

Your Future, Your Health Power of Attorney for Health Care

As you transition toward independence, it is important for you to know that you have the right to make decisions about the health care you get now and in the future. A health care power of attorney document is a written statement about how you want medical decisions made when you can no longer make them.

What is a Power of Attorney for Health Care?

A Power of Attorney for Health Care document allows a person, called the principal, to delegate to another person, called the agent (this could be a trusted friend, a family member, foster parent, or substitute care provider), the power to make decisions regarding health care the principal is unable to make. The agent, who does not need to be an attorney, will speak for the principal and make decisions according to the principal's wishes even when the principal is physically or mentally incapacitated.

Must an attorney prepare the form for you?

Illinois law does not require that an attorney prepare a Power of Attorney for Health Care document.

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

A Power of Attorney for Health Care is flexible and can apply to a number of situations. It will permit you, if you are the principal, to decide who should make decisions on your behalf rather than leaving the decision-making to the courts. It saves your relatives from the burden of having to make those decisions without knowing your wishes. For example, a Power of Attorney can be used by you to express your wishes about whether or not you want life-prolonging treatments continued if you should ever need them, or to specify under exactly what circumstances you would like such measures continued, for example, you may or may not want to receive life-sustaining measures if you suffer an irreversible coma. You may choose to instruct your agent to continue or withhold food and fluids or to not administer cardio-pulmonary resuscitation (CPR) under certain circumstances.

What happens if I don't execute a health care power of attorney?

A health care surrogate may be chosen for you if you cannot make health care decisions and do not have an advance directive. A surrogate is someone appointed to act in your place, with an advanced directive being a legal document signed by you to provide guidance for medical and health care decisions in the event that you become incompetent to make such decisions. This health care surrogate will be one of the following persons (in order of priority): guardian of the person, spouse, either parent, any adult brother or sister, a close friend, or guardian of the estate.

The surrogate can make all health care decisions for you, with the following exceptions. First, a health care surrogate cannot tell your doctor to withdraw or withhold life-sustaining treatment, unless you have a "qualifying condition", which is a terminal condition, permanent unconsciousness, or an incurable or irreversible condition. Two doctors must certify that you cannot make decisions and have a qualifying condition in order to withdraw or withhold life-sustaining treatment.

A health care surrogate cannot make decisions concerning mental health treatment, including treatment by electroconvulsive therapy (ECT), psychotropic medications, or admission to a mental health facility. A health care surrogate can petition a court to allow these mental health services.

What are the legal requirements or provisions?

Any person age 18 or older who is a resident of Illinois can create a Power of Attorney for Health Care. The person whom you designate as your agent must be age 18 or over and cannot be your doctor or someone who is paid to provide you with health care services. The Power of Attorney for Health Care document must be signed by you and a witness. And, when exercising the Power of Attorney for Health Care, your agent must use due care when acting for your benefit and must act in accordance with the terms which you have specified in your Power of Attorney for Health Care document. He or she will be liable for any negligent exercise of the duties which you have specified.

How long will your Power of Attorney for Health Care last?

As the principal, you can specify the time when the Power of Attorney for Health Care will begin and when it will end. In addition, the Power of Attorney for Health Care document can be changed at any time by a written amendment signed and dated by the principal. You may revoke your Power of Attorney by burning or tearing up the document, by written revocation, or by oral revocation in the presence of a witness 18 years of age or older who then puts the revocation in writing for you. However, if it becomes necessary to terminate the Power of Attorney after you have become incapacitated, legal action may be required to terminate the agent. Unless you state an earlier termination date, the Power of Attorney for Health Care will continue until your death. If you wish, the Power of Attorney for Health Care can also be effective after death to authorize your agent to deal with an autopsy, anatomical gifts and burial.

When should you designate an agent under a Power of Attorney for Health Care?

The best time for you to create a Power of Attorney for Health Care is right now, long before you anticipate anything happening to you. This will ensure that if you are ever in a situation where you need an agent, you will have one.

Other things to consider.

Before executing your Power of Attorney for Health Care document, you should talk to the person who you want to be your agent and review your wishes for the types of medical treatment you choose to receive in the event that your agent must exercise his or her authority under the Power of Attorney for Health Care. Be careful not to provide your agent with powers that are too broad (which may be subject to abuse or misinterpretation) or too confined (which could make it impossible for the agent to act). It is advisable for you to specify one or more successor agents to act on your behalf in case the primary agent is unavailable, unable or unwilling to act in your behalf should it become necessary. With all of your agents, the primary consideration should be that the individuals appointed are people in whom you have a great deal of trust and can rely upon to act according to your interests and values. Your Power of Attorney for Health Care document should also state the duties, limitations, immunities and other terms applicable to your agent. After your Power of Attorney for Health Care document is signed by you, witnessed and notarized (OPTIONAL), you should send the original form to your agent and provide copies to your lawyer, your doctor and to family members or close friends on whom you can rely to act according to your interests and values. DCFS will also keep a copy in your personal file. You should also keep a copy of the form for your records.

Final Notes

No facility, doctor, or insurer can make you execute a health care power of attorney. Likewise, no person or representative of the Department of Children and Family Services will attempt to coerce you, or influence your decision on whether or not to execute a health care power of attorney. It is entirely your decision. If a facility, doctor, or insurer objects to following your health care power of attorney, he/she must tell you and offer you assistance in finding alternative care.

Illinois Statutory Short Form Power of Attorney for Health Care

(Notice: The purpose of this Power of Attorney for Health Care is to give the person you designate (your "agent") broad powers to make health care decisions for you, including power to require, consent to or withdraw any type of personal care or medical treatment for any physical or mental condition and to admit you to or discharge you from any hospital, home or other institution. This form does not impose a duty on your agent to exercise granted powers; but when powers are exercised, your agent will have to use due care to act for your benefit and in accordance with this form and keep a record of receipts, disbursements and significant actions taken as agent. A court can take away the powers of your agent if it finds the agent is not acting properly. You may name successor agents under this form but not co-agents, and no healthcare provider may be named. Unless you expressly limit the duration of this power in the manner provided below, until you revoke this power or a court acting on your behalf terminates it, your agent may exercise the powers given here throughout your lifetime, even after you become disabled. The powers you give your agent, your right to revoke those powers and the penalties for violating the law are explained more fully in Section 4-5, 4-6, 4-9 and 4-10(b) of the Illinois "Powers of Attorney for Health Care Law" of which this form is a part (see pages 3-6 of this form). That law expressly permits the use of any different form of power of attorney you may desire. (If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.)

POWER OF ATTORNEY made this _____ day of _____ (month, year).

1. I, _____
(insert name of principal)

(insert address of principal)

appoint: _____
(insert name of agent)

(insert address of agent)

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others. My agent shall also have the full power to authorize an autopsy and direct the disposition of my remains. Effective upon my death, my agent has the full power to make an anatomical gift of the following **(initial one)**:

_____ Any organs, tissues or eyes suitable for transplantation or used for research or education.

_____ Specific organs: _____

(The herein grant of power is intended to be as broad as possible so that your agent will have authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your agent believes such action would be consistent with your intent and desires. If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so in the following paragraphs).

2. The powers granted herein shall not include the following powers or shall be subject to the following rules or limitations (here you may include any specific limitations you deem appropriate, such as: your own definition of when life-sustaining measures should be withheld; a direction to continue food and fluids or life-sustaining treatment in all events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electroconvulsive therapy, amputation, psychosurgery, voluntary admission to a mental institution, etc.):

*(The subject of life-sustaining treatment is of particular importance. For your convenience in dealing with that subject, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. If you agree with one of these statements, you may initial that statement; **do not** initial more than one):*

_____ I do not want my life to be prolonged nor do I want life-sustaining treatment to be
(Initialed) provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning lifesustaining treatment.

_____ I want my life to be prolonged, and I want life-sustaining treatment to be provided or
(Initialed) continued unless I am in a coma which my attending physician believes to be irreversible, in accordance with reasonable medical standards at the time of reference. If and when I have suffered irreversible coma, I want life-sustaining treatment to be withheld or discontinued.

_____ I want my life to be prolonged to the greatest extent possible without regard to my
(Initialed) condition, the chances I have for recovery or the cost of the procedures.

(This power of attorney may be amended or revoked by you in the manner provided in Section 4-6 of the Illinois "Powers of Attorney for Health Care Law" (see page 3-4 of this document). Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death, and beyond if anatomical gift, autopsy or disposition of remains is authorized, unless a limitation on the beginning date or duration is made by initialing and completing either or both of the following:

3. () This power of attorney shall become effective on _____

(insert a future date or event during your lifetime, such as court determination of your disability, when you want this power to first take effect)

4. () This power of attorney shall terminate on _____

(insert a future date or event, such as court determination of your disability, when you want this power to terminate prior to your death)

(If you wish to name successor agents, insert the names and addresses of such successors in the following paragraph.)

5. If any agent named by me shall die, become incompetent, resign, refuse to accept the office of agent or be unavailable, I name the following (each to act alone and successively, in the order named) as successors to such agent:

For purposes of this paragraph 5, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to health care matters, as certified by a licensed physician.

(If you wish to name your agent as guardian of your person, in the event a court decides that one should be appointed, you may, but are not required to, do so by retaining the following paragraph. The court will appoint your agent if the court finds that such appointment will serve your best interests and welfare. Strike out paragraph 6 if you do not want your agent to act as guardian.)

6. If a guardian of my person is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

