

Definitions of Legal Documents

Helping other relatives or friends make more informed choices about medical care and/or financial decisions will be followed in the event of incapacitation or inability to communicate

All information is as of 01/2014

All of the documents listed below are meant to be discussed and shared with family members and appropriate professionals. They should be stored in an easily accessible location and not locked in a safe deposit box or filing cabinet.

Advance Directives

This is a generic term for a group of documents that are prepared by a person in advance to ensure that in the event of their incapacitation or inability to communicate their wishes will be followed. In order to be legally valid, the person signing an advance directive must be able to understand the nature of the document being signed. An advance directive can be revoked.

Living Will

A Living Will allows a person to identify ahead of time which medical procedures or interventions they do or do not want to receive. It is intended to be used as a guide to treatment in the event that they become unable to make or communicate decisions due to an irreversible coma, persistent vegetative state, or similar type of condition. A Living Will may be a stand-alone document or included as part of a Health Care Power of Attorney (see below).

NOTE: When creating a Living Will, it is important to talk to a doctor about the meaning of all the terms and treatments that are included, as well as the potential implications of the decisions being made.

Durable Health Care Power of Attorney

A Durable Health Care Power of Attorney allows a person to choose another individual—known as an “agent”—to make health care decisions on their behalf in the event that they become too ill to make or communicate decisions. Once the person regains the ability to communicate or make decisions, the agent is no longer authorized to do so. This document can include a person’s wishes as to which medical procedures or interventions they do or do not want to receive.

NOTE: A Medical or Health Care Power of Attorney gives the agent authority to make all medical care decisions unless specific limitations are included ahead of time.

Pre-Hospital Medical Care Directive

Pre-Hospital Medical Care Directives are sometimes called Do Not Resuscitate forms or "Orange Cards." These forms, which must be signed by a physician and printed on orange paper to have legal effect, ask emergency medical personnel to withhold life-saving measures in the event that cardiac or respiratory arrest occurs. Presenting this document to medical personnel means that the person is ready to die and understands that death may result if resuscitation is withheld.

NOTE: The Pre-Hospital Medical Care Directive is a standardized form that must be printed on orange paper and signed by a physician to be valid. A recent photo of the person should be attached to the form.

Durable Mental Health Care Power of Attorney

A Durable Mental Health Care Power of Attorney allows a person to appoint another individual—known as an “agent”—to make mental health care decisions on their behalf if they become unable to do so.

NOTE: This document can be helpful for someone with a mental illness or a disease related dementia where institutional mental health services may be needed in the future. Mental health institutional placements are not covered by a regular Health Care Power of Attorney and require a court proceeding—unless a Mental Health Care Power of Attorney has been prepared ahead of time.

Financial Power of Attorney

The Financial Power of Attorney allows a person to appoint another individual—known as an “agent”—to manage financial matters on their behalf. These matters can include making business and property decisions. The agent may only make decisions that benefit the person involved and the agent cannot personally benefit from the Power of Attorney unless there is language in the document that specifically allows it.

Guardianship

Guardianship is the result of a legal court proceeding that removes decision-making power from an individual who is deemed to be incapacitated and transfers it to another individual—

known as a “guardian.” The guardian is appointed by the court to make all decisions for the incapacitated person, the same way a parent makes all decisions for child.

Conservatorship

A conservatorship is the result of a legal court proceeding that removes financial decision-making power from an individual who is deemed unable to make their own financial decisions and transfers it to another individual—known as a “conservator.”

Fiduciary

A fiduciary is a person who accepts responsibility for taking care of the needs or property of another person for the benefit of that person. A public fiduciary is a county official who has statutory responsibility to assume guardianship of incapacitated persons who have no one to assume this role for them. A private fiduciary is a person who has been certified or licensed to serve as a personal guardian or conservator.

Surrogate Decision Makers (Statute 36-3231)

If a person becomes unable to make or communicate health care treatment decisions and has not prepared an advance directive, a surrogate decision-maker can make health care decisions on their behalf. If willing and available, the following individuals can serve as surrogates regarding treatment decisions (in order of priority): spouse (unless legally separated), adult child, parent, domestic partner, sibling, a close friend or the attending physician.