



Advanced Medical Directives



What Happens If I'm Incapable of Making Medical Decisions On My Own?

If you've planned for it by executing an "Advanced Medical Directive" (AMD) or a "Health Care Power of Attorney" (HPOA), someone you trust can make those decisions for you.

Preparing for possible end-of-life issues is now simpler than ever, and it's routinely part of estate planning. At the same time that you prepare a will or a trust to take care of your property, you can execute documents – AMDs – that direct how you'll be cared for if you're no longer able to make those decisions yourself. This is important because in most states, no one, not even your spouse, has the legal right to make this kind of decision on your behalf; they might have to file a court petition to get permission, and the process can be expensive, slow, and still not fully accomplish your wishes. As a result, most states have adopted other ways to help your wishes be carried out when you're incapable of making such important decisions.

This explains two options: The AMD and the HCPOA. Both must be written while you're competent – not after you've entered an advanced state of, say, Alzheimer's disease – and they must be properly witnessed and executed. It's also a good idea to get your attorney's help to ensure that they meet your state's requirements and fit with your overall estate plan. As a military member or family member eligible for military legal assistance, your legal assistance attorney can prepare a military AMD or HCPOA for you.

Can I Determine How Treatment Decisions Will Be Made?

Under Federal law, you may consent to or refuse any medical treatment, and receive information about the risks and possible consequences of any procedure or life-sustaining medical care. No one else, not even a family member, has the right to make these kinds of decisions for you (unless you've been adjudged incompetent or are unable to make such decisions because, for example, you're in a coma or it's an emergency situation). Unfortunately, difficulties sometimes arise, mostly when wishes or intentions aren't clear. That's where the next two planning tools come in.

What is An Advance Medical Directive (or Living Will)?

A living will is a written declaration in which you state in advance your wishes about the use of life-prolonging medical care if you become terminally ill and unable to communicate. It lets your wishes be carried out even if you become unable to state them. So if you don't want to burden your family with the medical expenses and prolonged grief that might accompany keeping you alive when there's no reasonable hope of revival, you might want your living will to authorize withholding or turning off life-sustaining treatment.

Living wills typically come into play when you are incapable of making and communicating medical decisions. Usually, you'll be in a state such that if you don't receive life-sustaining treatment (*e.g.*, intravenous feeding, respirator), you'll die. If your living will is properly prepared and clearly states your wishes, the hospital or doctor should abide by it, and will in turn be immune from criminal or civil liability for withholding treatment. Some people worry that by making out a living will, they are authorizing abandonment by the medical system, but a living will can state whatever your wishes are regarding treatment, so even if you prefer to receive all possible treatment, whatever your condition, it's a good idea to state those wishes in a living will.

What is a Health Care Power of Attorney?

This is a special kind of durable power of attorney dealing with health-care planning. In it you appoint someone else to make health-care decisions for you – including, if you wish, the decision to refuse intravenous feeding or turn off the respirator if you’re brain dead – if you become incapable of making that decision. The form can be used to make decisions about things like nursing homes, surgeries, and artificial feeding. Since it’s simply impossible to predict every possible contingency in an advance medical directive, having both a living will and a HCPOA enables you to handle other kinds of disability, or gray-area cases where it’s not certain that your terminally ill, or your doctor or state law fail to give your wishes due weight. Better to have a trusted relative or friend make the call.

Finally, despite recent changes in the law, old habits die hard, and many doctors and nurses are still reluctant to turn off life support—even if that’s what the patient wants. That’s why you need an advocate appointed by your HCPOA to press your intentions.

Obviously, decisions so important should be discussed in advance with your agent, who should be a spouse, child or close friend. You should try to talk about various contingencies that might arise and what he or she should do in each case.

Make sure you put a copy in your medical record. Since it’s so much more flexible than a living will, the HCPOA is a very useful document that could save you and your family much anxiety, grief, and money.

Can I Have These Documents Prepared at the Same Time?

It’s a good idea to prepare the HCPOA and living will at the same time, and make sure they’re compatible with each other and with the rest of your estate plan. These days, planning for the day when you might not be able to decide for yourself should be regarded as an essential component of any estate plan.

If I Have a Living Will, Do I Still Need a Health Care Power of Attorney?

It is a good idea. A HCPOA appoints an agent to act for you; a living will doesn’t. A HCPOA applies to all medical decisions (unless you specify otherwise); most living wills typically apply to a few decisions near the end of your life, and often are limited to use if you have a “terminal illness.” A HCPOA can include specific instructions to your agent about the issues you care most about, or what you want done in particular circumstances.

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