

Ethics Booklet
Patient Self Determination
Advance Directives
A Nurses Guide

Introduction:

To our nursing colleagues:

This booklet on Advance Directives has been prepared by the Massachusetts Nurses Association Center for Ethics and Human Rights. The purpose of this booklet is to assist nurses in understanding Advance Directives.

It is important that nurses know and accept the roles of facilitator, educator, monitor and advocate of advance directives for their patients. Although other health care professionals may be involved in advance directives, the omnipresent nurse is essential to their implementation. In order to execute this critical responsibility, nurses should fully understand the ethical and legal dimensions of advance directives, especially at the end of life.

Use this booklet as a guide as you advocate and protect the legal and moral rights of all patients to make their own healthcare and treatment decisions.

Ethical Principles:

Our health care system is as ambivalent about death and dying as the population it serves. Although much progress has been made in end of life care, the underlying issue persists of who makes treatment decisions when a patient is unable. Nurses have a clear moral duty to protect their patients' right to make their own treatment decisions, including end of life care. The Code of Ethics for Nurses states: "a fundamental principle that underlies all nursing practice is respect for the inherent worth, dignity, and human rights of every individual" (ANA Code of Ethics for Nurses 1.1). The ethical principle of autonomy (the governing of one's self according to one's own system of morals and beliefs) reflects this fundamental principle and is an essential consideration in end of life treatment decisions. The use of an advance directive provides a means for the preservation of the patient's autonomy. A well-chosen health care proxy will allow the nurse and the health care team to honor the ethical principles of beneficence (doing good) and fidelity (promise keeping). It alleviates moral distress for caretakers, family and significant others which can occur when the patient is incapable of decision making.

Nurses may encounter a situation when patients' choices are not congruent with their own morals and beliefs. The principles of non malificence (do no harm) and autonomy may conflict and cause an ethical dilemma. If the occasion arises when the nurse/patient relationship is no longer therapeutic, the nurse should be aware of the facilities and resources which will enable her or him to reach a resolution which preserves both the patient's autonomy and the nurse's own integrity.

Legal Considerations:

Nurses who have sustained contact with the patient may also have the most important role in educating the patient and their families in regard to advance directives. Nurses must have special knowledge of the legal and ethical dimensions pertinent to advance directives. From the Karen Ann Quinlan to the Terri Schiavo case, the legal issues persist. These cases reflect an evolution of case law related to advance directives that have culminated in the following federal and state statutes.

Federal Law: Code of Federal Regulations, Title 42, volume 3, Parts 430
Revised as of October 1, 2000
Cite: 42 CFR 489.100

Requirement by federal law for hospitals, nursing homes, home health agencies and HMO's to provide patients with information on advance directives at the time of admission which includes health care decision-making rights.

The Federal Patient Self Determination Act of 1990 states that patients entering a hospital or other health care facility must be informed about their right to make healthcare decisions and to have an advance directive to state their wishes in the event of a life-threatening situation. Each facility must provide documentation subjected to government inspection as to the compliance of this law.

State Law: Massachusetts 130 CMR 450.112

Massachusetts Statutes Chapter 201D Health Care Proxies
Chapter 201B Uniform Durable Power of Attorney Act

The components of Advance Directives include the health care proxy or health care agent (HCP or HCA), the Living Will and the Durable Power of Attorney (DPA). The laws and terms vary somewhat state to state but the general guidelines are consistent. The Durable Power of Attorney Law is applicable to all states, many of which have chosen the DPA to be used for business issues and health care decisions in the event of incapacity of the patient. However, Massachusetts has elected to have two separate laws; the DPA for business and the HCP for issues related to health care.

Massachusetts recognizes a health care proxy as the only legally binding document to protect a person's right to self-determination regarding medical decisions should they become incapable of making their own decisions. Living wills are not designed to provide all medical possibilities to adequately address every situation. They are valuable tools to be used as a guide for the proxy to help maintain the patient's wishes for medical care choices, but are not legally binding. Power of Attorney is recognized by the law but is not inclusive of medical care.

Components of a Health Care Proxy:

Principal is the term given to the individual completing the health care proxy. The *agent* is the adult to whom the principal designates authority to make health care decisions in the event that the principal is unable. An *alternative agent* is an adult designated by the principal to serve in the event the named 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. *Attending physician* is the physician who has primary responsibility for the care and treatment of the principal (patient) in whatever setting medical diagnosis and treatment is rendered. *Capacity* to make health care decisions is the ability to understand and appreciate the nature and consequences of health care decisions including the risks and benefits and any alternatives to any proposed health care and to reach an informed decision (Mass M.G.L.201D).

The physician of the patient is required to determine whether implementation of a health care proxy is appropriate. All patients that are not deemed incompetent by a court of law regardless of their diagnosis are able to make their own medical decisions. Physicians are able to determine the patient's capacity to make medical decisions, thus determining the use of an appointed agent. The nursing assessment of the mental capacity of the patient is vital in assisting the physician in determining a patient's capacity to make treatment decisions. These are important distinguishing terms for nurses to understand in providing care to patients that may appear incapable, thus using their nursing judgment. Close collaboration with the physician and health care team is a must.

Application to Nursing Practice:

It is the nurses' responsibility to know the policies and procedures for Advance Directives in their facility. There are four roles for nurses related to Advance Directives: Facilitator, Educator, Monitor, and Advocate (**FEMA**).

FACILITATOR

- Information regarding the patient HCP status.
- Communicate that information to the appropriate members of the health care team.
- Collaborate with HC team to insure there is appropriate implementation of HCP.

EDUCATOR

- Teach the healthcare team the legal and ethical components of the HCP.
- Teach the patient the purpose of a HCP.
- Help patient set goals and teach them how a HCP works and its benefits.
- If needed, assist patient in choosing a Health Care Agent.
- Clarify treatment choices to patient.
- Assist patient if there are questions or concerns.
- Be available for follow-up.

MONITOR

- Change in patient status both physical and mental.
- Changes in patient HCP status.
- Accuracy, clarity, and completeness and up to date HCP form.
- Documentation of the above.

ADVOCATE

- Advocate the use of the HCP form to protect the patient's right to treatment choices (including no treatment).
- Support the agent making decisions as they advocate for patient.
- Be available to address concerns of the patient or agent

Questions and Answers:

1. Q. Does Massachusetts law require everyone to have a HCP?
A: No, but the law states that medical facilities must offer the opportunity to make an advance directive.
2. Q. In the absence of a HCP, who can make the medical decisions if a patient is unable to do so?
A: The next of kin or legal guardian.
3. Q. Where can you obtain a HCP?
A: On line @ <http://www.mass.gov> or type "health care proxy" in any search engine, public libraries, senior centers, medical facilities or Massachusetts Department of Elder Affairs.
4. Q. Who can be an agent:
A: Anyone of sound mind, 18 years of age or older designated by the patient. The nurse cannot be the HCP unless the patient is a relative.
5. Q. Who can act as a witness?
A: Anyone of sound mind, 18 years or older, including the patient's nurse and physician. Health care agents are excluded from acting as a witness.
6. Q. Who should have copies of an HCP?
A: The patient, primary care doctor, health care agent and alternate, caretakers and close family members.
7. Q. Can the patient change their proxy?
A: Yes, by revoking the previous proxy by destroying it, signing a new one and notifying all those who have copies.
8. Q. Is the HCP transferable from one facility to another?
A: Yes, the HCP is a legal document, which is transferable in the state of Massachusetts.
9. Q. Whose responsibility is it to initiate the implementation of the HCP?
A: The patient's physician is responsible for declaring the patient incapable of making a treatment decision. the nurse may initiate the implementation of the HCP.