



The Role of the Health Care Proxy and Person Centered Care

Presented by:

Lindsay Heckler
Center for Elder Law & Justice

Disclaimer

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Agenda

- ❖ Power of Attorney
- ❖ Health Care Proxy
- ❖ Family Health Care Decisions Act
- ❖ Person Centered Care
- ❖ Resident Representative
- ❖ Summary

Power of Attorney

A Power of Attorney (POA) is a legal document in which an individual (known as the Principal) gives authority to a third party (known as the Agent) to perform certain tasks and conduct business on the principal's behalf. The POA document lists the various tasks which the Agent is authorized to undertake for the Principal.

- ❖ Power of Attorney is a document for financial and property decisions only
- ❖ To make medical decisions on behalf of someone, the individual must complete a Health Care Proxy
- ❖ Agent(s) only have the powers granted to them by the POA document
- ❖ Agents are not entitled to determine who can live with the Principal, who can visit the Principal, etc.

NYS Durable POA

- ❖ One Principal can designate one or more agents
 - Principal can appoint up to two agents and up to two successor agents.
- ❖ POA is tailored specifically to each individual
 - Each POA is different.
 - An individual seeking a POA should consult an attorney so that the document best meets their needs!
- ❖ POA terminates only when:
 - At the death of the principal;
 - The POA is properly revoked; or
 - If terminated by a Judge/Court.

Authorities Granted

- ❖ Real estate transactions
- ❖ Chattel and goods transactions
- ❖ Bond, share and commodity transactions
- ❖ Banking transactions
- ❖ Business operating transactions
- ❖ Insurance transactions
- ❖ Estate transactions
- ❖ Claims and litigation
- ❖ Personal and family maintenance
- ❖ Benefits from government programs or military service
- ❖ Health care billing and payment matters; records, reports, and statements
- ❖ Retirement benefit transactions
- ❖ Tax matters
- ❖ Authority to delegate any powers to a person whom an agent selects
- ❖ All other matters
- ❖ **** Some or all these authorities can be chosen ****

POA Misconception #1

- ❖ Misconception: A Power Of Attorney Agent can make medical decisions on behalf of the Principal
 - Not true!
 - In NYS the execution of a Health Care Proxy (HCP) is required in order for a third party to make medical decisions on behalf of the Principal
 - If a HCP does not exist, then we turn to the Family Health Care Decisions Act (FHCDA) to determine who is the appropriate healthcare decision maker



POA Misconception #2

- ❖ Misconception: A POA document gives the Agent complete control.
 - Definitely not true!
 - The Principal retains the ability to make decisions and handle their own affairs
 - A Principal can revoke a POA at any time and for any reason, so long as they have capacity
 - When performing duties, Agents must always act in accordance with the Principal's instructions
 - In the absence of instructions, Agents must act in the Principal's best interest
 - If an Agent violates their duties to the Principal, the Agent may be liable for resulting damage



Health Care Proxy: Article 29-C PHL

- ❖ When the resident (“principal”) appoints someone (“agent”) to make health care decisions on the resident’s behalf should the resident lack capacity to make their own health care decisions.
- ❖ Health Care Decision:
 - Any decision to consent or refuse to consent to any treatment, service or procedure to diagnose or treat the resident’s physical or mental condition.
- ❖ Resident’s behalf:
 - The agent should make the same health care decisions as the resident would have.
- ❖ Capacity to make Health Care Decision
 - Ability to understand and appreciate nature and consequences of a health care decision.
 - Includes considering the benefits, risks, and alternatives to any proposed health care to reach an informed decision.

*******THE HEALTH CARE PROXY ONLY
ACTIVATES WHEN THE RESIDENT LACKS THE
CAPACITY TO MAKE HEALTH CARE
DECISIONS!!!!!!*******

It is only then the nursing home (provider) should
listen to the agent over the resident.

How is Capacity Determined?

- ❖ Only the attending physician can determine if the resident lacks capacity to make health care decisions to a reasonable degree of medical certainty.
- ❖ The attending physician's decision must:
 1. Be made in writing;
 2. Contain their opinion as to the cause and nature of the incapacity;
 3. Contain their opinion as to the extent and duration of the incapacity; and
 4. Be in the resident's medical record.
- ❖ The facility must give the resident the decision, orally and in writing, if the resident has any chance of understanding what it means.

HCP Misconception #1

- ❖ Misconception: The Agent can immediately make decisions on behalf of the Principal.
 - WRONG! The Agent can only make health care decisions on the Principal's behalf only if a physician has declared the Principal lacks capacity.
 - To declare a Principal lacks capacity the physician must document the:
 - Cause of the Principal's incapacity;
 - Nature of the Principal's incapacity;
 - Extent of the Principal's incapacity; and
 - Probably duration of the Principal's incapacity

HCP Misconception #2

❖ Misconception: Once I create a Health Care Proxy I can never change my Agent.

➤ Incorrect!

➤ A competent adult may revoke a Health Care Proxy by notifying the agent or health care provider orally or in writing.

➤ A Health Care Proxy is revoked upon execution by the Principal of a subsequent Health Care Proxy.

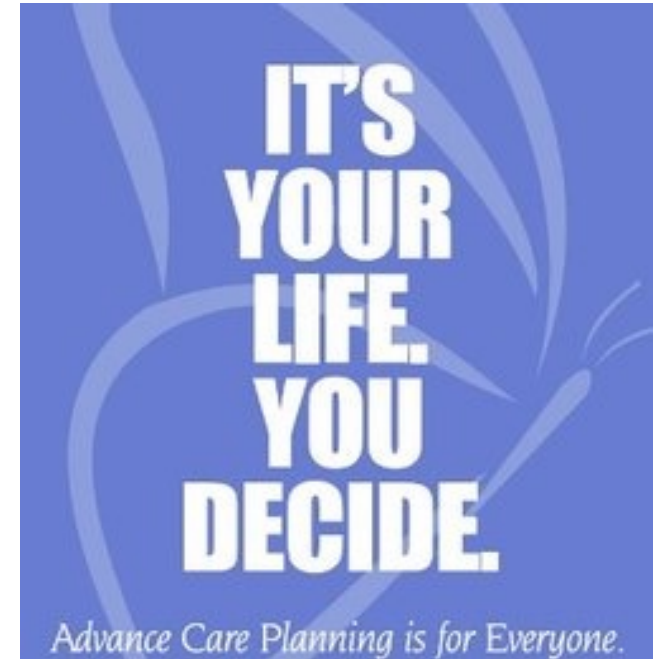
- Be careful when a health care provider asks if you want to complete a Health Care Proxy- you may not want to revoke a prior Health Care Proxy document that is already in place!

HCP Misconception #3

- ❖ Misconception: A Health Care Proxy Agent can always access my information.
 - This is incorrect, while the Principal has capacity.
 - It is when the Principal lacks the capacity to make health care decisions that the health care proxy is activated and the Agent can access the medical records.
 - The Principal has the ability (with or without) having a Health Care Proxy document, to allow access to records to a person or entity of his/her choosing.
 - The Health Care Proxy document itself is not the determining factor for whether another person has access to your records.

HCP Misconception #4

- ❖ Misconception: The Health Care Proxy Agent can make decisions on all aspects of the Principal's life.
 - Completely incorrect!
 - The Agent can only make decisions that pertain to the Principal's health care decisions.
 - The Health Care Proxy does not pertain to financial matters such as medical bills.



Family Health Care Decisions Act (FHCDA)

- ❖ Allows others (surrogate) to make health care decisions for the resident when the resident is not able to and has not designated/appointed a decision-making surrogate.
- ❖ A surrogate is chosen from a hierarchy list:
 - An article 81 guardian (if one has been appointed by a court);
 - Spouse, if not legally separated, or domestic partner;
 - Adult son or daughter;
 - Parent;
 - Adult brother or sister;
 - Close friend (or relative) who knows the resident or their religious/moral beliefs.

Person Centered Care

- ❖ To focus on the resident as the locus of control and support the resident in making their own choices and having control over their daily lives.
 - 42 CFR 483.5-Definitions
- ❖ Each resident comes to the nursing home with unique life experiences, values, attitudes and desires, and a singular combination of clinical and psychological needs. In order to assure the highest practicable quality of life, the individuality of the nursing home resident must be recognized, and the exercise of self-determination protected and promoted, by the operator and staff of the facility. The physical environment, care policies and staff behavior must at once acknowledge the dependence of the residents while fostering their highest possible level of independence.
 - 10 NYCRR § 415.1

Resident Right: Designation of Resident Representative

- ❖ Residents who have not been determined to lack capacity by a court have the right to designate a representative to exercise the resident's rights on their behalf.
- ❖ The resident has the right to choose the extent that their representative may exercise those rights and has the right to revoke the designation of representative.
- ❖ Facilities must ensure that the resident representative does not make decisions outside those delegated to them by the representative.
- ❖ The designation of a resident representative does not absolve the facility's obligation to be resident-focused.

Resident Representative: Defined

Means any of the following:

- ❖ An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;
- ❖ A person authorized by State or Federal law (including but not limited to agents under a POA, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;
- ❖ Legal representative, as used in section 712 of the Older Americans Act; or
- ❖ A court-appointed guardian or conservator of a resident.

Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

Rights Exercised by the Representative

- ❖ A competent resident may wish to delegate decision-making to specific persons, or the resident and family may have agreed among themselves on a decision-making process.
 - To the degree permitted by State law, the facility staff must respect the delegated resident representative's decisions regarding the resident's wishes and preferences so long as the resident representative is acting within the scope of authority contemplated by the agreement authorizing the person to act as the resident's representative.
- ❖ Whether a resident has or has not been judged incompetent by a court of law, **if it is determined that the resident understands the risks, benefits, and alternatives to proposed health care and expresses a preference, then the resident's wishes should be considered to the degree practicable, including resident input into the care planning process.**

Summary

- ❖ Regardless of your designation and/or authority (POA, HCP, Surrogate, Guardian, Other), the resident must be involved/included.
 - POA
 - HCP
 - Surrogate
 - Guardian
 - Other: no legal authority? What specific right/authority did the resident delegate?
- ❖ Remind the nursing home of its responsibility to involve the resident.
- ❖ How would the resident decide? Person Centered Care!

Thank You!

- ❖ Contact: Lindsay Heckler, lheckler@elderjusticeny.org 716-853-3087 x212
- ❖ Main intake for potential representation (WNY only): 716-853-3087
 - <https://elderjusticeny.org>
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 - Monday through Friday from 9:00am to 11:00am EST at 1-844-481-0973. You can also call and leave a message outside of those hours, and e-mail us at any time at helpline@elderjusticeny.org. A licensed attorney will respond to you within 3 business days.
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