

Living Wills & Power of Attorney for Healthcare

Planning Ahead:
How to plan for future healthcare
decisions now.



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Prepared by the Legal Department of the
Illinois Hospital Association.

Illinois Hospital Association
The Center for Health Affairs
1151 East Warrenville Road, PO Box 3015
Naperville, IL 60566
708 505-7777

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Who will make decisions concerning your healthcare if you are no longer able to – your spouse, your child, a close friend, a court-appointed guardian? When these decisions are made, how can you be sure that your wishes will be known and followed? Life comes at us fast. You need to be ready.

Documents known as advance directives allow you to answer these questions. Illinois law recognizes two types of advance directives – the Power of Attorney for Health Care, and the Living Will.

A Power of Attorney for Health Care permits you to name someone to make healthcare decisions for you if you are unable to do so. By designating someone you trust to act on your behalf, you are able to influence decisions concerning your medical care and treatment. It gives your wishes a voice. A Living Will allows you to state in advance what types of medical treatment you do or do not desire in case you are unable to communicate them. It is a good reference document but does not give your wishes a voice.

This booklet is designed to answer frequently asked questions about Powers of Attorney for Health Care and Living Wills. However, this information is not intended to replace or serve as legal advice. You are encouraged to consult your attorney regarding any specific questions on Power of Attorney for Health Care or Living Wills.

Another document that you should consider completing is the Power of Attorney for Finances. This document allows a person of your choice to manage your finances should you become unable to do so for yourself. You should consult with your attorney about signing a document for a financial surrogate.

Powers of Attorney (POA) for Health Care

What is a power of attorney for health care?

A Power of Attorney for Health Care is a document you sign authorizing another person, called an agent, to make healthcare decisions on your behalf.

In 1987, Illinois enacted the Power of Attorney for Health Care Law. This law contains a Power of Attorney for Health Care form that you may use (the Statutory Form) and specifies the requirements that apply to the use of such Powers.

Why should I have a Power of Attorney for Health Care?

By signing a Power of Attorney for Health Care your agent can immediately make healthcare decisions for you without first having to obtain court approval.

If you become unable to make your own healthcare decisions and do not have a Power of Attorney for Health Care, it may be necessary for a court to appoint a guardian for you. This means that there will first have to be a hearing to establish that you are unable to make your own healthcare decisions. This involves paying a physician's fees for examinations, and, in some cases, court appearances, as well as fees for legal services for the guardian's attorney. In addition, the court may appoint another attorney, called a guardian ad litem, to represent you in the guardianship proceedings.

What are the advantages of a Power of Attorney for Health Care over a Guardianship?

A Power of Attorney for Health Care has several advantages over a guardianship, including the following:

- **Identity of Guardian:** With a Power of Attorney for Health Care you can designate your own agent. If a court appoints a guardian, it may not be who you have selected.
- **Wishes of the Person Unable to Make Decision or Deemed by the Court to be Incompetent to Make Decisions:** A Power of Attorney for Health Care can indicate how you wish your agent to act. A guardian appointed by a court may not know or be inclined to follow your wishes.
- **Speed:** Under a Power of Attorney for Health Care your agent can act immediately upon your becoming unable to make your own decisions. Guardianship proceedings, which require court decisions, are often subject to delays.
- **Expenses:** As described above, guardianships can be expensive because of the costs associated with the court process. A Power of Attorney for Health Care requires no expenses unless you want to discuss it with an attorney.

Who may create a Power of Attorney for Health Care?

In Illinois, any competent person at least 18 years old may execute a Power of Attorney for Health Care. Also, parents may execute a Power of Attorney for Health Care naming an agent to direct the treatment of their child, whether temporarily or permanently – usually due to living arrangements or even separations for work or pleasure trips.

Who can act as an agent?

Any person who is at least 18 years old, who has not been declared incompetent, and who is able to give intelligent consideration to healthcare matters may act as a healthcare agent.

However, neither your personal physician nor any other healthcare provider (such as a nurse) that is providing healthcare to you may act as your healthcare agent. In the event of a healthcare emergency, two physicians in agreement can act and grant permission for immediate lifesaving interventions.

What happens if the person I appoint dies or is unavailable or unable to serve as my agent?

The Statutory Form Power of Attorney for Health Care permits you to name successor agents who may step in and make decisions if your first choice is unable to act. However, you may not have more than one person serving as your agent at the same time. Successor agents should be designated in the order of preference on your POA form.

How do I execute a Power of Attorney for Health Care?

The surest way of having your wishes followed is to complete and sign the Illinois Statutory Short Form Power of Attorney for Health Care. The Statutory Form requires one witness to also sign the form. The advantage to using the Statutory Form is that since it is contained in the law, healthcare providers are more willing to follow the decisions of the agent named in the form.

What are the powers of an agent under a Power of Attorney for Health Care?

In general, your agent may make any healthcare decision that you would make if you were able. However, you can limit your agent's powers or provide your agent with special instructions by clearly stating them in your Power of Attorney for Health Care.

Unless your Power of Attorney for Health Care provides otherwise, your agent may do or order that the following be done for you:

- Implement or discontinue all types of medical care, including medication, surgery, life-support systems, and the providing of artificial nutrition and hydration.
- Have you admitted to or discharged from any medical facility or healthcare institution based on your physician's directives.
- Contract for healthcare services.
- Obtain and disclose your medical records.
- Direct that an autopsy be made, donate all or part of your body based on the wishes you have discussed with him/her.
- Sign documents and do whatever is reasonably necessary to carry out the above powers.

Will my agent be held liable for my healthcare costs?

Your agent cannot be held personally responsible for the cost of healthcare services and treatment that he or she contracts on your behalf.

How do I tell my wishes with respect to life-sustaining treatments?

Since the withholding of life-sustaining treatment is an issue of particular importance, you should discuss your wishes with your agent personally and make sure he or she clearly understands your wishes.

Section two of the Statutory Short Form Power of Attorney for Health Care addresses the issue of life-sustaining treatment. Essentially, there are five ways in which you may complete this section of the Statutory Form.

First, you may leave this section completely blank. To do this you would neither write in any specific instructions to your agent nor initial any of the three optional statements printed on the form. If you leave this section completely blank, this gives your agent the *broadest flexibility* with respect to decisions to withhold or withdraw life-sustaining treatment.

Secondly, you can complete section two the Statutory Form by writing your own instructions to your agent.

Third, you may select one of the three optional statements that are pre-printed in section two of the Statutory Form. Please note that these pre-printed statements are optional and that you are not required to select any of the statements. Again, only one of these statements may be selected.

The first optional statement on the Statutory Form directs your agent not to have your life prolonged through life-sustaining treatment if your agent believes the burdens of treatment outweigh the expected benefits. Your agent is to consider the relief of suffering, expense of the treatment, and the quality of life, as well as possible complications. Of the three pre-printed statements on the Statutory Form, this one provides your agent with the *greatest flexibility* with respect to withholding life-sustaining treatment.

The second optional statement directs your agent to prolong your life through life-sustaining treatment unless you are in a coma that your physician believes to be irreversible, in which case life-sustaining treatment is to be withheld or discontinued.

The third optional statement directs your agent to prolong your life to the greatest extent possible without regard to your condition, changes of recovery, or cost of the procedures.

What duties does my agent have under a Power of Attorney for Health Care?

You and your agent are responsible for notifying healthcare providers of your Power of Attorney for Health Care and its amendments or revocation. In carrying out his or her powers, your agent must act reasonably and in accordance with the terms of the Power.

May my agent delegate powers granted under a Power of Attorney for Health Care?

Your agent cannot delegate the authority to make healthcare decisions to someone else – that decision is yours alone and can be done by naming as many successor agents as you feel you need in order to be prepared.

Are healthcare providers and third parties protected in dealing with my agent under a Power of Attorney for Health Care?

A provider or third person who acts in good faith on a direction from your agent under a Power of Attorney for Health Care is protected to the same extent as if the provider had dealt with you as a legally competent person unless the direction taken is clearly contrary to the terms of your wishes noted on the POA form.

What happens if I name my spouse as my agent and we are later divorced?

If you name your spouse as your agent and you are later separated or divorced, your spouse will no longer have authority to act under the Power of Attorney for Health Care unless it is your specific written wish that the individual is to continue to serve as your surrogate healthcare decision maker.

Anytime you change your wishes related to a surrogate decision maker, you should retrieve and destroy all copies of the form and replace them with your more current directives on a new form. This is important not only on a separation or divorce, but for any change in your agent selection.

Living Wills

What is a Living Will?

A Living Will, also called a “declaration,” is a document you may sign stating you do not want death-delaying procedures used if you develop a terminal condition. Essentially, it is a direction you are leaving your physician saying that if you develop a terminal condition you do not want certain procedures used.

In 1983, Illinois enacted the Illinois Living Will Act. This law contains a Living Will form that you may use and specifies the requirements that apply to such forms.

Who may execute a Living Will?

In Illinois, any competent person at least 18 years old may execute a Living Will.

How do I create a Living Will?

The surest way to have your wishes followed is to execute the Living Will Declaration that is contained in the Illinois Living Will Act. By using the form contained in the law, there is less of a chance to healthcare providers questioning it. The Living Will must be signed by you, or another person at your direction, in the presence of two witnesses at least 18 years old.

Who can witness the signing of my Living Will?

A witness must be a person at least 18 years old who is neither entitled to a portion of your estate, nor financially responsible for your medical care.

When does a Living Will take effect?

A Living Will does not take effect until you have a terminal condition as certified by your physician.

What is a terminal condition?

A terminal condition is an incurable and irreversible condition, such that death is imminent and the use of death-delaying procedures serves only to prolong the dying process.

What is a death-delaying procedure?

A death-delaying procedure is any medical procedure or intervention which, in the judgment of the attending physician, would serve only to postpone the moment of death.

In appropriate circumstances, death-delaying procedures may include assisted ventilation, kidney dialysis, intravenous feeding or medication, blood transfusions, tube feedings and other procedures that serve only to delay death.

If I have a Living Will, can I still receive pain medication?

A Living Will does not prevent your provider from providing you with pain medication or providing other treatment to make you comfortable.

What happens if I have a Living Will and I am pregnant and have a terminal illness?

A Living Will has no effect during pregnancy so long as the attending physician believes the fetus could develop to the point of live birth with the use of death-delaying procedures for the pregnant mother.

Questions Concerning both Living Wills and Powers of Attorney for Health Care

How does a Power of Attorney for Health Care differ from a Living Will?

A Power of Attorney for Health Care is much broader than a Living Will. A Living Will is a short form stating that you do not want life-sustaining treatment used if you develop a terminal illness. A Power of Attorney for Health Care, on the other hand, is not limited to situations where you have a terminal illness. It allows you to designate an agent to make healthcare decisions for you in any situation where you are unable to do so. A Power of Attorney for Health Care also permits you to leave specific directions for your agent to follow when making decisions regarding your healthcare treatment.

Should I have a Living Will as well as a Power of Attorney for Health Care?

If you wish not to be kept alive by life-sustaining treatment, you might consider signing a Living Will as well as a Power of Attorney for Health Care for the following reasons.

First, the Living Will reinforces the intent expressed in your Power of Attorney for Health Care. Second, your agent under a Power of Attorney for Health Care may be deceased, unavailable, or unwilling to act when healthcare decisions must be made. Third, most states (including Illinois) have statutes authorizing Living Wills, but many states do not provide for Powers of Attorney for Health Care. Your agent under a Power of Attorney for Health Care may have difficulty in having it recognized should you be hospitalized in

a state other than Illinois, and the Living Will may be helpful in implementing your wishes in those states where you might be traveling.

Finally, your Living Will does not take effect so long as your agent under a Power of Attorney for Health Care is available and willing to deal with life-sustaining treatment decisions. In summary, there are times when having both could be an advantage to you and/or your chosen agent(s).

Must hospitals and physicians honor my Living Will and Power of Attorney for Health Care?

Illinois law requires hospital, physicians, and other healthcare providers, who you furnish with a copy of your Power of Attorney for Health Care, to make it a part of your medical records. Similarly, physicians are required to make your Living Will part of your medical record when you give it to him/her.

In general, providers must comply with a healthcare decision of an agent under a Power of Attorney for Health Care or the directions stated in a Living Will unless they are morally opposed following the directions. If the provider is unwilling to comply, the provider must inform you or your agent who is then responsible for arranging the transfer of your care to another provider. Note that hospitals and healthcare providers in other states may or may not honor your Living Will or Power of Attorney for Health Care depending upon the law of the particular state.

For how long is my Living Will and Power of Attorney for Health Care effective?

Technically, your Living Will and/or Power of Attorney for Health Care remain valid until they are revoked. However, it is recommended that you sign a new form every two to three

years, since healthcare providers are more likely to honor a recently signed Living Will or Power of Attorney for Health Care document.

What should I do with my signed Power of Attorney for Health Care and Living Will?

Copies of your Living Will and/or Power of Attorney for Health Care should be given to the persons you have named as agents under the Power, as well as your physician, hospital, family and friends. You should discuss your wishes about medical care and particularly life-sustaining treatment with your agent, family and physician.

In case of an emergency, how will a hospital know that I have a Living Will or who my healthcare agent is?

To help a hospital in contacting your healthcare agent or locating your Living Will in the event of an emergency, you should note the presence of a Power of Attorney for Health Care/Living Will in your wallet or purse including the location of a copy.

Can I revoke or change my Power of Attorney for Health Care or my Living Will?

Your Living Will or Power of Attorney for Health Care can be revoked at any time, without regard to your physical or mental condition, in any of the following ways:

- By tearing it up or otherwise destroying it in a manner indicating your intention to revoke it; or
- By revoking it in writing, and having the written revocation signed and dated by you or a person acting at your direction; or

- By expressing (orally or otherwise) your intent to revoke it in the presence of a witness at least 18 years old who signs and dates a writing confirming that such an expression of intent was made.

You or your agent must then tell your physician and other healthcare providers of the revocation. Tell everyone you originally gave a copy to or the last time you updated it.

Your Power of Attorney for Health Care can be changed at any time by a written amendment signed and dated by you or a person acting at your direction. To amend your Living Will, you should revoke the current form and sign a new one.

Also, a court may intervene to revoke or amend your Living Will or Power of Attorney for Health Care if it believes clarification is needed or if your agent is not acting in your best interest.

Healthcare professionals will look at the dates of all existing documents/copies and follow your wishes noted on the most recently dated version/copy.

Where may I obtain a Living Will and Statutory Form Power of Attorney for Health Care?

A Living Will and Statutory Form Power of Attorney for Health Care may be available from the following sources:

Your attorney;

Your local hospital: at Sarah Bush Lincoln
Case Management and/or Admitting

The Illinois Department on Aging
421 East Capital Avenue, Springfield, Illinois 62701
1-800-252-8966; or

The Illinois Attorney General's Office
500 South Second Street, Springfield, Illinois 62706
1-800-252-2518

Organ Donation

Legislation that became effective January 1, 2006, created a new First-Person Consent Organ/Tissue Donor Registry which made an individual's decision to be a donor legally binding. It revoked the earlier requirement for permission to also be granted by an additional witness or family member. This change has decreased the time to verify donor wishes and gives a voice to donor's wishes independent of agreement by a second party.

In Illinois, persons under the age of 18 still require family consent in addition to personal preference before donation can occur. Because those under 18 will not be eligible to join the new registry, please encourage them to discuss their wishes about organ/tissue donation with family members and to join the registry when they turn 18.

There are three easy ways to join the registry:

1. Visit www.LifeGoesOn.com
2. Call the Secretary of State Organ/Tissue Donor Program at 1-800-210-2106.
3. Visit any Drivers Services facility

There is no cost to a donor's family for removal of organs, nor do they receive any monetary compensation. Consent may be withdrawn from the registry at any time by notifying the Secretary of State's office.

Illinois procurement agencies provide support for donor families by:

1. Accessing the registry to verify a person's declared intent to donate
2. Explaining the donation process to a donor's family, answering questions and providing support
3. Asking family/friends for the donor's medical and social history to help determine which organs/tissues are appropriate to be transplanted
4. Asking family members whether they wish to receive follow-up information about the recipients of the organs/tissue of their family member

Health Care Surrogate Act Revised, 2007

If no advance directive has been executed or for some reason does not apply, the law now provides a mechanism for a surrogate to make medical treatment decisions and life sustaining decisions on the behalf of a qualified person. The Illinois Health Care Surrogate Act provides a process that allows a surrogate selected from the statutory list to make decisions regarding forgoing of any medical treatment, including life-sustaining treatment and most types of routine medical treatment decisions, on behalf of a person that cannot make decisions for him/herself. A qualifying condition is needed for those decisions involving life-sustaining treatment and can be any one of the following three: a terminal condition, permanent unconsciousness, or an incurable or irreversible condition. Such decisions are to be made based on

what the patient would have done under the circumstances, if possible. If it is not possible to learn what the person would have wanted, then the decision should be based on what is in the person's best interest.

Priority List (in order top to bottom)

Guardian of the patient

The patient's spouse

Adult son or daughter of the patient

Either parent of the patient

Any adult brother or sister of the patient

Any adult grandchild of the patient

Close friend (defined in statute) of the patient

Guardian of the estate for the patient

Please contact Sarah Bush Lincoln Case Management for further information and assistance: **217-258-2392**.



1000 Health Center Drive
Mattoon, IL 61938
217-258-2525

www.sarahbush.org