

Determining Capacity and Invoking the Health Care Proxy

Policy and Procedure Intranet > Clinical Guidelines > Advance Care Planning

Purpose: Provide clear guidelines for the practitioner to determine and document a patient's lack of capacity for medical decision-making and to invoke the health care proxy

Policy:

Determining capacity: Using the guidelines in Addendum 1 to this policy, the primary care physician can determine and document that a patient no longer has the capacity to make their own health care decisions.

Invoking the Health care Proxy: A Health Care Proxy (HCP) is a legal document that designates the person/persons who can make medical decisions if/when the patient is not able. The HCP, in order to be actualized, needs to be invoked by the primary care physician.

Procedure:

Determining capacity: The physician will document the findings for lack of capacity in the Determining Capacity macro (.determining) available to add anywhere in the encounter. All 4 fields must be addressed as outlined in Addendum 1 though there is no strict guideline delineating how many elements must be met; this is per the provider's judgement, using all relevant clinical and anecdotal data. It is recommended to document over time to show progression or consistency.

For a patient of a non-physician provider, NP or PA will see their patient and summarize their findings with relevant dates and rationale for finding of lack of capacity in the visit note, then send a case summary to their collaborating physician regarding need for physician visit to confirm lack of capacity (and invoke health care proxy), referencing their note. The physician will review the note and arrange for a physician visit (30 minutes if physician is not familiar with the patient).

Invoking the Health Care Proxy: Once it is determined that a patient lacks capacity to make their own health care decisions, the health care proxy can be invoked. The primary care physician will document this lack of capacity in the chart (as above) and also write "health care proxy is invoked" in the yellow alert on the EHR banner as well as the name of the health care agent so that it is evident to all who work in that chart. In addition, there is a form titled: *ACP: Health Care Proxy Invocation* in print forms as seen in Addendum 2, for the physician to complete and give to the health care agent with a copy of the HCP.

Please note: Determining capacity and invoking a HCP must be performed and documented by a physician.

Documentation in encounter: .det in any section of the chart

Determining Capacity Guideline: Document on the following 4 elements. Comment on cause and nature of incapacity, extent and probable duration. Include relevant patient or caregiver quotes, consults or testing data, clinical and anecdotal notes.

1. Describe patient's ability to understand diagnosis or treatment, including the risks and benefits of options for care:
2. Describe patient's ability to communicate a clear choice of their own with reliability and consistency over time:
3. Describe patient's ability to appreciate how the information applies to them:
4. Describe patient's ability to reason, to make a decision that balances the facts with their own values:
5. Additional data contributing to decision-making:

Invoking the Health Care Proxy Form in Print Forms



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In accordance with Massachusetts law, I, _____ MD/DO,
have determined that (patient/DOB) _____
lacks the capacity to make health care decisions.

I have determined the cause and nature of this incapacity to be: _____

The anticipated duration of this patient's incapacity is: _____

The health care proxy is invoked. The designated health care agent is:
_____ and they have been notified of this
determination.

Physician signature: _____ Date: _____