

Q&A Healthcare Power of Attorney

Save Money, Time and Stay in Control

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What is a Healthcare Power of Attorney?

It is a document executed by a competent person (the principal) giving another person (the agent) the authority to assist in making health care decisions or actions for you. This action may happen if you are unable to communicate such decisions yourself or if you merely choose to have assistance in making a decision or taking an action such as signing a contract. For example you may have your Agent discuss treatment options with a specialist.

What is an Advance Directive?

An advance directive is a document in which you give instructions about your health care if, in the future, you cannot speak for yourself. You can give someone you name (your ““patient advocate”” or "agent") the power to make health care decisions for you. You also can give instructions about the kind of health care you do or do not want.

If you cannot make or communicate decisions because of a temporary or permanent illness or injury, the Advance Directive helps you keep control over health care decisions that are important to you. In your Advance Directive, you state your wishes about any aspect of your health care, including decisions about life-sustaining treatment, and choose a person to make and communicate these decisions for you.

What Other Names Do the documents have?

These documents may be referred to as a Healthcare Power of Attorney, a ““Designation of Patient Advocate,””Health Care Advance Directive, an Advance Directive or ““Living Will.””

Is there a difference between a Healthcare Power of Attorney and a Living Will?

If we are speaking about a true ““living will”” then the answer is yes. Technically a Living Will, or Advance Directive, only addresses end of life medical treatment. The Healthcare Power of Attorney is not limited to cases of terminal illness. Whether it is ““immediately effective”” or ““springing”” the document authorizes the Agent to handle any matters that may come up. These may include appeals of insurance coverage denials, making an appointment for a specialist, reviewing complicated medical information with a doctor or hospital.

Why have a Healthcare Power of Attorney?

In case you ever become incapacitated, it is important that someone has the legal authority to communicate your wishes concerning medical treatment. You may want somebody to talk to your doctor or a specialist about your medical treatment plan. Many people say they just don’t understand why the doctor is recommending a particular treatment.

Considering the end of life treatment options, you will want your wishes to be known about whether you should be kept alive by machines. By executing a Healthcare Power of Attorney, you ensure that the directions that you have given your patient advocate will be

carried out in the event you are not able to give instructions.

What if I do not have a Healthcare Power of Attorney?

If you become incapacitated and a serious medical decision must be made, your family will have to go to the probate court and have the judge appoint a “guardian.” This process can be expensive and can take time. In addition, the judge may not appoint the person you would choose. The judge may appoint a stranger, whom you will pay for their service. Finally once you have a guardian you and the guardian will be under the supervision of the probate court.

Who should I appoint as my patient advocate?

Since your patient advocate is going to have the authority to make medical decisions for you in the event you are unable to make such decisions yourself, it should be a family member or friend that you trust will follow your wishes. Before executing a Healthcare Power of Attorney, you should talk to the person you want to name as your patient advocate about your wishes concerning medical decisions, especially life sustaining treatment.

What do I put in a Healthcare Power of Attorney?

First you appoint an Agent who will assist you when you wish. Second, you will give the Agent instructions that state the Agent’s scope of authority.

What should I know about instructions concerning end of life care?

Your instructions to the agent must in a “clear and convincing manner” identify when medical treatment will be withheld. You may not delegate decision making without any guidelines, saying for example “my patient advocate knows my wishes.”

Must my instructions be written?

No. You may give instructions to your Patient Advocate orally. However, if there is any question or disagreement about the instructions you may have to have the probate court issue a court order. For example, two people may recall you saying different things about medical treatment. The Michigan Supreme Court ruled in such a case that when a man said he did not want to be kept alive by machines, he was referring to a coma state. It happened that he had an accident and was kept alive by machines and could not communicate his wishes but he was not in a coma. The court did not allow termination of the medical treatment.

Are there special provisions I should know about?

Yes. Most forms, whether provided by hospitals or by most attorneys, do not address psychiatric treatment or consent to psychotropic medications. A person who has a history

of treatment for mood disorders will want to have an Agent authorized to accept or reject treatment, to accept or reject hospitalization. In addition, thought or mood disorders are a common part of diseases affecting the elderly. Depression is a common complaint. If the document does not specially authorize mental health treatment the Agent has no authority to consent or oppose.

Is it too late if I have a diagnosis of Alzheimer's Disease?

No. The mere diagnosis of any condition that limits a person's ability to make decisions does not remove the person's ability to make legal documents. The legal issue is whether the person has "capacity" to understand what they are doing. For example, can a parent say and understand "I want my daughter to speak to the doctor for me and help me make medical decisions."? If so, then the parent has the "capacity" to appoint her daughter as her agent. It is possible to have the capacity to appoint an agent and not have the capacity to make an advance directive or Living Will instruction about end of life medical treatment. That is why it is very important to take care of the document as soon as possible on the diagnosis of a chronic degenerative condition.

When does a Healthcare Power of Attorney take effect?

The conditions of effectiveness are stated in the document. A Healthcare Power of Attorney may be immediately effective or it may "spring" into effect upon certification of two doctors that you are unable to participate in medical decision making . For example, you may require medical treatment and are unable to communicate your wishes . Your Agent or Patient Advocate would make the necessary decision.

Can I Cancel Or Change A Healthcare Power of Attorney?

Yes, you can cancel or change your Health Care Advance Directive by telling your agent or health care provider in writing of your decision to do so. Destroying all copies of the old one and creating a new one is the best way. Make sure you give a copy of the new one to your physician and anyone else who received the old one.

What if I regain my ability to communicate my own decisions?

You will again make your own decisions as you choose. If the Healthcare Power of Attorney is of the "springing" sort it will have no effect until you are again unable to participate in medical decision making. If your grant of authority is "immediately effective" your document will remain in effect and you will decide when you want your Agent to assist.

Who should have a copy of my Healthcare Power of Attorney?

You should have the original document. Your patient advocate should have a copy and medical office where you receive treatment should have a copy with your medical records.

When does the authority of the Agent Patient Advocate terminate?

Upon revocation, court order of divorce, annulment or separate maintenance, and upon death.

How can I get a Healthcare Power of Attorney?

Contact an attorney who is skilled and experienced in this area. You may get a basic ““Designation of Patient Advocate”” form at most any hospital, nursing home and many other sources. It will not be of immediate effect. It will spring into effect upon the certification of two doctors, as stated above, it will have very general end of life treatment instructions and it will not address mental health issues.