

Pause Before Signing That Health Care Proxy

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Going to the hospital for a medical procedure can be stressful, and, at times, confusing. Sometimes during the intake process, you may be asked if you have a Health Care Proxy (HCP) in place. If you do not have an HCP, or are unsure, they will ask you to sign a simple standard form Massachusetts HCP form. As you are probably more worried about your medical procedure at this point, you don't give it much thought. But should you sign this standard form?

If you haven't signed one before, the short answer is "yes." Having a valid HCP in place is crucial for every adult. This legal document allows you to name someone you know and trust to make personal and medical decisions for you if you become unable to make or communicate those decisions. Without a valid HCP, most health care facilities will insist that the court appoint a guardian for you. This is costly, public, and time consuming. Most notably, the court-appointed guardian may not be the person you would want to make your health care decisions, or even someone you know.

However, signing a new HCP with every health care provider or every time you go to the hospital can have major negative consequences. Each time you sign a new HCP, you revoke any previous ones you may have had in place. This may have serious unintended consequences, such as:

- Changing who you have chosen as your proxy – maybe in haste to sign a new document, or in your compromised condition (due to illness) you name a decision maker who you would not otherwise want in this important position long-term.
- The hospital HCP typically does not contain the explicit authority that a more comprehensive, attorney-created document may have. This would include authority to administer anti-psychotic medications or authority to admit you into a skilled nursing facility (nursing home), should you require it. Without this authority in the HCP document, the skilled nursing or rehabilitation facility and other providers will require your family to obtain a court-appointed guardian.

Having multiple documents, signed at different times, with different providers (such as one with your primary care physician's office, the hospital, and your cardiac specialist) can cause confusion and major problems, including:

- Leaving into question whether you were competent when you signed.
- Causing uncertainty around whether the most recently dated document accurately reflects your wishes.
- Having different people listed with different health care professionals.
- Unintentionally setting up your loved ones for a court battle as to who really is the decision maker you wanted.

A better plan is to create a HCP when you are not under the stress of having a medical procedure. You should carefully consider the person you want to step into your shoes to make medical decisions and the specific types of authority you want to give that person. Once you sign this document after careful review and thought, make sure you give a copy of this document

to all your health care providers and to the person you name as your proxy.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.