Your agent must follow your oral and written instructions, as well as your moral and religious beliefs, if they are known. You can put written instructions on the health care proxy form. If your wishes or beliefs are unknown, your agent is legally required to act in your best interest.

When would my agent make treatment decisions?

After your doctor decides you are unable to make your own health care decisions, your agent would step in and have authority to make decisions. As long as you can make decisions for yourself, you are in charge. Even if your agent has authority to act, you still have the legal right to speak up and reject your agent's decision.

Who will obey my agent?

All hospitals, doctors and other health care facilities are legally required to follow your agent's decisions. If a hospital objects to some treatment options (such as removing certain treatments) they must tell you or your agent in advance.

Who signs the proxy form?

You sign the form, along with two witnesses who are at least 18 years old. The agent or alternate agent can't sign as a witness.

How can I appoint a health care agent?

All competent adults can appoint a health care agent by signing a form called a health care proxy. Talk about choosing an agent with your family and close friends. Discuss this form with your agent, doctor or health care professional before signing. This will help you understand decisions that may be made for you. If you select a doctor to be your health care agent, he or she may have to choose between acting as your agent or as your attending physician. A physician cannot do both at the same time.

You don't need a lawyer, just two adult witnesses. You may use the form printed on the reverse side of this brochure.

For patients or residents of a hospital, nursing home or mental hygiene facility, special restrictions apply when naming someone as your agent who works for that facility. Ask the facility staff to explain those restrictions.

What is the Family Health Care Decisions Act?

The Family Health Care Decisions Act (FHCDA) of 2010 allows family members or a close friend (if there are no family members) to act as a "surrogate" or representative of the patient to make health care decisions, including withholding or withdrawing of life-sustaining treatment, for a patient who loses the ability to make those decisions when the patient has not signed a health care proxy. The law includes extensive rules and procedures to protect the patient.

Even with the FHCDA, New Yorkers are encouraged to sign a health care proxy, which allows the person you appoint, called your health care agent, to make health care decisions if you later lose capacity to make those decisions.

Under the FHCDA, your surrogate's role will be very similar to a health care agent. However, a surrogate only has authority to act if you are in a hospital or a nursing home or if the decision is about hospice care. A health care agent may make decisions wherever you are.

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 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 (6)

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 (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.

What if the person I appoint isn't available or willing?

You can include an alternate agent in the event your health care agent isn't available – or is unable or unwilling to act – when decisions must be made.

What if I change my mind about my agent or treatment instructions?

Just fill out a new form and destroy the old form. A health care proxy is valid indefinitely unless you revoke it. Also, if you choose to, you can set an expiration date or other conditions for it to expire. If your spouse is your agent – and you get divorced or legally separated – the proxy is automatically canceled, unless it says otherwise.

At any time – even if you lack capacity to make decisions – you have the legal right to overrule your agent's decision.

Can my health care agent be sued for decisions made on my behalf?

No. Your agent will not be liable for treatment decisions made in good faith. Also, your agent cannot be required to pay for your health care costs.

Where should I keep my proxy?

Give a copy to your agent, doctor and other family members or close friends. Keep a copy with your important papers. You might want to put a note on your refrigerator telling who your agent is and where a copy of the proxy is. Also, this brochure includes a form you can cut out and carry in your wallet to help identify your health care wishes.

For help, visit: www.health.ny.gov/forms/doh-1430.pdf

HEALTH CARE PROXY FORM

1) I, _____ , hereby appoint

_____

(Agent's name, home address and phone 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 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:

_____

(Alternate agent's name, home address and phone 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.

5) 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 _____

Failure to state wishes or instructions shall not be construed to imply a wish not to donate.

6) Your Identification: (please print) Your Name _____

Your Signature _____ Date _____

Your Address _____

7) Statement by 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.

Witness 1 (print) _____ Address _____

Signature _____ Date _____

Witness 2 (print) _____ Address _____

Signature _____ Date _____

Carry in your Wallet

I have a health care proxy. In case of emergency, please notify my health care agent:

My Name: _____

Address: _____

_____ Phone: _____

My Agent: _____

Agent's Address: _____

Agent's Phone: _____ Agent's Email: _____