
Health Care Proxy and Power of Attorney

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Introduction: Health Care Proxy (HCP) and Power of Attorney (POA) are types of advance directives, which are legal documents allowing individuals to designate someone else to make decisions on their behalf, particularly when they are incapacitated. Unlike conservatorships or guardianships, which are court-assigned, advance directives like HCP and POA allow the individual to proactively choose a representative. This delegate is tasked with making decisions that align with the person's wishes and values, encompassing medical, legal, and occasionally financial matters. This fact sheet delves into these important legal tools.

Health Care Proxy:

- An HCP is a legal document that allows an individual (the principal) to appoint someone else (the proxy or agent) to make health care decisions on their behalf if they are unable to do so. This includes decisions about medical or psychiatric treatments, surgical procedures, and other health care services.

Power of Attorney:

- A POA is a broader legal document that grants an agent the authority to make decisions on behalf of the principal, which may include financial, legal, and sometimes health decisions.
- Types of POA:
 - General POA: Gives broad powers but ceases to be effective if the principal becomes incapacitated.
 - Durable POA: Remains in effect even if the principal becomes incapacitated.
 - Health Care POA: Specifically for health decisions, like a health care proxy. Sometimes referred to as "Durable Power of Attorney for Health Care."
- Key Differences from HCP:
 - An HCP is solely for health care decisions, while a POA can include various types of decisions, depending on its scope.An HCP becomes effective only when the principal is determined to be unable to make health care decisions .

Legal and Ethical Considerations:

- HCP and POA laws vary by state. Familiarize yourself with the regulations and legal requirements in your jurisdiction.
 - Jurisdictions may have different legal and medical definitions of what constitutes incapacity and might have specific criteria for what mental or physical conditions qualify.
 - Some states require a single physician's determination, while others might need concurrence from multiple healthcare professionals. Some areas have broadened the scope of healthcare professionals who can make such determinations to include nurse practitioners.
- Upholding Patient Wishes vs. Proxy Decisions
 - You may encounter situations where the wishes of the proxy or agent conflict with your clinical judgment or the known preferences of the patient. For example, an HCP, who may be a family member, may insist on changing a medication due to perceived side effects they've read about, despite the patient's stable condition and your clinical assessment that the current medication is appropriate.
 - Try to resolve the disagreement through discussion, focusing on the patient's best interests and previously expressed wishes.
 - If the conflict persists, you may need to seek legal advice or consult with the hospital ethics committee.
- In the absence of a named HCP, the next of kin often steps in as the surrogate decision-maker, with some states outlining a specific next-of-kin hierarchy (e.g., first spouse, then child, etc.). Work with your hospital's risk management department to ensure compliance with state laws and hospital policies when determining the appropriate surrogate decision-maker.

Sample scenario: A 32-year-old male with severe bipolar disorder, Marcus, experiences a manic episode characterized by psychosis and impaired judgment. Prior to this episode, he had appointed his sibling, Nancy, as his health care proxy via an Advance Health Care Directive. Upon Marcus's hospitalization, you conduct a comprehensive evaluation of his mental state. Recognizing Marcus's inability to make informed health decisions due to his current condition, the psychiatrist documents this assessment in Marcus's medical record, officially determining that Marcus is incapacitated. This documentation serves as the formal trigger to activate Nancy's role as the health care proxy, as outlined in the Advance Health Care Directive. Nancy, now officially acting as the proxy, engages with the medical team to align treatment decisions with her brother's known preferences and values. She's aware, for example, that to continue his hobby as a painter, Marcus would want to avoid any medication that might cause a hand tremor. Nancy meets regularly with the treating physicians to ensure Marcus' care remains focused on his best interests and prior wishes. After 3 weeks of treatment, Marcus has recovered significantly, and his treating physician deems that he now has capacity to make informed decisions about his care.