

Health Care Proxy

Why it is important for Region 15 LTCOP

The Code of Ethics for Long Term Care Ombudsman starts with these tenets:

1. The ombudsman provides services with respect for human dignity and the individuality of the resident.
2. The ombudsman respects and promotes the resident's right to self-determination.
3. The ombudsman makes every reasonable effort to ascertain and act in accordance with the resident's wishes.

One way for a resident to exercise the right of self-determination is by signing a Health Care Proxy form, appointing health care "agent". The NYS Health Care Proxy Law has strong protections for the resident's right to self-determination with respect to health care decisions.

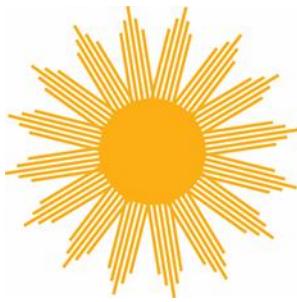
What is a health care proxy and when does it come into effect?

A legal document by which you appoint someone to make decisions about your health care if you lose the ability to make those decisions by yourself. The appointed person is called an "agent," you are called the "principal." The agent then has the authority to make health care decisions if the resident lacks the capacity to do so.

IMPORTANT: Only when you lack the capacity to make your own health care decisions is your agent given that power. It is only then the nursing home should be listening to the proxy over you.

When can the nursing home begin listening to the agent over the resident/how is incapacity determined?

1. Attending physician (and no one else) shall determine the resident (principal) lacks capacity to make health care decisions to a reasonable degree of medical certainty;
2. The physician's determination must be made in writing in the resident's medical record and include the following:
 - a. Cause of the principals incapacity;
 - b. Nature of the principals incapacity;
 - c. Extent of the principals incapacity; and
 - d. Probable duration of the principal's incapacity.



3. The nursing home must give the resident that decision, orally and in writing, in a manner the resident understands if the resident has any chance of understanding what it means.

What if the resident disagrees with the determination of incapacity or a health care decision made by the agent?

IMPORTANT: The resident's objection overrules the incapacity determination and that of the agent. The facility will need to follow the resident's directive or will need to obtain a court order that overrides the resident or agent's decision. The facility will need to consult with its own attorneys on how to do so.

Can a resident who lacks health care decision-making capacity still create a health care proxy?

Yes, as long as the resident is "competent". Every NYS adult is presumed competent to appoint a health care agent unless determined otherwise pursuant to a court order. As such, a resident with dementia may not have the capacity to make health care decisions, but may still have competency to make a decision to appoint a family member to make health care decisions. All that is needed is a 'moment of clarity.'

Advocating for self-determination.

The NYS Health Care Proxy Law has strong protections for your right to self-determination with respect to health care decisions. However in practice, Region 15 LTCOP has noted nursing home staff will listen to the proxy, over the resident, in some situations when they should not.

As residents present situations involving noncompliance with the law we will educate/advocate so that nursing homes, residents, and their families understand the Health Care Proxy Law and the resident's rights under the Law.

The better way to exercise the right of self-determination is by:

1. Carefully selecting who you want as your agent
2. Having The Conversation(s) with the agent, family members and physician; and
3. Signing a Health Care Proxy form, appointing your health care "agent".

Region 15 LTCOP's long term strategy is to change facility practices by improving their understanding of the Health Care Proxy Law and the proper procedure to follow to trigger the Health Care Proxy. By improving facility staff's understanding of the Law, we aim to reduce violations. That will increase respect for human dignity and the individuality of the client.