

Questions and Answers about Advance Directives

Why do I need a Power of Attorney for Health Care?

At any age a person can become incapacitated by an unexpected serious accident or illness which causes him or her to be unable to make decisions about health care. This is why it is recommended that anyone over the age of 18 complete an advance directive. Hopefully, this will never happen to you. But in order to be prepared for that possibility, you may designate someone you know and trust to make health care decisions on your behalf. This person is called your "health care agent."

Why can't my spouse or adult child automatically make decisions for me if I don't have an advance directive?

Although some states explicitly recognize the spouse, children, or other relatives as automatic decision-makers when an individual is incapacitated, **Wisconsin does not**. Even though physicians and other health care providers may discuss treatment with relatives, and often take their decisions as consent, this is not explicitly protected by Wisconsin law. If the physician or hospital is unsure about a decision, or if your family disagrees about a decision, and these concerns cannot be resolved, they may have to turn to the courts for guidance.

Do I need a lawyer to complete a valid Power of Attorney for Health Care for myself?

No. You may choose your health care agent and witnesses and complete this form yourself. If you want assistance, consult a lawyer, pastor, social worker, care coordinator, physician, chaplain, or other knowledgeable and trusted person.

When does my health care agent have the right to make health care decisions for me?

Only if you become **incapacitated** and are not able to make these decisions for yourself. Incapacity exists when two physicians or a physician and a licensed psychologist have examined you and sign a statement indicating that **you are unable to receive and evaluate information effectively or to communicate decisions to such an extent that you lack the capacity to manage your health care decisions**. Please note that this document can be deactivated in the event that your condition improves and you are again able to make your own decisions (for example, recovering after a stroke or after an accident that left you in a coma, etc.)

Whom can I choose to be my health care agent?

Select someone with whom you feel comfortable discussing your health care wishes and who can take an active and responsible role in your care if you become incapacitated. A health care agent is someone who: is over the age of 18; knows you well; is calm in a crisis; understands how you would make the decision if you were able; is not afraid to ask questions and advocate to doctors; and can reassure and communicate with your family. This person does **not** have to reside locally to be appointed as your agent. They **do** need to be reachable by phone and ideally, able to get to you in a reasonable time frame. To ensure this, keep phone numbers for your agent(s) up to date.

Your health care agent **may not** be your health care provider (such as your doctor), his/her employee, or an employee of your health care facility (hospital, nursing home, home health care agency), or a spouse of anyone listed above, unless any of the above is also a relative of yours. For example, if your spouse is a nurse, she/he could be your agent.

What if my health care agent is unable or unwilling to serve for me when and if the time comes that I need help?

You may also designate an alternate health care agent to serve if the need arises. If you choose someone younger than you to be either your alternate or your health care agent you increase the likelihood that he or she will survive you.

Can my health care agent make financial decisions for me?

No, not unless you use other forms and procedures to also give this person Power of Attorney for finance for you. You should consult a lawyer to discuss your options regarding financial matters.

What kinds of decisions may my health care agent make?

First, according to Wisconsin Law, your agent can never admit you or commit you to an inpatient facility for mental diseases, an intermediate care facility for mental retardation or a state treatment facility. Your agent can never consent to experimental mental research or psychosurgery, electro-convulsive treatment or other drastic mental health treatment procedures.

Under Wisconsin law there are three areas on the Power of Attorney for Health Care form where you must specifically indicate whether or not you give decision-making **authority** to your health care agent:

- a. Admission to a nursing home or community-based residential facility for a purpose other than recuperative or respite care;
- b. Having a feeding tube withheld or withdrawn;
- c. Health care decisions for women who are pregnant If you check the spaces on the form "no" or omit checking either "yes" or "no," your health care agent will not have the authority to decide these issues for you.

Then, in all other areas your health care agent will be able to make decisions regarding your care. Your agent will also be able to sign a waiver or release of liability required by hospitals or doctors for you to receive treatment. Be sure to discuss your wishes and desires carefully with your agent(s) so they will know how you feel and all of you are comfortable with the decisions to be made.

What should I include in the narrative sections of the form?

These sections are optional to complete. They allow you to state your specific health care wishes to help guide your agent(s). It may help to consider the following topics if you choose to complete the narrative sections of the form:

- Procedures prohibited by your religious beliefs, i.e., abortion or blood transfusions.
- Preferences about doctors, hospitals, nursing homes or home health care.
- Medical or surgical treatments you would permit or not permit, including autopsy.
- Provisions concerning when and how long you would consent to normal nutrition and hydration.
- Provisions for organ donation.
- Special funeral requests.
- Inclusion of a statement describing your desires regarding methods to artificially prolong your life if you have an incurable injury or illness (a Living Will statement.)

After consideration, you may decide to include a statement of your own desires, possibly similar to the following example:

Example No. 1: (Wording similar to a Living Will)

If I ever have an incurable, terminal illness or injury and death is imminent, or if I am in a persistent vegetative state, or if I am in some irreversible state in which I am no longer able to meaningfully interact with other persons, I desire that life-sustaining procedures be withheld or withdrawn and that I be permitted to die naturally, receiving only those medications and procedures which will alleviate pain.

If your desires and wishes require more space, use a separate sheet of paper. On the form include the phrase "See attached provisions." Title the additional paper, "Addendum to the Power of Attorney for Health Care." **Be sure to sign and date the addendum and have it witnessed at the same time as the rest of your document.**

Can my health care agent put me in a nursing home?

Yes, for short-term recuperative or respite care. There is a place on the form to indicate whether or not you wish to give your health care agent the authority to admit you for a longer stay. If you check "no" or leave this blank, it may become necessary for your family member(s) to go to court to obtain guardianship/protective placement in order to admit you to a nursing home should that need ever arise.

Can they take food away from me?

Not if you are able to eat normally by mouth. However, should you ever become so incapacitated that you are being fed by tubes in your veins or stomach, your health care agent may withhold or withdraw these tubes if you checked "yes" for authorization on the form, and if your physician advises that this will not cause you pain. Even if you check "yes," your agent will probably have tube feedings continued in situations where your physician believes these feedings are necessary and appropriate.

What if I am pregnant?

Indicate on your power of attorney for health care form whether or not you permit your health care agent to make health care decisions for you while you are pregnant.

Who can sign as my witnesses on this document?

Any adult (18 years or older) who knows you personally and believes you are an adult of sound mind and are completing this document voluntarily. However, you **may not** choose the following persons to sign as your witness:

- a. Someone related to you by blood, marriage, or adoption.
- b. Your health care provider (doctor, nurse, psychologist, etc.). (The hospital's chaplains and social workers may witness your document.)
- c. Your health care agent.
- d. Anyone who will benefit financially from your death.
- e. Persons who are directly financially responsible for your health care.

What is the difference between a "Living Will" (declaration to a physician) and a "Power of Attorney for Health Care?"

The Wisconsin Living Will is a declaration to your physician that goes into effect in the event two physicians certify that you have a terminal illness or injury and that your death is imminent and/or you are in a persistent vegetative state. It states that you want life-sustaining procedures withheld or withdrawn so that you may die naturally. If you become incapacitated but not terminal, or persistently vegetative, the Living Will does not apply.

A Power of Attorney for Health Care differs from a Living Will by: 1) permitting you to designate someone whom you know and trust to make health care decisions for you should you ever become incapacitated; and 2) covering a wide variety of health care decision; whereas, the Living Will focuses only on your wishes for no life prolongation when you are terminal or in a persistent vegetative state.

Should I have both a "Living Will" and a "Power of Attorney" for Health Care?

You do not need both forms. You may include a statement in the Power of Attorney form in the section "Statement of Desires, Special Provisions or Limitations" that addresses your wishes not to have your dying artificially prolonged if you have an incurable injury or illness.

A Power of Attorney for Health Care does supersede a valid Wisconsin "Living Will" if executed after December 11, 1991. Therefore, if you do have both, you should make certain that they are in agreement.

Where should I keep my Power of Attorney for Health Care document after it is completed?

Photocopies and facsimile copies are legally valid. It is suggested that you have copies made and distribute them as follows:

- a. Keep the original
- b. Copy to your physician(s).
- c. Copies to your health care agent and alternate agent(s).
- d. Copy to any facility where you receive medical care (clinic or hospital)

Can I change my mind about all of this?

This document can be cancelled at any time while you are capable of making decisions. Simply destroy the document and notify your health care agent(s) in writing of the revocation. This notice should be signed, dated, and distributed to everyone who received copies of the original document.

If your agent is your spouse, the document is automatically revoked upon divorce or annulment of the marriage. If you execute a new form, the prior one is revoked. Copies of the new document should be given to everyone who received the previous document, and you should request that they destroy the earlier document.

When does the Power of Attorney for Health Care expire?

Once signed and witnessed appropriately, it will be a legal document, eligible to be activated by two physicians when needed, unless you designate an expiration date or complete a new document. It is recommended that you review your advance directive every 5 to 10 years or if there is a significant change in your life. Think of the “five D’s” as a guide: Decade, Death of a loved one, Divorce, Diagnosis, Decline.

Is this Power of Attorney for Health Care recognized in other states?

This document only applies in Wisconsin, although some other states have similar legislation. Health care providers in other states may or may not honor this document. It is important for you to make your wishes known to family and friends so they can communicate this information to a health care provider anywhere in the event that you are unable to do so.

What if I am hospitalized?

When you are admitted to the hospital, you will be asked whether or not you have a Power of Attorney for Health Care. If you do, you will be asked to bring a copy to the hospital so that it can be included in your medical file. If you should become incapacitated while in the hospital, your document will provide direction to health care providers to notify your health care agent and to consult with him or her regarding your medical decisions.

Would I need both a Power of Attorney for Health Care and a DNR order/bracelet?

You will need both if you meet the qualifying medical conditions and wish no CPR be administered to you by first responders, EMT(s), and emergency health care facilities.

What is a Pre-Hospital Do Not Resuscitate order and bracelet?

In Wisconsin you can obtain a Pre-Hospital Do Not Resuscitate (DNR) order and bracelet from your attending physician if you meet "qualifying criteria." This DNR order and bracelet directs emergency medical technicians, first responders and emergency health care facility personnel not to attempt cardiopulmonary resuscitation (CPR) on you if you suffer cardiac or respiratory arrest. This is not the same as checking “no” to CPR on your advance directive. Having a DNR order and bracelet does not mean that emergency services will not be provided.

Emergency provider as appropriate will provide:	Emergency provider will NOT:
<ul style="list-style-type: none">• Clear airway• Administer oxygen• Position for comfort• Splint• Control bleeding• Provide pain medication• Provide emotional support• Contact hospice or home health agency if either has been involved in patient’s care, or patient’s attending physician	<ul style="list-style-type: none">• Perform chest compressions• Insert advanced airways• Administer cardiac resuscitation drugs• Provide ventilator assistance• defibrillate

What are the qualifying criteria for a DNR order/bracelet?

To qualify, the person must be someone who is 18 years or older and whom the physician does not know to be pregnant. The person must also be:

- terminally ill;
- have a medical condition that were the person to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful in restoring cardiac or respiratory function or the person would experience repeated cardiac or pulmonary failure within a short period before death occurs;
- or have a medical condition that, were the person to suffer cardiac or pulmonary failure, resuscitating that person would cause significant pain or harm that would outweigh the possibility that resuscitation would successfully restore cardiac or respiratory function for an indefinite period of time.

An attending physician may issue a do-not-resuscitate order only if the patient meets the above criteria, the patient (or an incapacitated patient's guardian or health care agent) requests the order, the order is in writing, the patient (or incapacitated patient's guardian or health care agent) signs the order and the physician does not know the patient to be pregnant. In addition, the physician, or a person directed by the physician, must provide the patient (or incapacitated patient's guardian or health care agent) with written information about the resuscitation procedures the patient (or incapacitated patient's guardian or health care agent) has chosen to forego and methods by which the do-not-resuscitate order may be revoked.

What if I feel my loved one's Advance Directive has not been honored?

You may meet with a member of the hospital's Ethics Committee to discuss your concerns. If you still feel your loved one's Advance Directive has not been honored, please call the State of Wisconsin Department of Health and Social Service's Bureau of Quality Assurance, 1-608-267-1443.

If you do not have an advance directive and you are injured and incapacitated, a guardianship may be required to allow another to make decisions for you. A guardianship takes place *after* a person has reached a point when they are not able to make decisions and decisions need to be made. A Living Will or POA-HC is a statement of your wishes that you complete *in advance* and used later if you become unable to communicate your wishes. When you complete an advance directive, you are appointing someone you know and trust. With guardianship, a judge appoints a guardian who may or may not be the person you would have chosen to make decisions for you.

It is very important that you share and discuss your advance directive with your family and friends as well as your agent. It's important for them to know the thought process that went into your choices so that if and when a decision needs to be made, the person with the responsibility to make the decision (your agent), is supported by your family and friends and not questioned and doubted.

Talk With Your Healthcare Agent About Your Wishes

Explain what you are asking of them and talk about why you picked them. Your healthcare agent needs to know about the quality of life that is important to you and when and what medical treatments you would want.

Talking to your agent means discussing values and quality-of-life issues as well as treatments and medical situations. Because situations could occur that you might not anticipate, your agent may need to base a decision on what he or she knows about your values and your views of what makes life worth living. These are not simple questions, and your views may change. For this reason, you need to talk to your agent in depth and over time.