

Healthcare Power of Attorney

What happens if I become incapable of making my own healthcare decisions?

So long as you can make your own healthcare decisions, you have the right to consent to or refuse medical procedures after your health care provider has explained the risks and benefits. You can say yes, no, or "I will think about it." You can demand additional information. You can change your mind. You can ask for a second – or a third – opinion. For patients who are incapable of making or communicating a healthcare decision, however, someone else must make decisions for them.

A guardian can be appointed to make health care decisions for an incapacitated person, but this requires action by a court. The law also provides a list of family members who can make decisions on your behalf. As an alternative, many individuals choose to appoint a person who can make health care decisions on their behalf by signing a healthcare power of attorney. A healthcare power of attorney allows you to pick who you would like to make healthcare decisions for you. The individual you select is called an “agent” or an “attorney-in-fact” (which does not mean that your agent is necessarily a lawyer!) – or they are sometimes called a “healthcare proxy.”

What is an advance directive?

An advance directive or “living will” is a written document that gives instructions to your physician as to whether you want life-sustaining treatment to be provided, withheld, or withdrawn. A healthcare power of attorney can include this information, but often a separate document is created. If there are inconsistencies between your power of attorney for healthcare and your advance directive, the most recently executed document controls. But with careful drafting, inconsistencies can be avoided.

Although an advance directive typically only speaks to a narrow range of healthcare options with regards to life-sustaining treatment when you are either terminally ill or permanently unconscious, a power of attorney for healthcare can appoint an agent with wide-ranging authority over a large variety of healthcare procedures and treatments. Still, your agent cannot make decisions that are not in accordance with accepted medical standards.

What is a power of attorney for healthcare?

A power of attorney for healthcare is a written document which appoints one or more healthcare agents. A healthcare agent can have a wide range of decision-making authority over your healthcare, but your agent only has the power to act once you have lost the ability to make healthcare decisions yourself. Your attending physician must first determine that you have lost capacity before your agent can act. The authority that can be granted to an agent includes the power “to consent to, or reject, or to withdraw consent for healthcare, including any care, service, or procedure to maintain, diagnose, or treat a person’s physical or mental condition.”

How do I create a power of attorney for healthcare?

A power of attorney for healthcare may be created at any time by a competent adult. It must properly convey your intent to confer authority upon your agent to make health care decisions should you become incapacitated. It must also be signed by you and witnessed either by two individuals or by a notary public. Some forms utilize both witnesses and a notary. If you cannot physically sign the document, you can direct another individual to sign for you. A durable power of attorney is a powerful document which confers broad authority to your agent to make important healthcare decisions in the event of your incapacity. Consult a lawyer or your doctor to ensure that your directions will be carried out according to your wishes.

Is there an approved form for a power of attorney for healthcare?

There is no statutory form for a power of attorney for healthcare in South Dakota. Consultation with a doctor or an attorney in completing a South Dakota power of attorney for healthcare is always a good idea.

Can I use a power of attorney for healthcare form which I found online or from another state?

There is nothing to prevent you from using forms from other states or from other sources, but the forms may or may not take into account South Dakota requirements. Similarly, a healthcare power of attorney which was executed in conformity with another state's laws ought to be recognized in South Dakota as well, but if you are a South Dakota resident, you should consider executing a power of attorney for healthcare that specifically conforms to South Dakota law.

Who should I name as my agent?

Selecting a healthcare agent should not be taken lightly. It could be the most important decision you ever make.

First, you need to think carefully about who will best be able to speak for you if you become incapacitated. For many, this will be a spouse or an adult child, but you may name anyone, including a friend. The person you select must be trustworthy and should share your values. You will want them to make the same kinds of decisions regarding your healthcare that you would if you were able to. You may consider appointing co-agents to act together or successor agents in case the original agent cannot act for some reason.

Second, you should consider where the person lives and whether that person could be present when healthcare decisions need to be made for you. This is less important than selecting a trustworthy agent, however, as decisions can be communicated and discussed over the phone or the internet.

Should I tell the person I have selected?

Ask if he or she is willing to accept the responsibility of being your healthcare agent. If the person you have selected accepts the responsibility, then discuss the various kinds of health care decisions that may have to be made in your future and

what your wishes are.

What authority should I grant my agent?

The authority you give to your agent is unique to your own personal and legal situation and may have far-reaching consequences. After all, you will not be able to supervise your healthcare agent's conduct effectively since you will be incapacitated whenever your agent is acting.

You should consult an attorney before you decide which powers should be conveyed, but you should generally grant your agent broad authority to act for you regarding healthcare decisions. You may also grant an agent authority to handle your financial affairs, but this may be a part of a separate document. Common powers granted to healthcare agents include the following:

- Power to consent or refuse medical treatments according to your instructions.
- Power to decide where to receive medical treatment and which doctors to use.
- Power to sue on your behalf regarding the receipt or refusal of medical treatment.
- Power to make arrangements for your funeral and the disposition of your remains.
- Power to distribute medical records
- Power to direct in-home treatment
- Power to determine who may visit you during treatment.
- Power to designate or change beneficiaries on your life insurance, annuities, IRA's, or 401(k) plans.
- Power to pay your bills or collect monies during your incapacity.
- Power to manage your assets or operate your business.

What should I do once I have signed a power of attorney for healthcare?

If you sign a durable power of attorney for health care, you should discuss it with the agent you have selected. No matter which document you have chosen, inform your physician, your family, and your religious advisor. Remember, you need to provide individuals access to the document before you lose capacity because at that point you may be unable to communicate about the existence of the document or its

location. You may also want to give copies to each of these individuals but be careful to keep a list; in case you should later decide to revoke your durable power of attorney for healthcare or living will, you will want to get those copies back.

What if I change my mind after I've created a power of attorney for healthcare?

You can amend or revoke a durable power of attorney for healthcare at any time while you are still capable of doing so. Both powers of attorney for healthcare and advance directives should be reviewed periodically to ensure they continue to effectively carry out your most current wishes.

If I should be hospitalized or enter a nursing home, how do I know whether they will honor my wishes?

Most hospitals, clinics, nursing homes, home health agencies, and hospice programs provide their patients and residents with written information on their policies with respect to durable powers of attorney for healthcare and living wills. Most hospitals and nursing homes will provide this written information during the admissions process and they may make legal forms available.

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