

HEALTH CARE DECISION MAKING AT LAHEY CLINIC

Information for Patients: Advance Directives

Health Care Proxy

Patients have the right to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at their option, advance directives. An advance directive is a written instruction, such as a living will, durable power of attorney for health care, or a Massachusetts health care proxy, related to the provision of health care when the patient lacks the capacity to make health care decisions. Massachusetts General Law chapter 201D sets forth the following requirements for use of health care proxies:

Appointment of health care agent

Patients have the right to appoint a health care agent by executing a health care proxy. The health care proxy is a document delegating to an agent the authority to make health care decisions. The health care proxy must be in writing and signed by the adult patient or at the direction of that patient, in the presence of two adult witnesses. The witnesses' signatures on the health care proxy affirm that the patient appeared to be at least 18 years old, of sound mind and under no constraints or undue influence. The person named as the health care agent cannot act as a witness to this signing. No individual who is an operator, administrator, or employee of a facility may be appointed as a health care agent by an adult, who, at the time of signing the health care proxy is a patient or resident, or applied to be the resident to that facility, unless the operator, administrator, or employee of that facility is related to the patient by blood, marriage, or adoption. Every adult shall be presumed to be properly competent to execute a health care proxy and every health care proxy shall be presumed to be properly executed unless a court determines otherwise.

Appointment of alternate health care agent

A patient may also designate an alternate health care agent on the health care proxy. The alternate may serve when the designated health care agent is not available, willing, or competent to serve and the designated health care agent is not expected to become available, willing or competent to make a timely decision given the patient's medical circumstances; or the health care agent has been disqualified for other reasons.

Lahey Clinic health care proxy process:

1. Each Lahey Clinic patient shall be asked upon admission if he or she has a health care proxy. If the patient has a health care proxy, that information shall be documented in the nursing care assessment.
2. If the patient does not have a health care proxy, Lahey Clinic shall provide the patient with a health care proxy form and this health care proxy policy.
3. If the patient has a health care proxy document or signs a health care proxy form upon admission, contact information about the health care agent(s) shall be entered on the nursing care assessment for the current admission and a copy of the health care proxy shall be inserted or scanned, as applicable, into the patient's medical record.



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Frequently Asked Questions:

Who cannot serve as a health care agent? Any individual who is an operator, administrator or employee of a facility may not be appointed as a health care agent by a patient who, at the time of the execution of the health care proxy, is a patient or resident of such facility or has applied for admission to such facility unless the operator, administrator, or employee is related to the patient by blood, marriage, or adoption.

What does a health care proxy do? The health care proxy:

- Identifies the patient, the health care agent, and the alternate health care agent, if any;
- Indicates that the patient intends the health care agent to have authority to make health care decisions on the patient's behalf;
- Describes the limitation, if any, that the patient intends to impose on the health care agent's authority; and
- Indicates that the health care agent's authority shall become effective if it is determined that the patient lacks the capacity to make health care decisions.

What is meant by "the patient lacks the capacity to make health care decisions"? This means the patient does not have the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of, and alternatives to, any proposed health care treatment, service or procedure, and to reach an informed decision.

When does the health care agent have the right to make decisions on behalf of the patient?

- The health care agent's authority begins after a clinical determination is made by the attending physician, according to accepted standards of medical judgment, that the patient lacks the capacity to make or to communicate health care decisions. This clinical determination shall be set forth in writing in the patient's permanent medical record and shall contain the attending physician's opinion regarding the cause and nature of the patient's incapacity as well as its extent and probable duration.
- If the attending physician determines that the patient lacks capacity because of mental illness or developmental disability, the attending physician who makes the determination must have, or must consult with a health care professional who has, specialized training or experience in diagnosing or treating mental illness or developmental disabilities of the same or similar nature in making such determination.
- A physician who has been appointed as the patient's health care agent shall not make the determination of the patient's capacity to make health care decisions.
- Notice of a determination that the patient lacks capacity to make health care decisions shall immediately be given orally and in writing to the patient (where there is any indication of the patient's ability to comprehend the notice), to the agent, and if the patient is in or is transferred from a mental health facility, to the facility director.
- A determination made that a patient lacks capacity to make health care decisions is solely for the purpose of empowering a health care agent to make health care decisions pursuant to a health care proxy.



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What are the rights and authority of the health care agent?

- A health care agent has the authority to make any and all health care decisions on the patient's behalf that the patient could make, including decisions about life-sustaining treatment, subject to any express limitations set forth in the health care proxy.
- After consultation with health care providers, and after full consideration of acceptable medical alternatives regarding diagnosis, prognosis, treatments and treatment side effects, the health care agent shall make health care decisions in accordance with the health care agent's assessment of the patient's wishes, including the patient's religious and moral beliefs, or if the patient's wishes are not known, in accordance with the health care agent's assessment of the patient's best interests.
- The health care agent has the right to receive any and all medical information necessary to make informed decisions regarding the patient's health care, including any and all confidential medical information that the patient would be entitled to receive.
- The health care agent's health care decisions pursuant to a health care proxy shall have the same priority over decisions by any other person, including a person acting pursuant to a durable power of attorney, as the decisions made by the patient, when competent, unless otherwise limited as described in the health care proxy or by specific court order overriding the health care proxy.
- A health care provider shall comply with the health care agent's decisions to the same extent as if those decisions were made by the patient, subject to any limitations in the health care proxy or in any specific court order.
- If it the attending physician has determined that a patient lacks capacity to make health care decisions, but the patient nonetheless objects to a health care decision made by a health care agent pursuant to a health care proxy, the patient's decisions shall prevail unless the patient is determined to lack capacity to make health care decisions by court order.

What if the attending physician determines that the patient has regained capacity to make health care decisions? If the attending physician determines that the patient has regained capacity to make health care decisions, the health care agent loses his/her authority and the patient's consent for treatment shall be required.

Can a patient revoke a health care proxy? A patient can revoke a health care proxy by notifying the health care agent or a health care provider orally or in writing or by any other act that shows the patient's intent to revoke the health care proxy. Every patient shall be presumed to have the capacity to revoke a health care proxy unless determined by court order A health care proxy shall be automatically revoked upon the execution by the patient of a new health care proxy or the divorce or legal separation of the patient from the spouse, where the spouse is the patient's agent under a health care proxy.

A physician who is informed of or provided with revocation of the health care proxy shall immediately record the revocation in the patient's medical record and provide verbal and written notice of the revocation to the health care agent and any health care providers known by the physician to be involved in the patient's care.

Any health care agent or member of the nursing staff informed of or provided with a revocation of a health care proxy shall immediately notify the attending physician of that revocation.



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Is a health care agent liable for health care costs resulting from decisions he/she made? No, liability for the cost of health care provided as a result of a health care agent's decisions shall be the same as if the health care were provided as a result of the patient's decisions.

Can a patient be required or prohibited to execute a health care proxy as a condition for receiving health care services or insurance?

No, a person may not require or prohibit the execution of a health care proxy by an individual as a condition for providing health care services or insurance to that individual.

Is a health care provider subject to criminal or civil liability for carrying out the decisions of a health care agent? No, no health care provider or employee of the health care provider shall be subject to criminal or civil liability or be deemed to have engaged in unprofessional conduct, for carrying out in good faith health care decisions by an agent in accordance with a health care proxy.

Is a health care agent subject to criminal or civil liability for making health care decisions pursuant to a health care proxy? No person acting as a health care agent in accordance with a health care proxy shall be subject to criminal or civil liability for making health care decisions in good faith pursuant to the Massachusetts Health Care Proxies Law, M.G. L. c. 201D.

Where shall provider's keep a patient's health care proxy? A health care proxy, or a copy of the proxy, shall be inserted in the patient's medical record. Revocation of the health care proxy shall also be recorded in the patient's medical record.

To whom should complaints about health care proxy requirements be directed? You may register a complaint with the Massachusetts Department of Public Health, Division of Health Care Quality, 99 Chauncy Street, 2nd Floor, Boston, MA 02111, 617-753-8000.



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