

GENERAL LAWS OF MASSACHUSETTS

PART .

REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS

TITLE II.

DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS

**CHAPTER 201D. HEALTH CARE PROXIES**

**Section 1 Definitions**

Section 1. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:--

""Attending physician", the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient, in whatever setting medical diagnosis or treatment is rendered. Where more than one physician shares such responsibility, any such physician may act as the attending physician.

""Capacity to make health care decisions", the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision.

""Facility", any facility as defined in section seventy E of chapter one hundred and eleven.

""Health care", any treatment, service or procedure to diagnose or treat the physical or mental condition of a patient.

""Health care agent" or ""agent", an adult to whom authority to make health care decisions is delegated under a health care proxy.

""Health care decision made by an agent under a health care proxy", a decision which is made in accordance with the requirements of this chapter, is consistent with any limitations in the health care proxy, and is consistent with responsible medical practice.

""Health care provider", an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice.

""Health care proxy", a document delegating to an agent the authority to make health care decisions, executed in accordance with the requirements of this chapter.

""Principal", a person who has executed a health care proxy.

## **Section 2 Appointment of health care agents; execution of proxy; alternate agents**

Section 2. Every competent adult shall have the right to appoint a health care agent by executing a health care proxy. Said health care proxy shall be in writing signed by such adult or at the direction of such adult in the presence of two other adults who shall subscribe their names as witnesses to such signature. The witnesses shall affirm in writing that the principal appeared to be at least eighteen years of age, of sound mind and under no constraint or undue influence. No person who has been named as health care agent in a health care proxy shall act as a witness to the execution of such proxy. For the purposes of this section, every adult shall be presumed to be competent and every health care proxy shall be presumed to be properly executed unless a court determines otherwise.

A competent adult may designate an alternate health care agent as part of a valid health care proxy. Said alternate may serve when the designated health care agent is not available, willing or competent to serve and the designated health care agent is not expected to become available, willing or competent to make a timely decision given the patient's medical circumstances; or, the health care agent is disqualified from acting on the principal's behalf pursuant to other requirements of this chapter.

## **Section 3 Eligibility to serve as agent**

Section 3. No person who is an operator, administrator or employee of a facility may be appointed as health care agent by an adult, who, at the time of executing the health care proxy is a patient or resident of such facility or has applied for admission to such facility unless said operator, administrator or employee is related to the principal by blood, marriage or adoption.

## **Section 4 Contents of proxy**

Section 4. The health care proxy shall:

- (i) identify the principal and the health care agent;
- (ii) indicate that the principal intends the agent to have authority to make health care decisions on the principal's behalf;
- (iii) describe the limitation, if any, that the principal intends to impose upon the agent's authority; and
- (iv) indicate that the agent's authority shall become effective if it is determined pursuant to section six that the principal lacks capacity to make health care decisions.

## **Section 5 Authority of agent**

Section 5. An agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make, including decisions about life-sustaining treatment, subject, however, to any express limitations in the health care proxy.

After consultation with health care providers, and after full consideration of acceptable medical alternatives regarding diagnosis, prognosis, treatments and their side effects, the agent shall make health care decisions: (i) in accordance with the agent's assessment of the principal's wishes, including the principal's religious and moral beliefs, or (ii) if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests.

Notwithstanding any general or special law to the contrary, the agent shall have the right to receive any and all medical information necessary to make informed decisions regarding the principal's health care, including any and all confidential medical information that the principal would be entitled to receive.

Health care decisions by an agent pursuant to a health care proxy on a principal's behalf shall have the same priority over decisions by any other person, including a person acting pursuant to a durable power of attorney as would decisions by the principal, when competent, except as otherwise provided in the health care proxy or by specific court order overriding the proxy.

A physician who is provided with a health care proxy shall arrange for the proxy or a copy thereof to be inserted in the principal's medical record.

A health care provider shall comply with health care decisions made by an agent under a health care proxy to the same extent as if such decisions have been made by the principal, subject to any limitations in the health care proxy, or in any specific court order.

## **Section 6 Incapacity of patient; regained capacity**

Section 6. The authority of a health care agent shall begin after a determination is made, pursuant to the provisions of this section, that the principal lacks the capacity to make or to communicate health care decisions. Such determination shall be made by the attending physician according to accepted standards of medical judgment. The determination shall be in writing and shall contain the attending physician's opinion regarding the cause and nature of the principal's incapacity as well as its extent and probable duration. This written determination shall be entered into the principal's permanent medical record.

If the attending physician determines that a patient lacks capacity because of mental illness or developmental disability, the attending physician who makes the determination must have, or must consult with a health care professional who has, specialized training or experience in diagnosing or treating mental illness or developmental disabilities of the same or similar nature in making such determination.

A physician who has been appointed as a patient's agent shall not make the determination of the

patient's capacity to make health care decisions.

Notice of a determination that a principal lacks capacity to make health care decisions shall promptly be given orally and in writing: (i) to the principal, where there is any indication of the principal's ability to comprehend such notice; (ii) to the agent; and (iii) if the patient is in or is transferred from a mental health facility, to the facility director.

A determination made pursuant to this section that a principal lacks capacity to make health care decisions is solely for the purpose of empowering an agent to make health care decisions pursuant to a health care proxy.

Notwithstanding a determination pursuant to this section that the principal lacks capacity to make health care decisions, where a principal objects to a health care decision made by an agent pursuant to a health care proxy the principal's decisions shall prevail unless the principal is determined to lack capacity to make health care decisions by court order.

In the event the attending physician determines that the principal has regained capacity:

(i) the authority of the agent shall cease, but shall recommence if the principal subsequently loses capacity; and (ii) the principal's consent for treatment shall be required.

### **Section 7 Revocation of proxy**

Section 7. A principal may revoke a health care proxy by notifying the agent or a health care provider orally or in writing or by any other act evidencing a specific intent to revoke the proxy.

For the purposes of this section, every principal shall be presumed to have the capacity to revoke a health care proxy unless determined otherwise pursuant to court order.

A health care proxy shall also be revoked upon: (i) execution by the principal of a subsequent health care proxy, or (ii) the divorce or legal separation of the principal and his spouse, where the spouse is the principal's agent under a health care proxy.

A physician who is informed of or provided with a revocation of a health care proxy shall immediately record the revocation in the principal's medical record and notify orally and in writing the agent and any health care providers known by the physician to be involved in the principal's care of the revocation. Any agent or member of the nursing staff informed of or provided with a revocation of a health care proxy pursuant to this section shall immediately notify the attending physician of such revocation.

### **Section 8 Liability of health care providers and agents**

Section 8. No health care provider or employee thereof shall be subject to criminal or civil liability or be deemed to have engaged in unprofessional conduct, for carrying out in good faith a

health care decision by an agent pursuant to a health care proxy.

No person acting as agent pursuant to a health care proxy shall be subject to criminal or civil liability for making a health care decision in good faith pursuant to this chapter.

### **Section 9 Liability for health care costs**

Section 9. Liability for the cost of health care provided pursuant to an agent's decision shall be the same as if the health care were provided pursuant to the principal's decision.

### **Section 10 Coercion; execution of proxy**

Section 10. A person may not require or prohibit the execution of a health care proxy by an individual as a condition for providing health care services or insurance of such individual.

### **Section 11 Foreign proxies; enforceability**

Section 11. Nothing in this chapter shall limit the enforceability of a health care proxy or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction; provided, however, that no person or health care provider or facility shall be required to enforce such proxy where to do so would violate sections fourteen and fifteen herein; provided, further, that all the responsibilities of a person, health care provider or facility are fulfilled as required under said sections fourteen and fifteen.

### **Section 12 Suicide or mercy killing**

Section 12. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide or mercy killing, or to permit any affirmative or deliberate act to end one's own life other than to permit the natural process of dying.

### **Section 13 Pain alleviation; comfort care procedures**

Section 13. Nothing in this chapter shall preclude any medical procedure deemed necessary by the attending physician to provide comfort care or pain alleviation. Such procedures shall include but not be limited to treatment with sedatives and pain-killing drugs; non-artificial oral feeding; suction; and hygienic care.

### **Section 14 Physicians; refusal to honor proxy**

Section 14. Notwithstanding any provisions herein to the contrary, nothing in this chapter shall be construed to require a physician to honor an agent's health care decision that the physician would not honor if the decision had been made by the principal because the decision is contrary

to the moral or religious views of the physician; provided, however, that the patient is transferred to another physician in the same facility, or in an equivalent facility that is reasonably accessible to the patient's family, who is willing to honor the agent's decision. If the physician or the agent is unable to arrange such a transfer, the physician shall seek judicial relief or honor the agent's decision.

Refusal to carry out actions requested by the agent when those actions would be contrary to the moral or religious views of the physician or other individual health provider shall not be grounds for dismissal, suspension, demotion, failure to promote, discrimination in hiring, withholding of pay or refusal to grant financial assistance under any state aided project, or used in any way to the detriment of that individual in any hospital, clinic, medical, premedical, nursing, social work, or psychology school or state aided program or institution which is supported in whole or in part by the commonwealth; provided, however, that individuals fulfill all the responsibilities required under section fourteen or fifteen.

### **Section 15 Private facilities; refusal to honor proxy**

Section 15. Notwithstanding any provisions herein to the contrary, nothing in this chapter shall be construed to require a private facility to honor an agent's health care decision that the facility would not honor if the decision had been made by the principal because the decision is contrary to a formally adopted policy of the facility that is expressly based on religious beliefs and the facility would be permitted by law to refuse to honor the decision if made by the principal, provided:

(a) the facility has informed the patient or the health care agent of such policy prior to or upon admission, if reasonably possible; and

(b) the patient is transferred to another equivalent facility that is reasonably accessible to the patient's family and willing to honor the agent's decision. If the facility or the agent is unable to arrange such a transfer, the facility shall seek judicial guidance or honor the agent's decision.

### **Section 16 Lack of proxy; effect**

Section 16. In those instances that a health care proxy has not been executed, nothing herein shall preclude a health care provider from relying upon the informed consent of responsible parties on behalf of incompetent or incapacitated patients to the extent permitted by law.

Nothing in this chapter shall invalidate a power of attorney delegating the authority to make health care decisions executed prior to the enactment of this chapter.

A competent adult's failure to appoint a health care agent or to provide the agent with specific health care instructions pursuant to this article shall create no presumptions regarding the adult's wishes about health care.

## **Section 17 Disputes; court proceedings**

Section 17. The health care provider, the conservator for, or guardian of the principal, members of the principal's family, a close friend of the principal, or the commissioner of public health may commence a special proceeding in a court of competent jurisdiction, with respect to any dispute arising under this chapter, including, but not limited to, a proceeding to:

- (i) determine the validity of the health care proxy;
- (ii) have the agent removed on the ground that the agent is not reasonably available, willing and competent to fulfill his or her obligations under this chapter or is acting in bad faith; or
- (iii) override the agent's decision about health care treatment on the grounds that: the decision was made in bad faith or the decision is not in accordance with the standards set forth in section five.