Your Health Care Proxy

You have the right to have your health care wishes carried out, even if you cannot express them yourself. One of the best ways to make sure this happens is to complete an advance directive.

An advance directive is a document that states your wishes about your future health care. It is used if you cannot make or communicate these wishes. In Massachusetts, a type of advance directive that is recognized by law is called a **health care proxy** (Health Care Proxies, Massachusetts General Laws, Chapter 201D).

This handout describes the health care proxy and answers some of the most common questions patients have about it.

What is a health care proxy?

A health care proxy is a legal document that allows you to name someone to make your health care decisions if you cannot do so yourself. This person is known as a health care agent. You may also choose an alternate health care agent who can make decisions if your health care agent is not available, willing or competent. The proxy must be signed by you (or someone else you choose) and witnessed by two adults.

Every time you are admitted to Lahey Clinic, you will be asked for your health care proxy. The contact information for your agents, as well as a copy of your health care proxy, will be added to your medical record. If you do not have a health care proxy, please ask for one to fill out.

Who should be my health care agents?

Your health care agents should be individuals you trust with your health care decisions. However, they cannot be administrators, operators or employees of the hospital you are being treated at, unless you are related to them by blood, marriage or adoption.

You should talk about your wishes with your agents so they know what you would want if you become unable to make your own health care decisions.

What decisions can my health care agent make for me?

Your health care agent can make all the health care decisions that you would make for yourself if you could. These include decisions about medical treatment to keep you alive (like CPR or a ventilator). If you choose, you can limit the decisions that your health care agent can make in your health care proxy. In these cases, he or she can only make decisions within those limits.

Your health care agent's decisions take priority over all other people's opinions, including those of a guardian or described in another type of advanced directive (like a durable power of attorney or living will). If you do not want your agent's decisions to take priority, you must specify so in your health care proxy.

When can my health care agent make my decisions for me?

The only time your health care agent can start making your health care decisions for you is after the following occur:

1. A doctor determines that you cannot make or communicate certain health care decisions. This determination needs to be written in your medical record. It should include the doctor's opinion about the cause, nature, degree and expected length of your inability to make health care decisions.
2. You are told (verbally and in writing) of the doctor's decision, if it seems you will understand this information.
3. Your health care agent is told, verbally and in writing, of the doctor's decision.

What else should I know about a doctor's determination that I cannot make decisions?

- If you chose a doctor as your health care agent, he or she cannot be the one to decide that you cannot make health care decisions.
- In order for a doctor to determine that you cannot make your own health care decisions because of a mental illness or developmental disability, he or she needs to have specialized training in that illness or disability. Or the doctor needs to consult with someone who has training in that illness or disability.
- If you are in or are being moved to a mental health facility, the director of that facility will be told of your doctor's decision.

How does my health care agent make decisions for me?

Your health care agent has the right to receive any and all medical information he or she needs to make an informed decision about your health care. Your agent can talk with your care providers and review your medical records and any other information that you would be entitled to review. Your agent will make decisions based on what he or she knows about your wishes and your religious and moral beliefs. If your agent does not know your wishes, he or she should make decisions based on what he or she feels is best for you.

Your health care providers have to follow your agent's decisions, unless you put specific limits in your health care proxy or a court order allows them not to.

What if I disagree with a decision my health care agent makes for me?

If you disagree with your health care agent, your opinion overrides his or hers. This is the case even if a doctor has said you cannot make your own decisions, unless there is a court order agreeing with your doctor.

What if my doctor decides I can make my own decisions again?

If your doctor decides you can make your own decisions again, your health care agent loses the right to make them for you.

Can I revoke (or cancel) a health care proxy?

Yes. To revoke a health care proxy, you can do any of the following:

- Tell your health care agents and your health care provider, verbally or in writing, that you have revoked the proxy.
- Complete a new proxy. Your new proxy will automatically cancel any proxies you completed before it.
- Destroy the original proxy.

Your health care proxy will also automatically be canceled if your health care agent is your spouse *and* you get divorced or legally separated.

As soon as your doctor knows that you want to revoke your health care proxy, he or she will make a note in your medical record. Your doctor will also notify (verbally and in writing) your health care agent and your other care providers of the change. If your health care agent or other care providers learn first that you want to revoke your health care proxy, they must immediately tell your doctor.

Can I be required to complete, or prevented from completing, a health care proxy in order to receive health care services?

No.

Is my health care agent responsible for health care costs resulting from decisions he or she makes?

No.

Can my health care provider be legally responsible (held liable) for following the decisions made by my health care agent?

No. No health care provider or employee of the health care provider can be held civilly or criminally liable or found to have acted unprofessionally for following decisions made by a health care agent.

Can my health care agent be held liable for making certain health care decisions based on what I ask for in my health care proxy?

No. No health care agent can be held civilly or criminally liable for decisions he or she makes for you in "good faith" (what he or she honestly thinks is best at the time).

Where is my health care proxy kept?

Your health care proxy, or a copy of it, will be in your medical record. If you revoke a health care proxy, that will be noted in your medical record too.

If you have any questions about this handout or health care proxies, please call Customer Relationship Management at 781-744-8556.