

Liability Disclaimer

The information on this web site does not constitute legal advice. The law is constantly changing, and we make no warranty of the accuracy of information on this site or any site to which we link.

Your Health Care: In Illinois, Who Decides?

Now, while you are well, is the time to decide what kind of health care you will want if you are ever unable to make those decisions. You can do this by signing a Power of Attorney for Health Care and/or a Living Will. In addition, a Declaration for Mental Health Treatment for specific forms of mental health care may be executed.

Power Of Attorney For Health Care

With a Power of Attorney for Health Care, you name a person whom you trust to make health care decisions for you. The law calls this person your Agent. You are allowed to provide careful directions to your Agent regarding how to make health care decisions for you when you are unable to do so for yourself. The Power of Attorney for Health Care allows a member of your family or friend the right to make these decisions for you but you must name one of these individuals in writing as your Agent.

Be Prepared

No matter what your age or current health, you should be prepared for a personal tragedy that may strike at any time. You could be severely injured in a car accident, for example, and kept alive by feeding tubes, respirators, or other means of modern technology, even though you may never regain consciousness. One important way to be prepared is to name an Agent and inform him or her of your wishes concerning future health care. Your Agent will have the power to make final health care decisions for you, including continuing or stopping your medical treatment in accordance with your wishes.

Choose The Short Form Or Write Your Own

In order to name an Agent properly, you may use a form called a "short Form Power of Attorney for Health Care." You may obtain this form and further information about a Power of Attorney for Health Care from your lawyer or doctor. (A Power of Attorney for Property is completely different and does not provide for your health care decisions.)

The law, however, does not require you to use this Short Form. Instead, you may write your own Power of Attorney for Health Care provided it: (1) names the person who will serve as your Agent; (2) describes the power you grant your Agent; and (3) is signed and dated while you are still able to make decisions for yourself.

Your Agent's Powers

You decide how much power you want to grant your Agent. You spell out your wishes. You may give your Agent the power to make all health care decisions for you or you may set whatever limits you want. As examples, you may want to tell your Agent to do everything possible to keep you alive or take into consideration any treatment that would limit your pain and suffering.

Choose Your Agent Carefully

If you name an Agent to make decisions for you, it is very important that you think carefully about whom you name as your Agent. He or she may someday decide what medical treatments you receive and whether life support measures are started or stopped. You may change your Agent or any section of your Power of Attorney for Health Care by identifying the change in writing and then signing and dating it. You may also cancel your Power of Attorney for Health Care at any time in a number of ways, including tearing it in half or drawing an X across it or any other way that shows your wish to cancel it.

Talk To Your Agent

In addition to describing in writing the power you want to grant your Agent, it is also important that you talk with your Agent and doctor. He or she needs to understand your wishes, your beliefs, and your values in order to feel comfortable making decisions on your behalf. You should also give a copy of the Power of Attorney for Health Care to your Agent and doctor.

A Living Will

In addition to naming an Agent under a Power of Attorney for Health Care, you may also want to sign a Living Will. A Living Will, properly witnessed, is a written statement that gives you the right to stop or not begin medical treatment that delays your death if you have a terminal condition. The law defines a "terminal condition" as an incurable or irreversible condition where death is imminent, and the use of death delaying procedures serves only to prolong the dying process. You may want to talk to your lawyer and your doctor about what this term means.

A Living Will is Different

Even though a Power of Attorney for Health Care and a Living Will apply to some similar situations, a Living Will is very different. A few of the many important differences are as follows:

1. Your Power of Attorney for Health Care names an Agent to make decisions for you. You do not name an Agent in a Living Will. Instead you indicate your wishes about death delaying procedures that your doctor can rely upon in certain specific situations.

2. Your Power of Attorney for Health Care may permit your Agent to make all health care decisions that you could otherwise make on your own. It does not matter whether you have a "terminal condition."

In comparison, your Living Will does not permit such a wide range of decisions. It applies only if you have a "terminal condition. In addition, a Living Will applies only to decisions by your doctor to stop or not begin medical treatment that delays the moment of your death.

3. A Power of Attorney for Health Care permits your Agent to stop water and tube feeding, if that is your wish. A Living Will does not permit your doctor to stop water and tube feeding if their withdrawal would be the only cause of your death.

Consider Both the Living Will and Power of Attorney for Health Care Documents

You should consider signing both a Living Will and Power of Attorney for Health Care. IF your Agent is available, the Living Will will not be used. However, if your Agent is unavailable, your doctor could rely on your Living Will to honor your wishes when your condition is terminal.

In addition, you may want to refuse medical treatment in another state that will not enforce your Power of Attorney for Health Care but may enforce your Living Will. A Living Will, therefore, increases the chances that your wishes will be followed in the event you have a medical emergency in a state other than Illinois.

Declaration for Mental Health Treatment

With a Declaration for Mental Health Treatment, you name a person who you trust to make specific mental health treatment decisions for you. This person is an Attorney-in-Fact, similar to an Agent but with limited authority. Your Attorney-in-Fact will have the legal right and responsibility to make limited mental health treatment decisions concerning: (1) admission for up to 17 days in a mental health facility, (2) psychotropic medication, and (3) electroconvulsive treatment.

An Agent under a Power of Attorney for Health Care may make all the decisions an Attorney-in-Fact may and more. This advance directive is for individuals with specific mental health treatment views.

Do Not Resuscitate (DNR) Orders

A DNR order is a physician's order which may be documented in a medical record or as a separate document executed by the physician and patient. A DNR order means that cardiopulmonary resuscitation (CPR) will not be commenced if your breathing or heart stop.

Talk to Your Doctor About Advance Directives

It is also important that you talk with your doctor. If you name an Agent or Attorney-in-Fact, your doctor may help you better explain your wishes to your Agent or Attorney-in-Fact. If you sign a Living Will, it is especially important for your doctor to understand your wishes. You should give a copy of your Living Will Care, Power of Attorney for Health Care, or Declaration for Mental Health Treatment to your doctor.

Who Decides If You Do Nothing?

If you do not sign a Power of Attorney for Health Care or Living Will, the Health Care Surrogate Act may allow certain persons to make medical and life sustaining treatment decisions without court involvement. This person is called a Surrogate. Also, a guardian may be appointed by the court to make all your health care decisions. Under the surrogate decision-making process, your physician will identify a Surrogate in the order listed below:

1. a court appointed guardian of your person
2. your spouse
3. any of your adult children
4. either one of your parents
5. any of your adult brothers or sisters
6. any of your adult grandchildren
7. one of your close friends
8. a court appointed guardian of your property

However, before the surrogate decision-making process can be used, two requirements must be satisfied:

1. A physician must determine and record in your medical record that you lack decision-making capacity.
2. You do not have an applicable Living Will, Declaration For Mental Health Treatment, or Power of Attorney for Health Care.

If you lack decision-making capacity, then your surrogate may make any medical treatment decision. However, your surrogate may not forgo life-sustaining treatment.

A surrogate may make any treatment decision including life-sustaining treatment decisions when: two physicians agree that you lack decision-making capacity and have at least one of the following: (1) a terminal condition, (2) incurable or irreversible condition or (3) permanent unconsciousness. The law calls any one of these three conditions a **Qualifying Condition**.

No surrogate may make decisions concerning admission to a mental health facility or mental health treatment including psychotropic medication or electroconvulsive therapy. These decisions must be made with court involvement. A surrogate may however petition a court to order any of these forms of care.

The Surrogate is required to make medical and life sustaining treatment decisions in accordance with your wishes. If your wishes are not known, then the Surrogate may make decisions based upon what is in your best interests by taking into account your values, beliefs and religious views.

Talk To Your Lawyer

The purpose of this brochure is to make you aware of your ability to decide now, while you are well, what medical treatment you would like to receive in the event of a tragedy. This brochure does not attempt to discuss all of the legal issues concerning a Power of Attorney for Health Care, a Living Will, Declaration for Mental Health Treatment, or the Health Care Surrogate Act. This brochure may also become outdated if the legislature someday changes the law. Therefore, you may wish to talk to a lawyer before signing a Power of Attorney for Health Care, Living Will, or Declaration for Mental Health Treatment.

Still Consider Naming An Agent

You should still consider naming an Agent under a Power of Attorney for Health Care instead of relying on a Surrogate. First, your Agent can do everything a Surrogate can do and much more. Second, with an Agent you reduce the risk that your wishes will not be carried out because the Agent will be following your written directions. Third, you may prefer someone other than the Surrogate to make these important decisions for you. Fourth, you could end up with several children or several brothers and sisters as Surrogates who may disagree. You can reduce the risk of disagreements between them or court challenges by naming your own Agent.

For more information on Advance Directives including copies of the statutory forms visit the Illinois Department of Public Health website at www.idph.state.il.us/public/books/advin.htm. Some information is available in both English and Spanish.

© Copyright, Illinois State Bar Association