

Healthcare Proxies and MOLST forms

by Attorney Michael Hooker

Massachusetts law allows a competent person (the "principal") to designate a surrogate medical decision-maker (the "proxy") in the event he or she later becomes incapable of making health care decisions.

HCP's can help avoid family conflict. They can also avoid potential legal and court fees. In simpler times, hospitals and medical providers looked to family members, next of kin or a spouse when an incompetent elder was mentally unable to provide informed consent to treatment. Those days are gone. Health care providers now require a Health Care Proxy. Nursing homes and hospitals routinely request that one be signed on admission. If you have waited too long, haven't signed one and are then incompetent to sign, your family may have problems getting you necessary treatment. Under such circumstances the provider may require that you pursue guardianship. Guardianships are costly, frustrating and time consuming.

The HCP form is fairly simple and requires two witnesses who are not the proxy. A notary public is not required. I recommend you name an alternate other than your spouse, in case the spouse is unable to serve the role. (Note that this form might be signed in 2017 but not come into play until 12 years from now after you have suffered a stroke for example. By then your primary proxy might have predeceased you). HCPs are rarely scrutinized by medical providers for legitimacy. They want the document to be valid. Compare, with Powers of Attorney, the financial institution will be skeptical and review that document with a fine tooth comb because money is involved.

You can name two people to be joint HCP and can include language in the HCP regarding end-of-life treatment and the withholding of treatment. You can later revoke the HCP and appoint someone else provided you are competent to do so. You should have a discussion with your named proxy so that they know your general wishes around care and treatment. HCP's do have their limitations. Should you, for example, give your proxy the authority to treat you with antipsychotic medications? To admit you to a nursing home when you don't want to be there? Order a Do Not Resuscitate? I have been in Probate Court seeking a guardianship even where there was a HCP because the elder did not want to go to a nursing home. I'm not sure language in a HCP that authorizes an involuntary admission would hold up in court. I raise the issue to illustrate that it is very difficult to imagine all the circumstances that may arise during the aging/dying process years from the date of signing and include them in your HCP.

The Massachusetts Dept. of Public Health MOLST should provide some guidance. It allows a person to indicate by checking boxes, the level of medical intervention they want. MOLST is an acronym for Medical Orders for Life Sustaining Treatment. These offer very specific options about what medical care you may or may not want CPR, ventilation, hospitalizations, intubation, artificial nutrition, hydration etc. It is signed by you and your physician. A HCP can sign a MOLST.