

## Ensuring Your End-of-Life Wishes Are Honored



No one likes to think about what might happen if they were in a serious accident or contracted an illness that left them unable to speak and make their wishes known. Unfortunately, such situations occur every day, and although opinions are often expressed in passing concerning extraordinary medical procedures used to prolong life, loved ones may disagree on what is best. Fortunately, there are documents you can establish to help ensure that your end-of-life care wishes are known and honored.

An essential document in this regard is your Health Care Proxy. In your proxy, you would name a designated person, known as your health care agent, to make health care decisions for you if you become incapacitated and cannot make decisions yourself. In that case, your healthcare agent would step into your shoes and make your decisions as you would if you were able. When called upon to act, your agent may decide whether a certain medication should be taken, a medical procedure should be done, or an admission or discharge from a medical facility should occur.

Your healthcare agent can also address your ongoing care wishes. For example, if you wish to never be treated with chemotherapy or to never receive a transfusion, you can expressly provide instructions guarding against such treatment in your proxy. Similarly, it is possible to add Living Will language to your proxy that addresses your end-of-life decisions. The typical Living Will sets forth that you would not want extraordinary medical procedures used to keep you alive when there is no likelihood of recovery. Although Living Wills are not statutorily recognized in Massachusetts, including such language in your proxy can be especially helpful to illuminate the decision-making of your proxy should you be facing an illness or injury from which you cannot be expected to recover.

It is important to note that if you have not established a Health Care Proxy and you lose capacity, your loved ones will most likely be called upon to petition the Probate Court to have a Guardian appointed to make your decisions. The guardianship process is a public court proceeding that can be lengthy and also involves substantial expenses. If you wish to keep your affairs private and have a decision maker that you choose, it is imperative that you establish a proxy.

Those of advanced age, the terminally ill, and those with painful, chronic conditions may also consider establishing Medical Orders for Life-Sustaining Treatment (“MOLST”) in addition to a Health Care Proxy. A MOLST is a form, usually printed on bright pink paper, that contains actionable medical orders that are effective immediately based on your current medical condition. A MOLST would eliminate the need for Living Will language, but the best practice would be to reference the MOLST in your proxy.

It is important to note that a Living Will and a MOLST are very different. A Living Will asks the health care agent to take into account all facts and circumstances to decide whether recovery is likely before carrying out instructions to withhold or terminate life support. In a MOLST, you have already made your own decisions about what you do and do not want as far as medical care. The MOLST is taking the place of Do Not Resuscitate (DNR) and Do Not Intubate (DNI) forms, as the MOLST is more comprehensive, although existing DNR and DNI forms remain valid. The MOLST not only addresses these situations, but also sets forth wishes as to hospitalization, dialysis, and artificial means of receiving nutrition and hydration.

A MOLST form needs to be signed by both you and your physician and is used by physicians to understand your wishes at a glance. A Health Care Proxy, on the other hand, only takes effect if you are incapacitated. It is recommended all adults (aged 18 and older) establish a Health Care Proxy to appoint a health care agent, while only those facing advanced age, or chronic or terminal illness are encouraged to complete a MOLST as well.

Should you be in need of establishing a Health Care Proxy, it is recommended that you contact your chosen estate planning attorney, who will discuss your wishes with you, draft a proxy reflecting your wishes, and ensure that it is executed properly. Should you be interested in establishing a MOLST, you will need to make an appointment with your physician to do so. It is especially important to take action now to establish these documents, as once capacity is lost, so is your opportunity to express your wishes.

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