

NEW YORK BREAST CANCER LEGAL RESOURCE GUIDE



Who Speaks for You? A Guide to Health Care Proxies and Living Wills

**LEGAL WELLNESS INSTITUTE
at THE FAMILY CENTER**



This guide was created with generous support from the Judges and Lawyers Breast Cancer Alert

© 2026 The Family Center, Inc. All rights reserved.

Facing breast cancer can bring many changes and tough choices. It can also bring times when treatment affects your energy, memory, or ability to speak for yourself. Planning ahead helps you stay in control of your care.

Health Care Proxies and Living Wills let you share your wishes and choose someone you trust to speak for you. These documents give you and your loved ones peace of mind, so your care can match your values.

What is a Health Care Proxy?

A health care proxy lets you name a person (called your health care agent) to make medical decisions for you if you become unable to decide for yourself.

Your agent's authority only begins when your doctor determines that you are no longer able to make your own health care decisions. As long as you can decide for yourself, you stay in charge of your own care.

Who Should Have a Health Care Proxy?

Everyone! Every adult should designate a health care agent, but it is even more critical for people with serious diagnoses.

Naming an agent is the only way to be certain that the person who knows you best is the one speaking for you.

You don't need a lawyer to create a health care proxy!

Whom Should I Name as my Agent?

Name someone who knows you well, respects your values and preferences, and can make reasonable, clear decisions, even in tough situations.

Your agent doesn't need to live nearby, but they need to at least be easily reached by phone.

Your health care agent should be able to understand medical information when it is explained to them, and they shouldn't be afraid to ask questions, or to stand up for you.

You cannot name your own doctor as your health care agent.

What Can my Agent Do?

If you become unable to make healthcare decisions for yourself, your agent can direct your care. Doctors will look to them to make decisions about your care, including decisions about life-sustaining treatment.

Your agent must follow your wishes and values, if they know them. If they do not know your wishes about a particular decision, they must act in what they believe to be your best interest. This is why it is so important to talk with your agent ahead of time about what matters to you.

Decisions about starting, stopping, or continuing artificial nutrition or hydration are treated differently under New York law. Your agent can only make these decisions if they know your wishes about them. The most reliable way to make sure your agent has this authority is to write your wishes directly into your Health Care Proxy form.



The Health Care Proxy Form

Often your doctor's office or hospital will have a form available, or you can find a form online at <https://www.health.ny.gov/publications/1430.pdf>.

You will need to sign the form in front of two witnesses. It doesn't need to be notarized.

You can also name a back up (alternate) agent, in case your first choice is unavailable.

You can't name two agents to act together.

Your agent and back-up agent cannot be witnesses.

Give copies of your Health Care Proxy to your agent, alternate agent, all of your doctors, and other family members. You should bring a copy with you when you go to the hospital.

You can cancel (revoke) your health care proxy by telling your agent, your doctor, and anyone else who has a copy of your form. It's best (but not necessary) to do this in writing.

What Happens if I Don't Have a Health Care Proxy?

New York's Family Health Care Decisions Act (FHCDA) tells doctors what to do if you are in a hospital or nursing facility and become unable to make your own health care decisions.

If this happens, doctors will try to find a "surrogate" to make decisions on your behalf.

They will usually need to pick from a list of surrogates provided by the law, in the following order of preference:

- Your guardian under Article 81 of the Mental Hygiene Law, if one has been appointed
- Your spouse or domestic partner
- Your adult child
- Your parent
- Your adult sibling
- Your close friend

Notice that this list is made up almost entirely of legal relatives, and that a close friend comes last. If the person who knows you best is a friend, an unmarried partner, or another member of your chosen family, they will be at the bottom of the list — or may never be reached at all.

The FHCDA only applies in hospitals and nursing homes. If you needed care somewhere else — at a dentist's office, for example — there may be no one with clear legal authority to make decisions for you.

If you are not happy with this order of preference, it is especially important to complete a health care proxy.

If your family members (especially two at the same level of preference — like two siblings or two adult children) disagree about your care, the hospital ethics committee or even a court may need to get involved. The result can be confusion, fighting, and delayed care for you.



What is a Living Will?

A living will is a document where you can write down your wishes and instructions about medical care if you become very sick and cannot make decisions for yourself. It is usually used to address end-of-life health care decisions. It does not name someone to speak for you.

IMPORTANT: A living will is NOT a will (or “last will and testament”). It has nothing to do with your property and is only effective during your lifetime.

You cannot use a living will alone to direct doctors not to resuscitate you if your heart stops. A “do not resuscitate” (DNR) instruction requires a separate order signed by your physician. Talk to your doctor about a DNR order or a MOLST form (Medical Orders for Life-Sustaining Treatment) if this is important to you.

Who Needs a Living Will?

Not everyone needs a living will, but they can be useful, especially if you have very strong preferences about particular treatment choices, if you have religious restrictions or beliefs that your care team and family need to be aware of, or if you do not have anyone you can name as your health care agent.

For people without strong preferences, or who want and trust their health care agent to make decisions for them based on their best judgment or a general set of principles, a living will might not be needed.

Your healthcare agent, FHCDA surrogate, and/or doctors will have to follow your instructions in a proper living will. You should therefore make sure you have thought carefully about the instructions in your living will, and make sure that your living will agrees with your Health Care Proxy, if you have both.

How Do I Make a Living Will?

There is no law in New York that says exactly what a living will must say, and there is no official state form. Because of that, how you complete and sign the document matters.

To make your living will as strong as possible:

- Put your wishes in writing
- Sign and date the document yourself
- Sign in front of two adult witnesses, who should also sign
- Have the document notarized, if you can

A living will that is properly completed and witnessed is the strongest evidence of what you wanted, and your doctors, your agent, and the courts will look to it. Because there is no standard form, this is one area where working with an attorney is especially helpful.

Keeping Your Documents Safe

Completing your documents is only the first step. They can only help you if the right people can find them.

Keep your original documents somewhere safe but easy to reach, like a drawer, filing cabinet, or fire safe. Avoid keeping them in a safety deposit box, since your loved ones may not be able to get to the box when they need it.



Tell the people close to you where your documents are kept.

Give copies of your Health Care Proxy and Living Will to your agent, your alternate agent, and all of your doctors, so they become part of your medical record. Bring a copy with you whenever you go to the hospital.

Review your documents from time to time. Do they still say what you want? Is your agent still the right person, and still able to serve? If anything has changed, complete a new form.

If you cancel or change a document, tell everyone who has a copy of the old one, and give them the new version.

If you are a breast cancer patient or survivor in NYC and have questions about Health Care Proxies or Living Wills, or would like help completing one, you can contact the **Legal Wellness Institute** at **718.789.3841 x 150** or **LWI@thefamilycenter.org** to see if you are eligible for legal assistance through the Maite Aquino Program or the Judge Judith Kaye Project.

The information in this guide is not legal advice and is not a substitute for consultation with an attorney. No attorney-client relationship is created by receipt of this information.

