

Nursing Home Residents & Health Care Decisions in New York

If I live in a nursing home, who can make decisions regarding my health care?

You have the power to make decisions regarding your health care unless: (1) a court has appointed a Guardian to make health care decisions for you; or (2) your doctor and one other health or social services professional agree that you are not able make health care decisions.

Can I select someone to make health care decisions for me in case, at some point in the future, I cannot make them for myself?

Yes, you can appoint a Health Care Proxy. A Health Care Proxy is someone who makes health care decisions for you if you lose the ability to make decisions. If you would like to appoint a Health Care Proxy, here are the form and instructions:

http://www.health.ny.gov/professionals/patients/health_care_proxy/

How else can I make my wishes known about medical care?

You can also create an advance directive. One type of advance directive is a living will.

What is a living will?

A living will is a written document that tells health care professionals what medical treatment you want or do not want. Doctors look at your living will when you are not able to express your wishes about treatment. If you would like to fill out a living will, here is the form:

www.nycourts.gov/courts/5jd/probono/New_York_Living_Will.pdf

What are some other types of advance directives?

You can refuse cardiopulmonary resuscitation (CPR) with a Do Not Resuscitate Order (DNR) signed by a doctor. If you want to express your wishes about life-sustaining treatment, you can also talk to your doctor about “Medical Orders for Life Sustaining Treatment” (MOLST). You can find more information here:

http://www.health.ny.gov/professionals/patients/patient_rights/molst/

Who decides when a health care proxy or other advance directive takes effect?

The nursing home makes the decision in a two-step process. First, your doctor at the nursing home must assess if you can make health care decisions. If the doctor

determines that you cannot, she must note the cause and level of the incapacity that prevents you from making health care decisions. The doctor must also assess if you might regain your ability to make decisions. If you cannot make decisions because of mental illness, a psychiatrist or a neurologist must assess your capacity. If you cannot make decisions because of developmental disability, a doctor or clinical psychologist specializing in developmental disabilities must assess your capacity. The doctors must note these assessments in your medical record.

Second, the nursing home must have a health or social service practitioner, like a nurse, confirm you cannot make health care decisions. The practitioner must note this in your medical record. If the practitioner does not agree with the doctor, an ethics committee will try to resolve the matter.

How will I know if the nursing home decides that I am not able to make decisions for myself?

If there is any sign that you can understand the information, the nursing home must tell you that it has decided that someone else will make your health care decisions for you.

What if I disagree with the nursing home's decision that I am not able to make decisions for myself?

You can object. If you object, the nursing home may not ignore your health care decision unless a **court** finds that you cannot make decisions or there is another legal reason to ignore your decision.

Who will make those decisions for me when I cannot make health care decisions and if I do not have an advance directive?

The Family Health Care Decisions Act allows others to make health care decisions for you when you are not able to. This person is called a surrogate and is chosen in this order:

- a) an Article 81 guardian, if one was appointed for you by a court;
- b) your spouse, if you are not legally separated, or your domestic partner;
- c) an adult son or daughter;
- d) a parent;
- e) an adult brother or sister; or
- f) a close friend (or relative) who knows you and your religious or moral beliefs.

What standards does a surrogate use to make decisions for me?

A surrogate must make decisions that reflect your wishes and religious or moral beliefs.

Will my surrogate have the right to access medical information to help make these health care decisions?

Yes. Your surrogate will have access to your medical information and records to help make informed decisions about your care.

Who can make health care decisions for me if there is no one is available to be my surrogate?

It depends on the type of treatment. A doctor can make decisions about *routine medical treatment*, like taking blood work or prescribing medications. For *major medical treatment*, like surgery, a doctor talks to the staff directly in charge of your care and recommends treatment to the medical director who must agree with the treatment. For *life-sustaining treatment*, such as artificial nutrition, a nursing home may decide to stop life-sustaining treatment: (1) based on a court order, or 2) when two doctors, including your doctor at the nursing home, decide that treatment would go against medical standards and will not prevent your death.

What happens if I regain my ability to make decisions?

If a doctor agrees that you are able to make decisions, you can start making your health care decisions again as long as there is no court order in place saying otherwise.

MFY Legal Services, Inc. provides free legal services to residents of nursing homes in New York City. If you have a question about your rights, you can call us toll-free at (855) 444-6477.