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| INFORMATIONAL LETTER |  
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TRANSMITTAL: 91 INF-34

TO: Commissioners of  
Social Services

DIVISION: Adult Services

DATE: July 1, 1991

SUBJECT: Health Care Agents and Proxies Statute

SUGGESTED

DISTRIBUTION: Agency Attorneys  
Directors of Services  
Adult Services Staff  
Staff Development Coordinators

CONTACT PERSON: Adult Services Program Representative  
at 1-800-342-3715:  
Irvin Abelman, ext. 432-2980 or (212) 804-1247  
Kathleen Crowe, ext. 432-2996  
Michael Monahan, ext. 432-2864  
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ATTACHMENTS: I. Article 29-C of the Public Health Law  
II. Health Care Proxy Form

Attachments not available on-line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Article 29- C, PHL		

The purpose of this release is to inform local social services districts of an amendment to the Public Health Law (PHL) in relation to the appointment of a health care agent to make health care decisions for individuals who no longer have the capacity to make such decisions.

In March 1985, Governor Cuomo convened a Task Force on Life and Law to consider the legal and ethical issues raised when health care decisions must be made for a patient who no longer has capacity to make such decisions. The Task Force developed legislation, which was enacted into law as Chapter 752 of the Laws of 1990. Chapter 752 established a new Article 29-C of the Public Health Law which became effective on January 18, 1991. The legislative intent of this law is to establish a decision-making process to allow a competent adult to appoint an agent to make health care treatment decisions in the event he or she loses decision-making capacity. The legislation is not intended to create new rights or expand existing rights of a competent adult to decide about treatment, but to allow an adult to delegate the rights he or she already possesses to a designated agent by use of a health care proxy.

The new Article 29-C PHL accomplishes three important goals in preserving the individual's right of choice in health care matters.

1. It establishes in law the right of a competent adult to extend control over future health care decisions through the personal appointment of a health care agent by use of a health care proxy. The agent will be guided by the preferences and specific directions of the person when making health care decisions for the person who is no longer able to do so.
2. It provides guidelines to patients, their families, physicians and hospitals about documents expressing treatment decisions and the legal validity of documents appointing an agent to make health care decisions.
3. It establishes safeguards regarding the appointment and authority of a health care agent.

The new Article 29-C contains a number of provisions which may be of interest to local social service districts.

1. A competent adult may appoint a health care agent by a health care proxy, signed and dated by the adult in the presence of two adult witnesses, who shall also sign the proxy.
2. Every adult is presumed competent to appoint a health care agent unless adjudged incompetent.
3. One individual may be appointed agent for no more than ten (10) other persons unless the agent is related to one or more of the persons.
4. The agent's authority commences upon a written determination by the attending physician that the individual lacks capacity to make health care decisions to a reasonable degree of medical certainty.

5. A determination that the person lacks capacity to make health care decisions shall not be construed as a finding that the person lacks capacity for any other purpose.
6. A Health Care Proxy may not be executed on a form or other writing that also includes the execution of a power of attorney.
7. Notwithstanding any law to the contrary, the agent has the right to receive medical information and medical and clinical records necessary to make informed health care decisions.
8. The agent must make health care decisions, after consultation with a medical professional:
  - a. in accordance with the principal's wishes, including the principal's religious and moral beliefs; or
  - b. if the principal's wishes are not reasonably known, in accordance with the principal's best interests.
  - c. However, if the principal's wishes regarding the administration of artificial nutrition and hydration are not known and cannot be ascertained with reasonable diligence, the agent does not have the authority to make decisions regarding these measures.
9. Health care agents have immunity from criminal or civil liability for making health care decisions in good faith pursuant to Article 29-C.

Local social services commissioners may accept designation as a health care agent. However, they should exercise caution in accepting designation, especially when the principal is in receipt of Medicaid. As a payor, the district's interests can be seen as adverse to the principal's with respect to the continuation of expensive medical care. If the commissioner does decide to accept appointment as a health care agent, any Health Care Proxy should specifically set forth the principal's wishes or instructions about health care decisions and limitations upon the agent's authority. (This information is usually optional). No local district employee, other than the commissioner, should accept designation as a health care agent in his or her official capacity.

A copy of the new Article 29-C and a Health Care Proxy form are attached to this release.

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William E. Gould  
Acting Deputy Commissioner  
Division of Adult Services