

Cancer Advocacy Project

Charting Your Course: Navigating Advanced Planning

ABOUT LEGALHEALTH

LegalHealth, a division of NYLAG, provides free legal assistance and develops policy to help New Yorkers who are experiencing financial hardship and have serious or chronic health problems. We bring together legal and medical professionals in the healthcare setting.

ABOUT NYLAG

The New York Legal Assistance Group (NYLAG) is a leading non-profit that provides free civil legal services, financial counseling, and engages in policy advocacy efforts to help people experiencing poverty.



Introduction

- Julie Babayeva is a Supervising Attorney with LegalHealth and coordinates the Cancer Advocacy Project which focuses on the specific disparities faced by people living with cancer.
- Julie joined NYLAG in 2014 and ran legal clinics in several New York City public and private hospitals where she assisted patients with a variety of civil legal issues, including government benefits, medical insurance, immigration, credit issues, family law, landlord-tenant matters and advanced planning.
- Julie also trains healthcare professionals throughout New York City on subjects relevant to their patients listed above. Julie is a graduate of St. John's University School of Law and Pace University.



Cancer Advocacy Project

- Since 2001 LegalHealth has partnered with medical professionals to address the non-medical needs of low-income people with serious health problems.
- Clinics at 36 NYC area hospitals and community organizations
 - See <https://legalhealth.org/find-us/> for more information on how to make an appointment at your hospital site
- The Cancer Advocacy Project offers free legal assistance to low-income cancer patients, alleviating the burden of legal complexities
- Advanced Planning documents can help patients feel prepared and have peace of mind while they focus on their health



ADVANCED DIRECTIVES

Healthcare Proxy

Living Will

Power of Attorney

Appointment of Agent to Control Disposition of Remains



HEALTHCARE PROXY



Healthcare Proxy - Basic Concepts

- NY Law presumes a person is competent and that a competent person has the right to consent to health care treatment and the right to refuse treatment
- Informed consent means that the individual understands and appreciates:
 - the nature and consequences of the proposed treatment
 - the risks and benefits of the proposed treatment and alternative treatment
 - who will provide treatment
- Determination of ability to give informed consent for healthcare decisions is made by healthcare providers



Healthcare Proxy

- Allows an “agent” chosen by a person to make health care decisions if a person becomes incapacitated
- Proper execution requires that the person, who is also called a “principal” to have sufficient mental capacity to understand the purpose and implications of the document
- Legal capacity vs. Medically Determined Capacity
 - Changes daily, or hourly – depends on illness, fatigue, effects of medications, etc.



Role of Agent

- Authority commences once doctors determine that the principal is incapacitated
- Agent's authority may be limited by language in the proxy or by principal's wishes as stated in living will
- An agent can:
 - Consult with doctors
 - Bring in a doctor for a second opinion
 - Examine the principal's medical records



Artificial Hydration and Nutrition

- Unless a healthcare agent knows the principal's wishes regarding artificial hydration and nutrition, the agent cannot act on issues regarding artificial nutrition or hydration.
- The principal's wishes may be stated in the proxy or in a living will
- The proxy form can simply state that the agent knows the principal's wishes regarding artificial hydration or nutrition, without spelling out what those wishes are



Important Points for Consideration:

- You should provide your agent with clear guidelines about your preferences regarding your health care treatment
- Discuss your views and values with your physician and your family
- Your agent is obligated to advocate for your wishes, not decide what they think is “best” for you!
- You should chose an agent who is willing and able to meet this challenge
- Try to appoint a successor agent
- Make sure your agent is willing to serve



Family Health Care Decisions Act (FHCDA)

- Applies to patients in hospitals, nursing homes and hospice in NYS;
- Does not apply to ambulatory settings or doctor's offices;
- Empowers families and close friends to make treatment decisions for patients who do not have the capacity to decide for themselves;
- Does not apply to patients who have signed a health care proxy; and also where people have had discussions with their doctors;
- Permits those closest to the patient to make decisions based on the patient's known wishes, and if not known, in the patient's best interests.
- Provides a list of surrogates in order of priority who have the authority to make decisions for patients who no longer have capacity.



List of Surrogate Decision Makers

- A guardian authorized to decide about health care pursuant to Mental Hygiene Law Article 81;17A
- The spouse, if not legally separated from the patient, or the domestic partner;
- A son or daughter 18 years of age or older;
- A parent;
- A brother or sister 18 years of age or older;
- A close friend.



If FHCDA exists, what's the need for Healthcare Proxy?

- The FHCDA is no substitute for a health care proxy!
- Health care proxy encourages important discussion with agent about end-of-life wishes
- Health care proxy ensures that the proper person has authority to make decisions
- FHCDA only applies to inpatient general hospital nursing home situations and hospice



LIVING WILL



Living Will

- A statement of one's wishes with respect potential medical care decisions
- New York does not have a statute regulating living wills, but New York State courts have recognized living wills as a binding expression of a patient's wishes.
 - Only valid for the medical situations it addresses
 - No lawyer needed to fill out this form
 - Has to be witnessed by two adults



POWER OF ATTORNEY



Power of Attorney: Legal and Financial Surrogate Decision Making

- A Power of Attorney (POA) allows an individual to name an agent to handle one's personal affairs during their lifetime, including banking, selling of real or personal property, and other financial matters.
- The authority designated in a Durable Power of Attorney continues after a person becomes disabled or incompetent, but not after the person dies
- The form needs to be notarized
- A Power of Attorney does not cover healthcare issues
- Because it is executed while one is competent, a Power of Attorney can often avoid the need to have a guardian appointed once that person becomes incapacitated



Definitions

- Power of Attorney (POA) – a legal document that allows an individual to appoint an agent or agents to manage his or her financial and/or property transactions
- Principal – the individual who signs the POA and whose assets are at issue
- Agent – the individual chosen to assist the Principal
- Capacity – ability to comprehend the nature and consequences of the act of execution and granting, revoking, amending or modifying a POA, any provision in a POA, or the authority of any person to act as agent under a POA.



NY General Obligations Law, Title 15: Statutory Short Form and Other Powers of Attorney for Financial And Estate Planning

§ 5-1501B. Creation of a valid power of attorney; when effective.

To be valid, a power of attorney must:

- Be legible (if typed, no less than 12 pt in size, or if written, the equivalent thereof)
- Be signed and dated by the Principal with capacity, notarized.
- Be signed and dated by the Agent, notarized.
 - It is OK to have a lapse in time between the Principal's and Agent's signature.
 - The effective date of the POA is the date of the Agent's signature.
- Contain the exact wording of the: "Caution to the Principal" and "Important Information for the Agent" paragraphs (in the statute).



Principal and Agent

- Who can be a Principal?
 - Anyone over the age of 18 years old with capacity
- Who can be an Agent?
 - Anyone over the age of 18 years old that the Principal chooses
 - Can choose more than one agent to act at a time, and specify how they will act together or separately
 - Can choose an alternate agent, or agents, if the first choice is not able to act or continue to act as Agent
 - Think about efficiency and practicability when choosing agents
 - TRUST TRUST TRUST!!!



Durable Power of Attorney

§ 5-1501A. Power of attorney not affected by incapacity.

1. A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal.
2. The subsequent incapacity of a principal shall not revoke or terminate the authority of an agent who acts under a durable power of attorney.

“Durable” POA – is effective when completed. This means the POA can be used regardless of Principal’s capacity, and may continue to be used even if Principal becomes incapacitated.

“Springing” POA – only comes into effect if/when the Principal becomes incapacitated and cannot manage his or her own affairs.

- LegalHealth assists only with Durable POAs



Recent Changes to POA Laws in NY State

NYS Assembly and Senate passed legislation to amend POA Law and it was signed into law in 2021. The major changes include:

- A statutory short form Power of Attorney requires wording that “substantially conforms” to the wording in the statute rather than “exact wording”;
- The separately executed Statutory Gifts Rider was eliminated, and gifting provisions can now be included in the modifications section;
- A power of attorney can be signed by another person at the direction of the principal;



Recent Changes to POA Laws in NY State, cont'd

- All powers of attorney require two witnesses (one of whom can be the notary);
- There were changes to the construction sections of the statute;
- There is an acceptance and reliance timeline for third parties who are honoring or dishonoring a Power of Attorney; and
- There is a provision for damages and attorney fees for the unreasonable refusal to accept a valid Statutory Short Form Power of Attorney.



How to Use a POA

- Photocopies of a completed POA are legally valid, meaning they can be used to evidence an Agent's authority to act
- The Agent must present the POA when he/she is using it
- The Agent will sign his/her name or indicate that he/she is the Agent for the Principal
 - Example: “Jane Doe, as POA for John Smith”
- Only valid during lifetime of Principal. Cannot be used to transfer assets after death.



APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS



Appointing an Agent to Control Disposition of Remains

- Principal appoints Agent, similar to POA
- Agent then knows and follows principal's wishes as to the disposition of remains upon principal's death
- This power is not covered by health care proxy or power of attorney and Agent's authority begins upon Principal's death
- Can add special instructions limiting that power
 - For example: "I would like my remains to be cremated"
- Indicate if there is a pre-funded funeral agreement
- Can name Successor Agents in case Agent is unable to serve
- Principal signs document in front of a notary and two witnesses (notary can be one of the witnesses)
- Document not valid until Agent accepts the appointment by signing in front of a notary.



Questions?



THANK YOU

More information at legalhealth.org



Search “NYLAG” or “New York Legal Assistance Group” on these social media platforms.

