

Giving Someone a Power of Attorney For Your Health Care

A Guide with an Easy-to-Use, Legal Form for All Adults



Prepared by

The Commission on Law and Aging
American Bar Association



This publication was produced by the Commission on Law and Aging, American Bar Association.

The mission of the ABA Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders. It carries out this mission through research, policy development, technical assistance, advocacy, education, and training. This publication provides information and tools individuals may use in preparing their own health care power of attorney. See: www.americanbar.org/aging

The ABA gratefully acknowledges the Archstone Foundation and the California HealthCare Foundation for their funding of this publication. See:

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Giving Someone a Power of Attorney For Your Health Care

The form in this guide is a simple version of a Health Care Advance Directive. It allows you to choose someone to make health care decisions for you if you can't. If you name a health care agent when you are healthy, you will make sure that someone you trust can make health care decisions for you if you become too ill or injured to make them yourself.

To properly use the form, you must do 3 things:

1

Think carefully about the person you may choose to be your health care agent.

2

Think about what guidance you want to give your health care agent in making treatment decisions for you. Then talk about your decisions.

3

Fill out the form, *A Power of Attorney for My Health Care*, and follow the instructions for signing it in the presence of 2 witnesses.

Before you start, read this.

Can you use this form?

Generally, you can use this form wherever you live in the U.S. to name a health care agent or proxy. However, in some states you cannot use this form.

Some states do not permit people to use a universal form. So, you cannot use this form if you live in:

- Indiana
- New Hampshire
- Ohio
- Texas
- Wisconsin

Some states have special requirements for witnesses in certain care facilities. So, you should not use this form if you live in a nursing home or any other care facility in:

- California
- Connecticut
- Delaware
- New York
- Vermont

But if you do not live in a nursing home or other care facility in these states, you can use this form.

1

Think carefully about the person you may choose to be your health care agent.

Your *health care agent* — or *agent*, for short — will have the authority to make life and death decisions for you according to your wishes. Make sure that the person you pick is willing to be your agent.



When you ask someone to be your health care agent, you should think about several things. For example, usually it is best to name one person as your first choice. Then choose at least one back-up agent, in case the first person is not available when needed.

Here are some other tips for choosing an agent:

Choose a person who comes closest to meeting all these qualifications.

Choose someone who meets the legal requirements to act as an agent. (Some states call an agent a *proxy* or *representative*.)

State requirements differ greatly, so to meet the combined requirements of every state, your health care agent should be an adult who is of sound mind, and NOT anyone in the following list:

- DO NOT choose your health care providers or the owner or operator of a health or residential care facility that is currently serving you.
- DO NOT choose a spouse, employee, or spouse of an employee of your health care providers.
- DO NOT choose anyone who professionally evaluates your capacity to make decisions.
- DO NOT choose anyone who works for a government agency that is financially responsible for your care (unless that person is a blood relative).
- DO NOT choose anyone that a court has already appointed to be your guardian or conservator.
- DO NOT choose anyone who already serves as a health care agent for 10 or more people.

Choose someone who will talk with you now about your wishes, who will understand what you want and your priorities about health care, and who will do as you ask faithfully when the time comes.

Choose someone who lives near you or could travel to be with you, if needed.

Choose someone you trust with your life.

Choose someone who can handle conflicting opinions from family members, friends, and medical personnel.

Choose someone who can be a strong advocate for you if a doctor or institution is unresponsive.

Once you have decided whom you would like to serve as your health care agents and they have agreed, involve them in step 2. You may also want to give them a guide that explains what it means to be a health care

agent. One guide is *Making Medical Decisions for Someone Else: A How To Guide*, available free at: Ambar.org/AgingProxyGuide.

2

Think about what guidance you want to give your health care agent in making treatment decisions for you. Then talk about your decisions.

Talking about what you want is very important because your agent must try to make decisions the way you would.



Have a real conversation with your agent and with anyone else who could be involved in your care if you were seriously ill. This is not easy to do, so it is best to use resources to sharpen your thinking and to help guide you through the conversation.

The important thing — along with completing the form *A Power of Attorney for My Health Care* — is to have a serious conversation about end-of-life care with your agent and with anyone else who could be involved in your care if you were seriously ill. This process is called *advance care planning*.

To help make this difficult task easier, try using one of the guides listed on the right. They all aim to help you clarify what is important to you about your health care, what your current goals for your health care are, and what values and priorities you would want your agent to follow in making decisions for you. Plus, they create a record that you can refer to and change as your circumstances change.

You don't have to spell out specific medical treatments that you want or don't want. In fact, that is usually a bad idea to try to do, unless you are facing a situation now in which you need to decide about a specific plan of care. Even though the distant future is unpredictable for most of us, who we are as a person remains fairly stable.

Here are three free resources you should consider:

- ***Consumer's Tool Kit for Health Care Advance Planning***, by the ABA Commission on Law and Aging. Go to:
Ambar.org/AgingToolkit
- ***Caring Conversations Workbook***, published by the Center for Practical Bioethics. Go to:
www.practicalbioethics.org/cpb.aspx?pgID=986
- ***Advance Care Planning Conversation Guide***, plus other resources from the Coalition for Compassionate Care of California. Go to:
<http://www.coalitionccc.org/advance-health-planning.php>

Many other resources are available for free or for modest cost. **Go to the ABA Resource page:**

Ambar.org/AgingAdvancePlanning

3

Fill out the form and follow the instructions for signing it in the presence of 2 witnesses.

Although this guide gives you space to add anything that is really important to you, it is better to use one of the help guides to fully talk about your wishes and goals.



The form in this guide combines the many different state legal requirements into a “universal” legal form that is intended to meet the basic requirements in most states. However, since the requirements for four states do not fit within the guidelines of this form, you cannot use the form if you live in: Indiana, New Hampshire, Ohio, Texas, and Wisconsin.

Because state rules differ, this form combines all the state requirements for who can be your agent and who can be a witness. It should be easy to meet all of the requirements if you follow the instructions carefully.

The form has space so you can add any special instructions or limitations you wish to include. But remember, this form is a basic Health Care Power of Attorney. It is not meant for a lengthy statement of your wishes and preferences.

But everyone is different. You may want to have more detailed instructions in your health care directive. If you do, other forms include more detail.

Go to the ABA resource page:

Ambar.org/AgingAdvancePlanning

You can also use a form that is written just for your own state. For links to state-specific forms, go to:

Ambar.org/AgingStateForms

Remember, you should discuss your wishes and priorities directly with your agent and with others who are close to you. Use any of the resources mentioned previously to clarify and communicate your wishes.

Now what?

After you fill out your form, *A Power of Attorney for My Health Care*, give a copy to your agents and health care providers.

Then, in the future ...

If you want to cancel or change your document, the rules for how to do that depend on where you live. The safest way to do it — which will be valid everywhere — is to complete and sign a new form, destroy all copies of the old form that you have, and tell anyone else who has a copy that you’ve revoked the old form.

A Power of Attorney for My Health Care

— A Simple Health Care Advance Directive

My name is: _____ Today's date ____/____/____
First Middle Last Month / Day / Year

I am completing this form in: _____ My birthdate ____/____/____
State Month / Day / Year

Part 1: Who Will Be Your Health Care Agent?

Choose someone who is an adult of sound mind.

Do **not** choose anyone who:

- Provides health care to you, including an owner or operator of any health care facility that currently serves you (for example, a hospital, nursing home, residential or other community care facility).
- Is a spouse, employee, or spouse of an employee of your health care provider.
- Professionally evaluates your capacity to make decisions.
- Works for a government agency that is financially responsible for your care (unless that person is a blood relative).
- Has already been appointed by a court to be your guardian or conservator.
- Already serves as a health care agent for 10 or more people.

My agent's name _____
First Middle Last

Address _____
Number Street

City State ZIP Code

Daytime phone (____) _____ - _____

Other phone (____) _____ - _____

Email _____

Part 2: Do You Want to Choose Back-Up Agents?

You do not have to name back-up agents, but it's a good idea to do so. If you trust one or two people who would be willing and able to act for you if your first agent can't, name them. They must meet the same requirements listed in *Part 1: Who Will Be Your Health Care Agent?*

If my first agent is unwilling or unable to act for any reason, then my next choice is:

1st Back-up agent _____
First Middle Last

Address _____
Number Street

City State ZIP Code

Daytime phone (____) _____-_____

Other phone (____) _____-_____

Email _____

If the first two agents are not willing or able to act for any reason, then my next choice is:

2nd Back-up agent _____
First Middle Last

Address _____
Number Street

City State ZIP Code

Daytime phone (____) _____-_____

Other phone (____) _____-_____

Email _____

Part 3: What Will Your Agent's Powers Be?

Part 3 gives your agent broad authority to make all health care decisions for you. Some states may limit your agent's authority.

This form gives your agent authority that is as broad as possible, even over life and death decisions. Some states require physicians to certify certain diagnoses before your agent can make some decisions.

This first power is very important. To clearly confirm your agent's authority over decisions about life support and artificially supplied nutrition and hydration, write in your initials here:



If you decide to limit your agent's authority, simply **cross out any paragraph you don't like and initial it**, or write any limitation on the next page in *Part 4: Do You Have Special Instructions or Limitations for Your Agent?*

My agent knows my goals and wishes based on our conversations and on any other guidance I may have written. My agent has full authority to make decisions for me about my health care according to my goals and wishes. If the choice I would make is unclear, then my agent will decide based on what he or she believes to be in my best interests. My agent's authority to interpret my wishes is intended to be as broad as possible, and includes the following authority:

1. To agree to, refuse, or withdraw consent to any type of medical care, treatment, surgical procedures, tests, or medications. **This includes decisions about using mechanical or other procedures that affect any bodily function, such as artificial respiration, artificially supplied nutrition and hydration (that is, tube feeding), cardiopulmonary resuscitation, or other forms of medical support, even if deciding to stop or withhold treatment could or would result in my death;**
2. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose health information to others;
3. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted-living or similar facility or service;
4. To contract for any health care-related service or facility for me, or apply for public or private health care benefits, with the understanding that my agent is not personally financially responsible for those contracts;
5. To hire and fire medical, social service, and other support personnel who are responsible for my care;
6. To authorize my participation in medical research related to my medical condition;
7. To agree to or refuse using any medication or procedure intended to relieve pain or discomfort, even though that use may lead to physical damage or dependence or hasten (but not intentionally cause) my death;
8. To decide about organ and tissue donations, autopsy, and the disposition of my remains as the law permits;
9. To take any other action necessary to do what I authorize here, including signing waivers or other documents, pursuing any dispute resolution process, or taking legal action in my name.

Part 4: Do You Have Special Instructions or Limitations for Your Agent?

Use this space to add anything really important that you want in this document. If you need more space, attach a sheet to this form. Consider using one of the resources described in step 2 to help clarify and communicate your wishes to your agent and others.

Part 5: When Will This Power Be Effective?

Part 5 provides a very simple procedure for making your Power of Attorney for Health Care go into effect. Note that some states have a required procedure for certifying someone's incapacity to make decisions, and those provisions may override this provision.

This Power of Attorney for My Health Care will become effective during any time in which, in the opinion of my agent and attending physician, I am unable to make or communicate a choice about a particular health care decision.

Part 6: Other Provisions

These administrative provisions help implement this document. Read them and make sure you understand them.

- Health care providers can rely on my agent. No one who relies in good faith on any representations by my agent or back-up agent will be liable to me, my estate, my heirs or assigns, for recognizing the agent's authority.
- I cancel any previous power of attorney for health care that I may have signed.
- I intend this power of attorney to be universal; it is valid in any jurisdiction in which it is presented.
- I intend that copies of this document are as effective as the original.
- My agent will not be entitled to compensation for services performed under this power of attorney, but he or she will be entitled to reimbursement for all reasonable expenses that result from carrying out any provision of this power of attorney.

Part 7: Sign Here

Sign and date this form in front of two witnesses who meet the qualifications listed on the next page and who actually see you sign the document. The list of people who should NOT be your witness is long because it represents all of the different state requirements.

Four states require that the form be notarized and witnessed: Missouri, North Carolina, South Carolina, and West Virginia.

I understand the contents of this document and the effect of granting powers to my agent.

My signature _____

My printed name _____
First Middle Last

Date _____
Month / Day / Year

A Statement by Your Witnesses

I declare that I personally know you — the person who signed this document — or I have adequate proof of your identity, and that you signed or acknowledged this *Power of Attorney for My Health Care* in front of me, and that you appear to be of sound mind and under no duress, fraud, or undue influence.

I am an adult and am **NOT** any of the following:

- Appointed as your agent or back-up agent
- Related to you by blood, marriage, domestic partnership, or adoption, nor a spouse of any such person.
- Your health care provider, including the owner or operator of a health, long-term care, or other residential or community care facility serving you
- An employee of your health care provider
- Financially responsible for your health care
- An employee of your life or health insurance provider
- A creditor of yours or entitled to any part of your estate under a will or codicil, trust, insurance policy, or by operation of intestate succession laws.
- Entitled to benefit financially in any other way after you die.

About Witness 1

Printed name _____
First Middle Last

Signature _____

Date ____/____/____
Month / Day / Year

Address _____
Number Street

City State ZIP Code

About Witness 2

Printed name _____
First Middle Last

Signature _____

Date ____/____/____
Month / Day / Year

Address _____
Number Street

City State ZIP Code

If you are a resident of Missouri, North Carolina, South Carolina or West Virginia, you must have this form notarized. It is optional for everyone else.

State of _____ County of _____

On this _____ day of _____, 20____, the said Principal _____ and Witnesses _____, and _____, known to me (or satisfactorily proven) to be the person named in the foregoing instrument and witnesses, respectively, personally appeared before me, a Notary Public, within and for the State and County aforesaid, and acknowledged that they freely and voluntarily executed the same for the purposes stated therein.

Signature _____ My commission expires: _____