

# CHOICES WOMEN'S MEDICAL CENTER

## *Appointing Your Health Care Agent In New York State*

The New York Health Care Proxy Law allows you to appoint someone you trust — for example, a family member or close friend – to make health care decisions for you if you lose the ability to make decisions yourself. By appointing a health care agent, you can make sure that health care providers follow your wishes. Your agent can also decide how your wishes apply as your medical condition changes. Hospitals, doctors & other health care providers must follow your agent's decisions as if they were your own. You may give the person you select as your health care agent as little or as much authority as you want. You may allow your agent to make all health care decisions or only certain ones. You may also give your agent instructions that he or she has to follow. This form can also be used to document your wishes or instructions with regard to organ and/or tissue donation.

### **About the Health Care Proxy Form**

This is an important legal document. Before signing, you should understand the following facts:

1. This form gives the person you choose as your agent the authority to make all health care decisions for you, including the decision to remove or provide life-sustaining treatment, unless you say otherwise in this form. "Healthcare" means any treatment, service or procedure to diagnose or treat your physical or mental condition.
2. Unless your agent reasonably knows your wishes about artificial nutrition & hydration (nourishment & water provided by a feeding tube or intravenous line), he or she will not be allowed to refuse or consent to those measures for you.
3. Your agent will start making decisions for you when your doctor determines that you are not able to make health care decisions for yourself.
4. You may write on these form examples of the types of treatments that you would not desire and/or those treatments that you want to make sure you receive. The instructions may be used to limit the decision-making power of the agent. Your agent must follow your instructions when making decisions for you.
5. You do not need a lawyer to fill out this form.
6. You may choose any adult (18 years of age or older), including a family member or close friend, to be your agent. If you select a doctor as your agent, he or she will have to choose between acting as your agent or as your attending doctor because a doctor cannot do both at the same time. Also, if you are a patient or resident of a hospital, nursing home or mental hygiene facility, there are special restrictions about naming someone who works for that facility as your agent. Ask staff at the facility to explain those restrictions.
7. Before appointing someone as your health care agent, discuss it with him or her to make sure that he or she is willing to act as your agent. Tell the person you choose that he or she will be your health care agent. Discuss your healthcare wishes & this form with your agent. Be sure to give him or her signed copy. Your agent cannot be sued for health care decisions made in good faith.
8. If you have named your spouse as your healthcare agent & you later become divorced or legally separated, your former spouse can no longer be your agent by law, unless you state otherwise. If you would like your former spouse to remain your agent, you may note this on your current form & date it or complete a new form naming your former spouse.
9. Even though you have signed this form, you have the right to make health care decisions for yourself as long as you are able to do so, & treatment cannot be given to you or stopped if you object, nor will your agent have any power to object.

10. You may cancel the authority given to your agent by telling him or her or your health care provider orally or in writing.

11. Appointing a health care agent is voluntary. No one can require you to appoint one.

12. You may express your wishes or instructions regarding organ and/or tissue donation on this form.

## Frequently Asked Questions

### **Why should I choose a health care agent?**

If you become unable, even temporarily, to make health care decisions, someone else must decide for you. Health care providers often look to family members for guidance. Family members may express what they think your wishes are related to a particular treatment. However, in New York State, only a health care agent you appoint has the legal authority to make treatment decisions if you are unable to decide for yourself. Appointing an agent lets you control your medical treatment by:

- allowing your agent to make health care decisions on your behalf as you would want them decided;
- choosing one person to make health care decisions because you think that person would make the best decisions;
- choosing one person to avoid conflict or confusion among family members and/or significant others.

You may also appoint an alternate agent to takeover if your first choice cannot make decisions for you.

**Who can be a health care agent?** Anyone 18 years of age or older can be a healthcare agent. The person you are appointing as your agent or your alternate agent cannot sign as a witness on your Health Care Proxy form.

**How do I appoint a health care agent?** All competent adults, 18 years of age or older, can appoint a health care agent by signing a form called a Health Care Proxy. You don't need a lawyer or a notary, just two adult witnesses.

Your agent cannot sign as a witness. You can use the form printed here, but you don't have to use this form.

**When would my health care agent begin to make health care decisions for me?**

Your health care agent would begin to make health care decisions after your doctor decides that you are not able to make your own health care decisions. As long as you are able to make healthcare decisions for yourself, you will have the right to do so.

### **What decisions can my health care agent make?**

Unless you limit your health care agent's authority, your agent will be able to make any health care decision that you could have made if you were able to decide for yourself. Your agent can agree that you should receive treatment, choose among different treatments & decide that treatments should not be provided, in accordance with your wishes & interests. However, your agent can only make decisions about artificial nutrition & hydration (nourishment & water provided by feeding tube or intravenous line) if he or she knows your wishes from what you have said or what you have written. The Health Care Proxy form does not give your agent the power to make non-health care decisions for you, such as financial decisions.

### **Why do I need to appoint a health care agent if I'm young & healthy?**

Appointing a health care agent is a good idea even though you are not elderly or terminally ill. A health care agent can act on your behalf if you become even temporarily unable to make your own health care decisions (such as might occur if you are under general anesthesia or have become comatose because of an accident). When you again become able to make your own health care decisions, your health care agent will no longer be authorized to act.

### **How will my health care agent make decisions?**

Your agent must follow your wishes, as well as your moral & religious beliefs. You may write instructions on your Health Care Proxy form or simply discuss them with your agent.

### **How will my health care agent know my wishes?**

Having an open & frank discussion about your wishes with your health care agent will put him or her in a better position to serve your interests. If your agent does not know your wishes or beliefs, your agent is legally required to act in your best interest. Because this is a major responsibility for the person you appoint as your health care agent, you should have a discussion with the person about what types of treatments you would or would not want under different types of circumstances, such as:

- Whether you would want life support initiated/continued/removed if you are in a permanent coma;
- Whether you would want treatments initiated/continued/removed if you have a terminal illness;
- Whether you would want artificial nutrition & hydration initiated/withheld or continued or withdrawn & under what types of circumstances.

### **Can my health care agent overrule my wishes or prior treatment instructions?**

No. Your agent is obligated to make decisions based on your wishes. If you clearly expressed particular wishes, or gave particular treatment instructions, your agent has a duty to follow those wishes or instructions unless he or she has a good faith basis for believing that your wishes changed or do not apply to the circumstances.

**Who will pay attention to my agent?**

All hospitals, nursing homes, doctors & other health care providers are legally required to provide your health care agent with the same information that would be provided to you & to honor the decisions by your agent as if they were made by you. If a hospital or nursing home objects to some treatment options (such as removing certain treatment) they must tell you or your agent BEFORE or upon admission, if reasonably possible.

**What if my health care agent is not available when decisions must be made?**

You may appoint an alternate agent to decide for you if your health care agent is unavailable, unable or unwilling to act when decisions must be made. Otherwise, health care providers will make healthcare decisions for you that follow instructions you gave while you were still able to do so. Any instructions that you write on your Health Care Proxy form will guide health care providers under these circumstances.

**What if I change my mind?**

It is easy to cancel your Health Care Proxy, to change the person you have chosen as your healthcare agent or to change any instructions or limitations you have included on the form. Simply fill out a new form. In addition, you may indicate that your Health Care Proxy expires on a specified date or if certain events occur.

Otherwise, the Health Care Proxy will be valid indefinitely. If you choose your spouse as your health care agent or as your alternate, & you get divorced or legally separated, the appointment is automatically cancelled. However, if you would like your former spouse to remain your agent, you may note this on your current form & date it or complete a new form naming your former spouse.

**Can my health care agent be legally liable for decisions made on my behalf?**

No. Your health care agent will not be liable for health care decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs of your care, just because he or she is your agent.

**Is a Health Care Proxy the same as a living will? No.**

A living will is a document that provides specific instructions about health care decisions. You may put such instructions on your HealthCare Proxy form. The Health Care Proxy allows you to choose someone you trust to make healthcare decisions on your behalf. Unlike a living will, a Health Care Proxy does not require that you know in advance all the decisions that may arise. Instead, your health care agent can interpret your wishes as medical circumstances change & can make decisions you could not have known would have to be made.

**Where should I keep my Health Care Proxy form after it is signed?**

Give a copy to your agent, your doctor, your attorney & any other family members or close friends you want. Keep a copy in your wallet or purse or with other important papers, but not in a location where no one can access it, like a safe deposit box. Bring a copy if you are admitted to the hospital, even for minor surgery, or if you undergo outpatient surgery.

**May I use the Health Care Proxy form to express my wishes about organ and/or tissue donation?**

Yes. Use the optional organ & tissue donation section on the Health Care Proxy form & be sure to have the section witnessed by two people. You may specify that your organs and/or tissues be used for transplantation, research or educational purposes. Any limitation(s) associated with your wishes should be noted in this section of the proxy. Failure to include your wishes & instructions on your Health Care Proxy form will not be taken to mean that you do not want to be an organ and/or tissue donor.

**Can my health care agent make decisions for me about organ and/or tissue donation?**

No. The power of a health care agent to make health care decisions on your behalf ends upon your death. Noting your wishes on your HealthCare Proxy form allows you to clearly state your wishes about organ & tissue donation

**Who can consent to a donation if I choose not to state my wishes at this time?**

It is important to note your wishes about organ and/or tissue donation so that family members who will be approached about donation are aware of your wishes. However, New York Law provides a list of individuals who are authorized to consent to organ and/or tissue donation on your behalf. They are listed in order of priority: your spouse, 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, or any other legally authorized person.

# Health Care Proxy Form Instructions

**Item (1)** Write the name, home address & 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 & 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 & should be filled in only if you want your HealthCare 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 & alternate & they know my wishes including those about artificial nutrition & 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 & 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 \_\_\_\_\_*

*& 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 nutrition & hydration (nourishment & water provided by feeding tube)
- Artificial respiration
- Antipsychotic medication
- Electric shock therapy
- Antibiotics
- Surgical procedures
- Dialysis
- Cardiopulmonary resuscitation (CPR)
- Transplantation
- Blood transfusions
- Abortion
- Sterilization

**Item (5)** You must date & 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 (6)** You may state wishes or instructions about organ and/or tissue donation on this form. A health care agent cannot make a decision about organ and/o tissue donation because the agent's authority ends upon your death. The law does provide for certain individuals in order of priority to consent to an organ and/or tissue donation on your behalf: your spouse, 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, or any other legally authorized person.

**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.

# Health Care Proxy

(1) I, \_\_\_\_\_ hereby appoint

Name		Phone
Address		

as my health care agent to make any & all health care decisions for me, except to the extent that I state otherwise. This proxy shall take effect only when & 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

Name		Phone
Address		

as my health care agent to make any & all health care decisions for me, except to the extent 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 & 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 & hydration *(nourishment & water provided by feeding tube & 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, including your wishes about artificial nutrition & hydration.

(5) Your Identification Your Name \_\_\_\_\_

Your Signature \_\_\_\_\_ Date \_\_\_\_\_

Your Address \_\_\_\_\_

(6) 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 \_\_\_\_\_

If you do not state your wishes or instructions about organ and/or tissue donation on this form, it will not be taken to mean that you do not wish to make a donation or prevent a person, who is otherwise authorized by law, to consent to a donation on your behalf.

Your Signature \_\_\_\_\_ Date \_\_\_\_\_

(7) Statement by Witnesses *(Witnesses must be 18 years of age or older & cannot be the health care agent or alternate.)* I declare that the person who signed this document is personally known to me & appears to be of sound mind & 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.

Date	Witness 1	Witness 2
Signature		



Address		

State of New York  
George E. Pataki, Governor, Department of Health  
Antonia C. Novello, M.D., M.P.H., Dr.P.H., Commissioner 1430 12/01

## INSTRUCTIONS

# NEW YORK LIVING WILL

This Living Will has been prepared to conform to the law in the State of New York, as set forth in the case *In re Westchester County Medical Center*, 72 N.Y.2d 517 (1988). In that case the Court established the need for “clear and convincing” evidence of a patient’s wishes and stated that the “ideal situation is one in which the patient’s wishes were expressed in some form of writing, perhaps a living will”.

### PRINT YOUR NAME

I, \_\_\_\_\_, being of sound mind, make this statement as a directive to be followed if I become permanently unable to participate in decisions regarding my medical care. These instructions reflect my firm and settled commitment to decline medical treatment under the circumstances indicated below:

I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying, if I should be in an **incurable or irreversible mental or physical condition with no reasonable expectation of recovery**, including but not limited to: (a) **a terminal condition**; (b) **a permanently unconscious condition**; or (c) **a minimally conscious condition in which I am permanently unable to make decisions or express my wishes**.

I direct that my treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing treatment.

While I understand that I am not legally required to be specific about future treatments **if I am in the condition(s) described above I feel especially strongly about the following forms of treatment**:

### CROSS OUT ANY STATEMENTS THAT DO NOT REFLECT YOUR WISHES

I do not want cardiac resuscitation.  
I do not want mechanical respiration.  
I do not want artificial nutrition and hydration.  
I do not want antibiotics.

However, I **do want** maximum pain relief, even if it may hasten my death.

### ADD PERSONAL INSTRUCTIONS (IF ANY)

Other directions:

These directions express my legal right to refuse treatment, under the law of New York. I intend my instructions to be carried out, unless I have rescinded them in a new writing or by clearly indication that I have changed my mind.

### SIGN AND DATE THE DOCUMENT AND PRINT YOUR ADDRESS

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_

### WITNESSING PROCEDURE

I declare that the person who signed this document appeared to execute the living will willingly and free from duress. He or she signed (or asked another to sign for him or her) this document in my presence.

### YOUR WITNESSES MUST SIGN AND

Witness 1 \_\_\_\_\_

**PRINT THEIR  
ADDRESSES**

Address \_\_\_\_\_

Witness 2 \_\_\_\_\_

Address \_\_\_\_\_