

Make health care decisions while you're healthy

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Estate planning isn't just about what happens to your assets after you die. It's also about protecting yourself and your loved ones. This includes having a plan for making critical medical decisions in the event you're unable to make them yourself. And, as with other aspects of your estate plan, the time to act is now, while you're healthy. If an illness or injury renders you unconscious or otherwise incapacitated, it will be too late.

Without a plan that expresses your wishes, your family may have to make medical decisions on your behalf or petition a court for a conservatorship or guardianship. Either way, there's no guarantee that these decisions will be made the way you would want, or by the person you would choose.

2 documents, 2 purposes

To ensure that your wishes are carried out, and that your family is spared the burden of guessing — or arguing over — what you would decide, put those wishes in writing. Generally, that means executing two documents: (1) a living will; and (2) a health care power of attorney ("HCPA").

Unfortunately, these documents are known by many different names, which can lead to confusion. Living wills are sometimes called "advance directives," "health care directives" or "directives to physicians." And HCPAs may also be known as "durable medical powers of attorney," "durable powers of attorney for health care" or "health care proxies." In some states, "advance directive" refers to a single document that contains both a living will and an HCPA.

For the sake of convenience, we'll use the terms "living will" and "HCPA." Regardless of terminology, these documents basically serve two important purposes: (1) to guide health care providers if you become unable to communicate or are unconscious, and (2) to appoint someone you trust to make medical decisions on your behalf.

Living will

A living will expresses your preferences for the use of life-sustaining medical procedures, such as artificial feeding and breathing, surgery, invasive diagnostic tests, and pain medication. It also specifies the situations in which these procedures should be used or withheld.

Living wills often contain a do not resuscitate order ("DNR"), which instructs medical personnel to not perform CPR in the event of cardiac arrest.

HCPA

An HCPA authorizes a surrogate — your spouse, child or another trusted representative — to make medical decisions or consent to medical treatment on your behalf if you're unable to do so. It's broader than a living will, which generally is limited to end-of-life situations, although there may be some overlap.

An HCPA might authorize your surrogate to make medical decisions that don't conflict with your living will, including consenting to medical treatment, placing you in a nursing home or other facility, or even implementing or discontinuing life-prolonging measures.

It's a good idea to have both a living will and an HCPA or, if allowed by state law, a single document that combines the two. Please contact us if you have questions regarding either document.

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