

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

Health Care Bureau

## **PLANNING YOUR HEALTH CARE IN ADVANCE**

*How to Make Your Wishes Known and Honored*



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Attorney General



Dear New Yorker:

Planning end-of-life care is a complex matter. Although it is hard to talk about the final phase of life, it can be a great gift to our family and loved ones to prepare them in advance for the sometimes difficult and distressing decisions that must be made.

For those who wish to plan in advance, New York law can help. Ultimately, your decision to accept or reject medical treatment really depends upon your personal wishes, values, and beliefs. This guide explains your right to choose medical treatments and describes the steps you can take under state law to help ensure that your personal health care decisions are known and honored if you are unable to speak for yourself.

Preparing a few simple legal forms known as advance directives can help ensure that your wishes are respected and that your health care decisions stay in the hands of people you trust. This guide includes sample advance directive forms with tips on how to use them.

We hope that you find this guide to be helpful.

Sincerely,

A handwritten signature in black ink that reads "Eric Schneiderman". The signature is fluid and cursive, with a large initial "E" and "S".

Eric T. Schneiderman

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## **I. OVERVIEW: WHY PLAN IN ADVANCE?**

It is possible that because of illness or injury, you may be unable to talk to a doctor and make decisions about your treatment. You may wish to plan in advance to help make sure that your wishes about treatment will be followed if you become unable to decide for yourself for a short or long time period. Preparing a few simple legal forms—a Health Care Proxy, for example—can help to ensure that your health care wishes are followed and your health care decisions stay in the hands of people you trust.

### **YOUR RIGHT TO DECIDE YOUR TREATMENT**

New York law grants you certain rights concerning your medical treatment. You have the right to accept or reject medical treatment, including life-prolonging procedures, such as mechanical respiration and tube or intravenous feeding.<sup>1</sup> New York facilities such as hospitals and nursing homes are required to inform you before you are admitted as to whether or not they will be able to honor your right to accept or reject treatment, or if you are already admitted, they are required to transfer you to a facility that will.<sup>2</sup>

If you have lost the capacity to make decisions about your medical treatment, and have not appointed a health care agent, a person close to you may make decisions on your behalf. In 2010 the New York Legislature passed the Family Health Care Decision Act, which allows family members and others who are close to you to make decisions regarding medical treatment in accordance with your wishes or, if unknown, your best interests.<sup>3</sup> In addition, under the state's Do Not Resuscitate law, a family member or another who is close to you may be granted the right to decide about emergency treatment to restart your heart or lungs when your heartbeat or breathing stops.

However, to best ensure that your specific wishes are met, you should select a Health Care Proxy and complete the advance directives described in this booklet.

### **WILL YOUR WISHES BE KNOWN AND HONORED?**

As long as you are able to do so, you can speak directly to your doctor and your family members and let them know what care you may or may not want. But what if you are in a coma or a “persistent vegetative state” and are unable to talk to a doctor and decide about your care?

The first step towards planning your end-of-life care is to think through what type of care you may want, consistent with your values and beliefs. Discuss your wishes with your doctor, your family and loved ones. This is not an easy subject to deal with but it will help your family and loved ones know what kind of treatment you want.

Casual statements you may have made to your family like “Don’t keep me alive on machines,” “No Heroics,” or “Make sure I am not in pain” may not be specific enough for life prolonging procedures to be given or withdrawn.

The questions listed below may help you identify what kind of treatment you may or may not want if you are in a medical situation where you are no longer able to decide for yourself.

*Imagine that you are an active, generally healthy adult. One afternoon you have a sudden stroke, leaving you paralyzed and unconscious. You are unable to breathe without assistance and you are placed on a breathing machine. After careful evaluation, the doctors say that there is no hope for recovery.*

- Q. 1 Would you want your doctor to withhold or withdraw medical treatment, if that medical treatment will only prolong dying?**  Yes  No
- Q. 2 Would you want cardiopulmonary resuscitation (CPR) to restore stopped breathing and/or heartbeat?**  Yes  No
- Q. 3 Would you want to continue mechanical respiration, i.e. use machines to keep you breathing?**  Yes  No
- Q. 4 Would you want tube or intravenous feeding and water?**  Yes  No
- Q. 5 Would you want maximum pain relief even if it hastens your death?**  Yes  No
- Q. 6 Would you want to donate your organs and/or tissues?**  Yes  No

Thinking about what care you want to receive in particular situations and talking with your doctor and loved ones about your health care wishes is an important step. Putting your wishes in writing may be more effective to ensure that your doctor, loved ones and others have a clear and reliable view of your specific wishes. Appointing someone to decide health care matters for you may be an effective way to address situations that you may not be able to anticipate. Below we explain more about the options available to you to make your wishes known so that you can decide what works best for you.

## II. ADVANCE DIRECTIVES: WHAT ARE THEY?

In New York State, the best way to ensure that your health care wishes are known and honored is to use one or more of the following legal documents, sometimes referred to as “Advance Directives.” Remember, your advance directives will speak for you when you are unable to speak for yourself.

**In New York State, there are four types of Advance Directives:**

- ◆ **A Health Care Proxy** lets you appoint a health care agent—that is, someone you trust to make health care decisions for you if you are unable to make decisions for yourself.
- ◆ **A Living Will** allows you to leave written instructions that explain your health care wishes, especially about end-of-life care. You cannot use a Living Will to name a health care agent; you must use a Health Care Proxy.
- ◆ **A Living Will** together with a *Health Care Proxy* lets you state your health care wishes and name a health care agent.
- ◆ **A Do Not Resuscitate Order (DNR)** only lets you express your wish to do without cardiopulmonary resuscitation (CPR)—that is, emergency treatment to restart your heart and lungs if your heartbeat or breathing stops.

Type of Advance Directive	Health Care Proxy	Living Will	Do Not Resuscitate (DNR)
Established under New York Law	Yes	No, but accepted as evidence of health care wishes by NY Courts	Yes
Allows written statement about desired medical treatment decisions in advance	Yes	Yes	No, only CPR decisions
Allows appointment of health care agent	Yes	No	No

### HOW TO SELECT YOUR ADVANCE DIRECTIVE

How do you choose which Advance Directive might be best for you? Here are some questions and answers that may help you:

*Q. If you are in a coma or vegetative state or otherwise incapacitated, would you want someone you trust to make medical decisions for you?*

If the answer is **yes**, consider a **Health Care Proxy** that is appointing someone you trust as your Health Care Agent to speak and decide for you when you are unable to do so. (See below.)

If the answer is **no** because you have no one you trust to act as your Health Care Agent, consider a **Living Will** so that your medical instructions are clear and can be read by your care givers when you are unable to communicate your wishes. (See p. 8.)

*Q. Even though you want someone you trust to make medical decisions, do you still have strongly held views about specific situations?*

If **yes**, you may consider combining a **Health Care Proxy with a Living Will** so that the person you appoint to act on your behalf can also rely on your written instructions to make decisions for you. (See p. 9.)

If **no**, then maybe just a **Health Care Proxy** will meet your needs.

**This guide gives you information about these advance planning tools and includes forms that you can use to prepare your advance directive of choice. You should ask your doctor to explain any medical issues.**

## **1. A HEALTH CARE PROXY**

You can complete a Health Care Proxy if you are 18 years of age or older. A Health Care Proxy, established under New York law, allows you to appoint someone you trust—a Health Care Agent—to make health care decisions on your behalf if you are no longer able to do so.<sup>4</sup> You can tell your wishes to your agent orally or in writing.

A standard Health Care Proxy form approved under New York law is included with this guide. (See p.18.) A copy is also available from the Attorney General's Health Care Bureau at [http://www.ag.ny.gov/bureaus/health\\_care/commonly\\_requested\\_forms.html](http://www.ag.ny.gov/bureaus/health_care/commonly_requested_forms.html). Remember, New York law requires hospitals and nursing homes to provide you with a Health Care Proxy form and information about creating a proxy.<sup>5</sup>

**Below are some things to consider in writing and signing your Health Care Proxy form.**

### **Step 1: Understand Your Health Care Agent's Authority**

Under New York's Health Care Proxy law, your agent's authority to make health care decisions begins when your doctor determines that you have lost the capacity to make decisions for yourself. For a decision to withdraw or withhold life sustaining treatment, a second doctor must confirm your doctor's decision.

You may give your health care agent as little or as much authority as you wish. In other words, you may allow your agent to make all health care decisions on your behalf or only certain ones

#### **A Health Care Agent's Rights and Obligations Under New York's Health Care Proxy Law:**

- ✓ Your Health Care Agent can make decisions related to artificial nutrition and hydration (for example, use of a tube to give you food and water) if you have communicated your wishes. You may either specifically tell your wishes to your agent or write your wishes in your Health Care Proxy form.
- ✓ Your agent will have the authority to decide whether or not your heart beat should be restarted through cardiopulmonary resuscitation (CPR) unless you write in your Health Care Proxy form that your agent cannot make this decision for you.
- ✓ Once your agent's authority begins, he or she has the right to get your medical information and records to make informed health care decisions for you.
- ✓ Your agent's decision is final unless an objecting family member or facility obtains a court order overriding the decision or disqualifying the agent.
- ✓ Your agent is not financially responsible for the cost of your care.
- ✓ Overall, your agent is required to make health care decisions for you according to your wishes, religious and moral beliefs, and in your best interest.

### **Step 2: Choose a Health Care Agent**

Picking your health care agent is a very important decision. Generally, you have the right to appoint any competent adult (18 years of age or older) as your health care agent. Your agent may be your spouse or partner, an adult child, a relative, a close friend or a lawyer. Choose someone you trust—and someone with whom you feel confident discussing your wishes for medical care. Your agent need not agree with all of your wishes,



but must be capable of carrying them out, regardless of his or her own feelings. And, of course, it is always good practice to make sure the person you appointed as your agent is comfortable serving as your agent.

**Under New York's Health Care Proxy law, you can appoint any competent adult as your Health Care Agent except:**

- ✓ You cannot appoint your doctor as your health care agent unless your doctor is your spouse or your relative.
- ✓ You cannot appoint an operator, administrator, or employee of the hospital or nursing home where you are admitted unless they are a relative or you appointed them before your admission.

***Q. Should my health care agent be living in the same city?***

While the law does not require you to name an agent living in the same city or state as you do, it is a good idea to choose someone who lives nearby. If you are terminally ill, for example, and unable to make decisions for yourself, your agent may have to spend weeks or even months nearby to ensure your health care wishes are followed.

**Step 3: Name an Alternate Health Care Agent as your back-up agent**

**The Health Care Proxy form gives you the option to appoint an alternate agent. Your alternate agent can take over from your first choice only if:**

- ✓ You specify the circumstances under which you would like your alternate agent to take over from your agent. For example, if you want your alternate to serve if your first choice moves out of state, then say that in your Health Care Proxy.
- ✓ Your doctor states in writing that your first choice as health care agent is not available, unwilling or unable to act when needed.
- ✓ A court disqualifies your agent.

#### Step 4: Sign Your Health Care Proxy

Two witnesses must watch you sign your Health Care Proxy form and say that you appeared to sign willingly. Neither your agent nor your alternate agent can serve as a witness. You do not need to have the form notarized.

The standard Health Care Proxy form approved under New York law has sections that must be completed for your proxy to be valid. The form also has “optional” sections that you may or may not choose to complete.

**Make sure your Health Care Proxy form meets the minimum requirements listed in the box on the left.**

##### **Minimum State Requirements for a Valid Health Care Proxy Form**

- ✓ Your name as the Principal who creates the proxy.
- ✓ Name of your health care agent.
- ✓ Your statement that you intend the agent to have the authority to make health care decisions on your behalf.
- ✓ You must sign and date your signature with the witnesses present. If you are unable to sign your proxy, another adult can sign for you at your request.
- ✓ Two witnesses must sign and date their signatures, and state that you (Principal) appeared to execute the proxy willingly. Neither your agent nor your alternate agent can serve as witnesses.

##### ***Optional Sections for a Health Care Proxy Form***

- ✓ Statement of your treatment wishes or limitations on the agent’s authority. For example, you may want to state that you have told your agent your wishes about artificial nutrition and hydration (food and water).
- ✓ Naming an alternate agent.
- ✓ Statement of your wishes regarding organ and/or tissue donation.
- ✓ Expiration date if any, of your Health Care Proxy, or a description of circumstances that trigger expiration.

## 2. A LIVING WILL

While New York does not have a statute governing Living Wills, the Court of Appeals, New York's highest court, has stated that Living Wills are valid as long as they provide "clear and convincing" evidence of your wishes.<sup>6</sup> If you are 18 years of age or older, you may express your wishes in writing about your health care by signing a Living Will.

**There is no standard Living Will form.** You may download a Living Will form at no charge at [www.caringinfo.org](http://www.caringinfo.org).

**Below are some things to consider in planning and signing your Living Will.**

### Step 1: Understand the Authority of Your Living Will

- A Living Will is a written declaration of your health care wishes. In your Living Will, you can leave specific instructions about medical treatments you may or may not want, when you are no longer able to decide for yourself.
- A Living Will serves as evidence of your wishes.

### Step 2: Write Your Living Will

- You can use a Living Will to write your wishes about care at the end-of-life. You may describe the medical situations in which you would accept or refuse medical treatment. You may specify the kind of treatment that you may or may not want. For example, whether you wish to be kept alive with a feeding tube or intravenous feeding if you are terminally ill or comatose and there is no hope you will recover. (See *also* "Identifying your Health Care Wishes," p. 1.)
- You may want to consult a lawyer if you wish to address issues not covered in the form included with this guide—like whether you want medical treatments such as CPR, blood transfusions and dialysis, or whether you want to be kept alive on machines for a short time if necessary to be an organ donor. A custom-tailored Living Will can help make clear your objection to unwanted medical treatments.
- If you have questions, discuss them with your doctor, a patient representative at a hospital, or a lawyer.

### Step 3: Sign Your Living Will

It is best to have two witnesses watch you sign your Living Will, and sign a statement on the form that you appeared to sign willingly. If possible, you should have the form notarized, so that it may be recognized in states that require notarization.

Regardless of which Living Will form you choose to use, make sure you meet the minimum requirements for a Living Will listed below.

#### Minimum Requirements for a Valid Living Will:

- ✓ Your name as the person creating the Living Will.
- ✓ Date you create your Living Will.
- ✓ Your statement regarding your personal health care wishes.
- ✓ Your signature.
- ✓ Two witnesses' signatures and dates, and statements from the witnesses that you appeared to sign the document willingly.

### 3. A LIVING WILL AND A HEALTH CARE PROXY

#### *Q. What is the difference between a Living Will and a Health Care Proxy?*

Although both a Health Care Proxy and a Living Will are advance directives, they are not the same thing.

**A Living Will is a document that contains your health care wishes and is addressed to unnamed family, friends, hospitals and other health care facilities.** You may use a Living Will to specify your wishes about life-prolonging procedures and other end-of-life care so that your specific instructions can be read by your caregivers when you are unable to communicate your wishes.

**A Health Care Proxy is a person who is named by you to make health care decisions on your behalf if you are no longer able to do so.** You may give this person (your agent) authority to make decisions for you in all medical situations. Thus, even in medical situations not anticipated by you, your agent can make decisions and ensure you are treated according to your wishes, values and beliefs.

***Q. Can I choose to sign both a Living Will and a Health Care Proxy?***

**Yes.** You have the right to create both a Living Will and a Health Care Proxy, if you wish, so that they can leave specific medical instructions in writing and appoint a health care agent to carry them out. Your health care agent can rely on your instructions as guidance to make decisions that reflect your wishes. **Remember**, you can leave specific instructions about your preferences for care in your Living Will or in the space provided on the Health Care Proxy form itself. You may want to discuss the best course for you with your loved ones, a patient representative, your doctor, or a lawyer.

**4. DO NOT RESUSCITATE ORDERS (DNR)**

Under New York law, a DNR Order instructs medical professionals not to perform cardiopulmonary resuscitation (CPR), that is, emergency treatment to restart your heart or lungs when your heartbeat or breathing stops.<sup>7</sup> This means that doctors, nurses, or emergency personnel (i.e, ambulance paramedics) will not initiate emergency procedures such as mouth-to-mouth resuscitation, external chest compression, electric shock, insertion of tube to open your airway, or injection of medication into your heart or open chest.

In New York, any adult 18 years or older can get a Hospital or a Non-Hospital DNR Order. A Hospital DNR Order is issued if you are in a health care facility such as a hospital, nursing home, or a mental hygiene facility licensed by New York State. Emergency personnel (EMS), such as ambulance paramedics must honor your Hospital DNR Order during transfer. But if you are outside any of these facilities, at home, for example, you may want to get a Non-Hospital DNR Order.

You can make your Hospital DNR wishes known in your health care proxy, living will or a state approved MOLST form (see below). Your Non-Hospital DNR order must be recorded on a state specific form [DOH- 3474].

**Medical Orders for Life-Sustaining Treatment (MOLST) Form**

The New York State Department of Health has recently approved the Medical Orders for Life-Sustaining Treatment (MOLST) form. The MOLST form allows doctors to record your preferences regarding cardiopulmonary resuscitation (CPR), mechanical intervention, and other life sustaining treatments on to one form as a physician order. MOLST must be completed by a health care professional and signed by a New York State licensed physician to be valid.

A valid MOLST form serves as a “Physician Order Form” and can be transferred with you from one health care setting to another. A sample MOLST form is available at [www.excellusbcbs.com/download/forms/molst\\_form\\_web.pdf](http://www.excellusbcbs.com/download/forms/molst_form_web.pdf). To order copies of the MOLST and patient and provider information, you must complete an order form available at: [www.excellusbcbs.com/download/forms/fax\\_reorder\\_forms.pdf](http://www.excellusbcbs.com/download/forms/fax_reorder_forms.pdf) and fax it to (585) 350-7851.

**Remember**, while the MOLST form may help centralize your end-of-life wishes and summarize your advance directives, it is not intended to replace your Health Care Proxy form and/or Living Will. MOLST translates your current medical treatment preferences into physician orders whereas your Health Care Proxy and/or Living Will guides future medical care.

**Giving Consent to a DNR Order**

If you have capacity to make decisions for yourself, you can give your consent to a DNR Order verbally or in writing. If you lack capacity to make decisions for yourself, your health care agent can consent on your behalf. But what if you become unable to decide about CPR, you did not tell your doctor about your wishes in advance, and you do not have a health care agent or a Living Will? Under New York's DNR law, in such a circumstance, a surrogate, such as a family member or a close friend, can give consent.<sup>8</sup>

**See the checklists below for DNR Orders.**

<p align="center"><b>Checklist for a Valid Hospital DNR Order</b></p>	<p align="center"><b>Checklist for a Valid Non-Hospital DNR Order</b></p>
<ul style="list-style-type: none"> <li>• You, your health care agent or a surrogate may give written or verbal consent to your Hospital DNR order.</li> <li>• Verbal consent must be witnessed by two adults, one of whom must be a doctor in the facility where you are admitted.</li> <li>• Written consent must be signed by two adult witnesses.</li> <li>• Your doctor can issue your DNR Order. New York State does not require your written or verbal consent to be recorded on a state form. Facilities may use their own forms or the state specified MOLST form.</li> </ul>	<ul style="list-style-type: none"> <li>• You, your health care agent or a surrogate may give written or verbal consent to your Non-Hospital DNR Order.</li> <li>• If you are getting your DNR Order before discharge, verbal consent may be given to your attending doctor or two adult witnesses, one of whom must be a doctor in the facility where you are admitted.</li> <li>• If you are out of hospital, at home, for example, it will be sufficient to give verbal consent to your attending doctor.</li> <li>• If you are giving consent in writing, it must be signed by two adult witnesses.</li> <li>• Written or verbal consent must be recorded on New York State Form DOH-3474 and signed by your doctor. Form available at <a href="http://www.health.state.ny.us">www.health.state.ny.us</a>.</li> </ul>

**Q. What is the difference between a health care agent and a surrogate?**

Under New York law, a health care agent is named by you in your Health Care Proxy and has the authority to accept or reject any medical treatment on your behalf. A surrogate, on the other hand, is a person appointed by a court to make decisions on your behalf about CPR. Under DNR law, a surrogate could be a spouse, a parent, an adult child, an adult sibling or a close friend. Remember, a surrogate can only give consent to your DNR Order if you do not have a health care agent and cannot accept or refuse other medical treatments on your behalf.

### III. MAKING YOUR ADVANCE DIRECTIVES KNOWN

#### HEALTH CARE PROXY AND LIVING WILL

**After signing your Health Care Proxy or Living Will, follow these tips:**

- ✓ Make several photocopies of the completed forms.
- ✓ Keep the originals in a safe but accessible place (not a safe deposit box). Give copies to your health care agent, alternate agent, your attorney or other advisor, close family members, doctors, and anyone else you choose to involve in your health care.
- ✓ Under New York law, any doctor who is given a Health Care Proxy form must arrange for the form, or a copy of the form, to be put in your medical record.
- ✓ Consider carrying a wallet card giving information about the existence and location of your Health Care Proxy or a Living Will.

#### DNR ORDERS

A Hospital DNR Order is recorded in your medical chart. A Non-Hospital DNR Order must be recorded on a state specific form DOH-3474 and you may also consider getting a DNR Bracelet.

**DNR Bracelet:** A DNR bracelet may be worn only if you have been issued a valid Non-Hospital DNR Order using form DOH-3474. The law requires emergency medical personnel who see a standard DNR bracelet on you to comply with the Order.

To learn more about DNR form DOH-3474 or a DNR bracelet, visit [www.health.state.ny.us](http://www.health.state.ny.us) or your local DOH EMS office or health department.

## IV. CANCELING YOUR ADVANCE DIRECTIVES

An advance directive remains in effect indefinitely unless you cancel it, or include an expiration date, or describe the circumstances that trigger expiration. You can change or cancel your advance directives at any time. It is important to revisit the forms you have signed to make sure they express your current health care wishes.

### CANCELING A HEALTH CARE PROXY OR LIVING WILL

- You can cancel your Health Care Proxy by notifying, orally or in writing, your agent, doctor or others who have copies.
- You can cancel the appointment of the agent on your Health Care Proxy at any time and appoint a different health care agent in a new Health Care Proxy.
- If your spouse is your appointed health care agent, your Health Care Proxy is automatically cancelled upon divorce.
- You can cancel your Living Will at any time by destroying the document. You are not required to notify anyone by law before canceling your Living Will but it would be wise to inform those aware of its existence that you have canceled it.

### CANCELING YOUR DNR ORDER

In general, you or your health care agent can cancel a DNR Order at any time in any way that makes your wish known. This can include the following:

- Your oral or written statement to a doctor or nurse.
- Your act that shows an intention to cancel your consent, such as:
  - Physically destroying the actual DNR document or indicating on it that it is canceled.
  - Removing any bracelet or medallion which indicates your DNR status.
  - Orally telling emergency responders not to pay attention to the order.
- However, a surrogate may cancel your DNR Order only by:
  - An oral statement to your attending doctor in the presence of one adult witness;
  - Or a written statement to a doctor or nurse.
- Any doctor informed about the cancellation of a DNR Order must:
  - Immediately record the cancellation in your chart and inform the staff responsible for your care about the cancellation.
  - Any nurse or other professional who is informed about the DNR cancellation must immediately inform the doctor.



## V. SOME SPECIAL ISSUES

### PAIN MANAGEMENT

Unrelieved pain can have a profound effect on your physical and mental well-being. In New York, doctors have an ethical, moral, and legal obligation to treat pain as effectively as possible. Also, hospitals, nursing homes, health plans and home care agencies accredited by the Joint Commission on Health Care Organizations (JCAHO) are required to establish procedures to support the appropriate prescription or ordering of effective pain medications. You should make certain that your doctor is well-informed about your level of pain and understands your wish to receive adequate pain management. Express the nature and intensity of your pain to your doctor so that he or she can assess and address your needs accordingly. Ensure that your Living Will or Health Care Proxy makes clear your wishes related to pain management. For example, you may want to state whether or not you want medication to alleviate pain even if it shortens your life.

### HOSPICE CARE

Hospice is a program of care focused on providing comprehensive care for the terminally ill and their families. The program provides palliative and supportive care to meet the special needs arising out of physical, mental, spiritual, social and economic stresses experienced during the final stages of illness, dying and bereavement. Hospice care programs are regulated under federal and state law.<sup>9</sup>

**In New York State, there are about fifty state certified hospice care programs. You or your health care agent may indicate a preference for a hospice program in advance to fulfill your needs. Here are some factors to consider about hospice care:**

- ➔ Hospice care services provided by state certified programs are usually covered by insurance such as Medicare, Medicaid, and commercial health insurance plans. Generally, hospice care is a covered benefit if you have a terminal illness with 6 months or less to live and a physician has certified that hospice care is appropriate.
- ➔ In New York, you can opt to receive hospice care in settings of your choice such as your home, in a hospital, or nursing home.
- ➔ Under federal and state law, hospice care must be administered by a coordinated team which may include your doctor, the hospice's medical director, registered nurses, certified home health aides, licensed social workers, pastoral counselors, bereavement counselors, rehabilitation therapists and volunteers who provide support with day-to-day life challenges.
- ➔ To obtain information on hospice providers and benefits or to file a complaint against a hospice care provider, call the New York State Department of Health at 1-800-628-5972.

## ORGAN DONATION

In New York, any person 18 years of age or older, capable of making decisions, may donate any or all parts of their body after death to any hospital, surgeon, doctor, accredited medical school, storage facility, specific person or organ procurement organization. New York law prohibits organ donation for money or any other consideration.

You can choose to fill out an Organ/Tissue Donor Form or specify your wishes related to organ donation in your Health Care Proxy or Living Will. Failure to specify your wishes, however, shall not be construed to imply a wish not to donate. Your agent is authorized to consent to organ/tissue donation, unless he or she has notice of opposition, or reason to believe that the donation is contrary to your religious or moral beliefs.

To enroll in the New York State Organ and Tissue Donor Registry, you can request that an enrollment form be mailed to you by calling 1-800-GIFT-4-NY (1-800-443-8469) or visiting [www.health.state.ny.us/professionals/patients/donation/organ](http://www.health.state.ny.us/professionals/patients/donation/organ).

**Remember**, you will be enrolled automatically if you check the organ donor box on your driver's license or non-driver identification (ID) card application or renewal form.

## VI. OTHER DOCUMENTS TO HELP ENSURE YOUR WISHES ARE FOLLOWED

Under New York State law, you can designate a person to make property, financial, and other legal non-healthcare decisions on your behalf through a “Power of Attorney.”

- ✓ **A Durable Power of Attorney** allows you, the Principal, to appoint an Agent to act for you immediately upon its execution or the occurrence of some future event identified by you and lasts until cancellation by you or upon your death; this power continues when you are mentally or physically incapacitated.
- ✓ **Power of Attorney** can be used to grant any and all of the following legal powers to an Agent: buy or sell your real estate; manage your property; conduct your banking transactions; invest or not invest your money; make legal claims and file lawsuits on your behalf; and manage your tax and retirement matters.
- ✓ **Power of Attorney** is often used to plan for one's future incapacity or disability and loss of competence resulting, for example, from Alzheimer's disease or a catastrophic accident.
- ✓ **Power of Attorney** cannot be used to make medical decisions on your behalf.

**Remember**, the New York Health Care Proxy law specifically requires you to fill out a Health Care Proxy form to appoint your health care agent. Therefore, you cannot combine your Health Care Proxy with your Power of Attorney. The agent appointed by you in your Power of Attorney may, but need not be, the person who is the Health Care Agent in your Proxy.

## VII. CONCLUSION: POINTS TO REMEMBER

- ✓ Your decision to accept or reject medical treatment, including life-sustaining procedures, ultimately depends on your personal wishes, values and beliefs.
- ✓ Advance Directives can help you ensure that your health care wishes are followed if you are unable to make decisions for yourself.
- ✓ Advance Directives are for everyone, not just the elderly and the chronically ill.
- ✓ Advance Directive forms are free.
- ✓ Advance Directives can be canceled at any time.
- ✓ Advance Directives work best when accompanied by discussions with your family and loved ones about your personal values and beliefs. You may also wish to speak with a patient representative (if you are in the hospital), your doctor or lawyer.

**You can obtain a copy of the New York State Health Care Proxy Form that appears on the next page at no charge by visiting:**

The New York State Attorney General's Health Care Bureau  
at

[www.ag.ny.gov/bureaus/health\\_care/pdfs/hc\\_proxy\\_form.pdf](http://www.ag.ny.gov/bureaus/health_care/pdfs/hc_proxy_form.pdf)

or

The New York State Department of Health at

[http://www.health.state.ny.us/professionals/patients/health\\_care\\_proxy/form.htm](http://www.health.state.ny.us/professionals/patients/health_care_proxy/form.htm)

**You can obtain a free copy of a Living Will Form in English or Spanish by visiting the New York State Bar Association at:**

[www.nysba.org/Content/NavigationMenu/PublicResources/LivingWillHealthCareProxyForms/Living\\_Will\\_and\\_Heal.htm](http://www.nysba.org/Content/NavigationMenu/PublicResources/LivingWillHealthCareProxyForms/Living_Will_and_Heal.htm)

## HEALTH CARE PROXY FORM

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

\_\_\_\_\_  
(name, home address and telephone number)

\_\_\_\_\_  
\_\_\_\_\_  
as my health care agent to make any and all health care decisions for me, except to  
the extent that I state otherwise. This proxy shall take effect only when and 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, home address and telephone number)

\_\_\_\_\_  
\_\_\_\_\_  
as my health care agent to make any and all health care decisions for me, except to  
the extent that 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 and 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):

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In order for your agent to make health care decisions for you about artificial nutrition and hydration (nourishment and water provided by feeding tube and 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 and hydration.

**(5) Your Identification (please print)**

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 \_\_\_\_\_

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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 and cannot be the health care agent or alternate.*)

I declare that the person who signed this document is personally known to me and appears to be of sound mind and 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 \_\_\_\_\_

Date \_\_\_\_\_

Name of Witness 1  
(print) \_\_\_\_\_

Name of Witness 2  
(print) \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
NON-HOSPITAL ORDER NOT TO RESUSCITATE  
(DNR ORDER)**

Person's Name: \_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Do not resuscitate the person named above.

Physician's Signature \_\_\_\_\_

Print Name \_\_\_\_\_

License Number \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

It is the responsibility of the physician to determine, at least every 90 days, whether this order continues to be appropriate, and to indicate this by a note in the person's medical chart.

The issuance of a new form is NOT required, and under the law this order should be considered valid unless it is known that it has been revoked. This order remains valid and must be followed, even if it has not been reviewed within the 90 day period.



## RESOURCE DIRECTORY

### **Caring Connections**

Website: [www.caringinfo.org](http://www.caringinfo.org).

To obtain advance directive forms visit the website address. To get assistance regarding a specific end-of-life situation or obtain free advance directive forms call 1-800-658-8898.

### **Hospice Care**

To find a hospice or palliative care program in your county, visit [www.hpcanys.org](http://www.hpcanys.org) or call toll-free at 1-800-431-8988. You can also request informational brochures from The Hospice and Palliative Care Association of New York State, 21 Aviation Road, Suite 9, Albany, NY 12205.

### **New York State Attorney General**

To obtain a free copy of the New York State Health Care Proxy form, visit the New York State Attorney General's Office at [www.ag.ny.gov](http://www.ag.ny.gov).

### **New York State Department of Health**

Website: [www.health.state.ny.us](http://www.health.state.ny.us)

To obtain a free copy of the New York State Health Care Proxy form with instructions go directly to [http://www.health.state.ny.us/professionals/patients/health\\_care\\_proxy/form.htm](http://www.health.state.ny.us/professionals/patients/health_care_proxy/form.htm)

To obtain a free copy of the DNR Order form (DOH 3474) or information about a DNR bracelet visit [www.health.state.ny.us](http://www.health.state.ny.us).

To obtain information on hospice providers and benefits, or to file a complaint against a hospice care provider, call 1-800-628-5972.

### **Organ and Tissue Donation**

To contact an organ procurement organization call:

Albany: 1-800-256-7811

Buffalo: 1-800-227-4771

Rochester/Syracuse: 1-800-810-5494

New York City/Long Island: 1-800-GIFT- 4-NY or 1-800-443-8469

To enroll in the New York State Organ and Tissue Donor Registry, you can enroll online at the New York State Department of Health at <http://www.health.state.ny.us/nysdoh/donor/index> or call 1-866-NYDONOR (1-866-693-6667).

### **Toll Free Government Helplines**

Medicare HelpLine: 1-800-633-4227

TTY/TDD users: 1-877-486-2048

Medicare Rights Center/HIICAP Hot Line: 1-800-333-4114

New York State Long Term Care Ombudsman: 1-800-342-9871

NYS Department of Insurance: 1-800-342-3736

NYS Division of Veterans' Affairs: 1-888-838-7697

NYS Office of Aging, Senior Citizens' Hot Line: 1-800-342-9871

NYS Partnership for Long Term Care: 1-888-697-7582

**To obtain more copies of this report or advance directive forms visit <http://www.ag.ny.gov/>**

## *Endnotes*

1. In *Rivers v. Katz*, 67 N.Y.2d 485, 504 N.Y.S.2d 74, 78 (1986), the court recognized that the common law right to refuse treatment is co-extensive with the patient's liberty interest protected by the due process clause of the New York State Constitution.
2. N.Y. Public Health Law § 2991 requires hospitals and other health care facilities to provide patients with a Health Care Proxy form and information about creating a proxy. In addition, the Federal Patient Self-Determination Act requires health care facilities to notify patients of their rights under state law to create advance directives. *See* 42 U.S.C. § 1395cc(f) (2010).
3. N.Y. Family Health Care Decision Act, N.Y. Public Health Law §2994-b.
4. N.Y. Public Health Law, Article 29-C. *See generally* New York State Task Force on Life and the Law, *Life-Sustaining Treatment: Making Decisions and Appointing a Health Care Agent* (1987) (providing social, ethical, and legal background to New York Health Care Proxy Law); *see also* New York State Department of Health, *The Health Care Proxy Law: A Guidebook for Health Care Professionals* (1991).
5. N.Y. Public Health Law § 2991 requires hospitals and other health care facilities to provide patients with a Health Care Proxy form and information about creating a proxy. In addition, the Federal Patient Self-Determination Act requires health care facilities to notify their patients of their rights under state law to create advance directives. *See* 42 U.S.C. 1395cc(f).
6. *Matter of O'Connor*, 72 N.Y.2d 517, 531 N.E.2d 886 (1988).
7. N.Y. Public Health Law, Article 29-B.
8. N.Y. Public Health Law §§ 2960, 2965, 2966 and 10 NYCRR 405.43 (F) (1) (i). These statutes facilitate the ability of surrogates to consent to DNR Orders for patients in hospice and home care settings.
9. *See* 42 CFR § 418.3 and 10 NYCRR § 700.2.