

2. your spouse
3. your adult children
4. your parents
5. your adult brothers or sisters
6. your adult grandchildren
7. one of your close friends
8. a court appointed guardian of your property

Before the surrogate decision-making process can be used, two requirements must be satisfied:

1. A physician must determine and record in your medical record that you lack decision-making capacity; and
2. You must not have an applicable Power of Attorney for Health Care, Living Will, or Declaration for Mental Health Treatment.

Your surrogate may not forgo life-sustaining treatment unless two physicians agree that you lack decision-making capacity and have at least one of the following:

- a terminal condition;
- an incurable or irreversible condition; or
- permanent unconsciousness.

The law calls any one of these three conditions a “qualifying condition.”

A surrogate may not make decisions concerning admission to a mental health facility or mental health treatment including psychotropic medication or electroconvulsive therapy. These decisions must be made with court involvement. A surrogate, however, may petition a court to order any of these forms of care.

Even though you can rely on a surrogate, you should still consider naming an agent under a Power of Attorney for Health Care. First, your agent can do everything a surrogate can do and much more. Second, with an agent, you reduce the risk that your wishes will not be carried out because the agent will be following your written directions. Third, you may prefer someone other than the surrogate to make these important decisions for you. Fourth, you could end up

with adult children or several brothers and sisters as surrogates who may disagree. You can reduce the risk of disagreements between them or court challenges by naming your own agent.

As with any major life decision, it is always

CONSULT AN ATTORNEY

wise to consult with an attorney. In addition to providing accurate answers to your questions, a qualified attorney will know whether the current laws have become outdated. To find an attorney, you can log onto IllinoisLawyerFinder.com, or call the Illinois State Bar Association lawyer referral service at 1-800-922-8757 toll-free in Illinois.

For additional information on these issues, including copies of the applicable legal forms in English and Spanish, visit the Illinois Department of Public Health web site on advance directives at www.idph.state.il.us/public/books/advin.htm.

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For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online www.IllinoisLawyerFinder.com

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For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit www.ISBAlawyers.com

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Consumer Legal Guide



Your Guide to Your Health Care

In Illinois, who decides?



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

YOUR HEALTH CARE IN ILLINOIS, WHO DECIDES?

Now, while you are in good health, is the time to decide what kind of care you prefer if you are ever physically or mentally incapacitated and unable to make your own health care decisions. You can do this by signing a Power of Attorney for Health Care and/or a Living Will. In addition, a Declaration for Mental Health Treatment for specific forms of mental health care may be executed.

POWER OF ATTORNEY FOR HEALTH CARE

No matter what your age is or the current state of your health, a personal tragedy could strike at any time. You could be severely injured in a car accident, for example, and kept alive solely by feeding tubes, respirators, or other means of modern technology without ever regaining consciousness.

With a Power of Attorney for Health Care, you would have already named a person whom you trust to make health care decisions for you in a circumstance such as this one. In legal terms, this person is called your “agent.” If you become incapacitated, your Power of Attorney may give your agent the power to consent to or withdraw medical treatment, request medical care on your behalf, or admit you to a hospital or other institution.

Even if you plan to have a friend or a member of your family serve as your agent, you must name one of them in writing as your agent; the law does not automatically grant family members or friends these broad powers. Your agent will have the power to make final health care decisions for you, including continuing or stopping your medical treatment in accordance with your wishes.

PREPARING THE WRITTEN DOCUMENT

In order to name an agent legally, you may use a form called “Short Form Power of At-

torney for Health Care,” which you can obtain from your lawyer or a physician. (You should know that a Power of Attorney for Property is completely different and does not include provisions for health care.)

The law does not require you to use this short form. Instead, you may write your own Power of Attorney for Health Care provided it:

- names the person who will serve as your agent;
- describes the power you grant your agent; and
- is signed and dated while you are still able to make decisions for yourself.

You may give your agent the power to make all health care decisions for you or you may set whatever limits you want. For example, you may want to tell your agent to do everything possible to keep you alive and to agree to any treatment that would limit your pain and suffering.

At any time, you may change your agent or any section of your Power of Attorney for Health Care by identifying the change

in writing, then signing and dating it. You may also cancel your Power of Attorney for Health Care by simply tearing it in half or drawing an “X” across it.

WHO RECEIVES A COPY OF THE DOCUMENT

You should make sure that an updated copy of the Power of Attorney for Health Care is provided to the person you have named as your agent as well as to your physician. Although you may choose anyone as your agent, your Power of Attorney does not require that the person you choose serve as your agent. Accordingly, you should discuss your decision with your agent to ensure that they are willing to take on these duties and that they understand the beliefs and values underlying your decisions.

A LIVING WILL

In addition to naming an agent under a Power of Attorney for Health Care, you may

also want to sign a Living Will. A Living Will is a written statement that gives you the right to stop or not begin medical treatment delaying your death in situations where you aren’t able to state your wishes. Your Living Will is utilized when you have been diagnosed with a terminal condition and you do not have an agent who is available to make a decision to continue medical treatment delaying your death. The law defines a “terminal condition” as an incurable or irreversible condition where death is imminent and where the use of death-delaying procedures serves only to prolong the dying process.

HOW A LIVING WILL DIFFERS FROM POWER OF ATTORNEY FOR HEALTH CARE

Even though a Power of Attorney for Health Care and a Living Will apply to similar situations, a Living Will is very different. You do not name an agent in a Living Will. Instead you indicate your wishes about death-delaying procedures that your physician can rely upon in certain specific situations. For example, your Living Will may dictate that you should not receive cardiac resuscitation or blood transfusions. A Living Will applies only if you have a “terminal condition” which is determined by your doctor. A Living Will does not permit your doctor to stop water and tube feeding if their withdrawal would be the only cause of your death.

You may want to refuse medical treatment in a state other than Illinois that will not enforce your Power of Attorney for Health Care, but may enforce your Living Will. A Living Will, therefore, increases the chances that your wishes will be followed in the event you have a medical emergency in another state.

DECLARATION FOR MENTAL HEALTH TREATMENT

With a Declaration for Mental Health Treatment, you name a person whom you trust to make specific mental health treatment decisions for you. This person is called an attorney-in-fact, similar to an agent but with limited au-

thority. Your attorney-in-fact will have the legal right and responsibility to make limited mental health treatment decisions concerning admission to a mental health facility (for up to 17 days) and the use of psychotropic medication or electroconvulsive treatment.

An agent under a Power of Attorney for Health Care may make all the decisions an attorney-in-fact may and more. A Declaration for Mental Health Treatment is for individuals with specific mental health treatment preferences. It may also be used by those with a mental illness that makes it likely they will not be able to make competent decisions about their mental health treatment in the future.

DO NOT RESUSCITATE (DNR) ORDER

It is important to inform your doctor, both verbally and in writing, of any legal documents you have executed that dictate your end-of-life care. One of these is a do not resuscitate (DNR) order, a physician’s order which may be documented in a medical record or as a separate document executed by the physician and patient.

A DNR order means that cardiopulmonary resuscitation (CPR) will not be used if your breathing and/or heart stop. The Illinois Department of Public Health has established a uniform DNR order form.

WHO DECIDES IF YOU HAVE NO SIGNED DOCUMENT?

If you do not sign a Power of Attorney for Health Care, Living Will, or Declaration for Mental Health Treatment, the Health Care Surrogate Act may allow a certain person or persons to make medical and life sustaining treatment decisions without court involvement. This person is called a surrogate. Under the surrogate decision-making process, your physician will identify a surrogate in the order listed below:

1. a court appointed guardian of your person