

Power of Attorney for Health Care: An Overview

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1. What is a Power of Attorney for Health Care?

A power of attorney for health care (POA-HC) is a document that you (the “principal”) complete and sign, naming another person (the “agent”) to make your health care decisions for you if you ever become unable to make those decisions for yourself.

2. Why should I have a POA for Health Care?

If you are ever unable to make your own health care decisions for any reason, a POA-HC is a way for you to choose someone to make those decisions for you, in accordance with your previously expressed wishes.

In Wisconsin, a family member is not automatically authorized to make health care decisions for you. You must have a POA-HC authorizing them as your agent.

Without a POA-HC, your family or others may have to go to court and get a temporary or permanent guardian of the person appointed for you. This can be expensive, time-consuming, and emotionally draining for you and your family. And it may result in the appointment of a person you would not have wanted to have decision-making power, or someone who doesn’t know your wishes.

3. What is the difference between a Living Will and a POA for Health Care?

A Living Will informs your health care providers of your end-of-life wishes and allows them to carry those wishes out. A Living Will only covers health care decisions when a person is in a persistent vegetative state or when a person is terminally ill and death is imminent. A Living Will does not name an agent to make decisions for you.

In contrast, A POA-HC covers all health care decisions, not just those that are covered by a Living Will. A POA-HC names an agent to make your health care decisions consistent with your wishes if you ever become incapacitated, no matter what the reason.

See our [Comparison of Wisconsin’s Living Will and Power of Attorney for Health Care](#) for more information.

4. Should I have both a Living Will and a POA for Health Care?

There can be benefits to having both. While a POA-HC generally provides more authority to your agent, a Living Will can serve as a backup to inform your health care providers of your wishes in case your agent and alternates are no longer willing or able to make decisions for you.

Make sure your wishes are consistent in the documents if you choose to have both. If the wishes are inconsistent between the POA-HC and Living Will, the provisions in the valid POA-HC take priority over any that directly conflict with the valid Living Will. [Wis. Stat. § 154.70\(3\)](#).

5. What factors should I think about when selecting an agent?

Your agent should be willing to follow your wishes about your health care decisions and able to act in an emergency if necessary. There are other factors you may want to consider, including:

- Will they be able to resist pressure from friends and family members who want to influence your health care choices in a manner that may be inconsistent with your wishes?
- Will they be willing to make decisions consistent with your wishes and not according to their own ideas of what the right decision would be?
- Do they have experience dealing with hospitals, doctors, and stressful health situations? Can they communicate effectively with your providers about your needs and wishes?
- Will they be able to ensure that you are being treated properly?
- Will they ask enough questions about the impact of certain decisions?
- Will they be able to insist that providers keep in contact with details about your treatment, about any change in your condition or medications, or about injuries?
- Are they geographically close? (Note: this is not required, but may be helpful)
- If they aren't nearby, are they comfortable advocating for you by phone or video?

6. Is there anyone who can't serve as my agent?

Your health care providers, their spouses and employees, and employees of facilities where you are receiving care cannot serve as your agent unless they are related to you. For example, if your sibling works at a hospital in which you are receiving care, they may serve as your agent if you wish, but other hospital staff who are not related to you cannot be your agent.

7. Should I name an alternate agent?

It is not required, but it is a good idea to have at least one alternate agent. Your agent could be on vacation, ill, unable to assist you, or deceased when you need help. If the primary agent cannot fulfill their responsibilities, the alternate can be called upon to make your health care decisions for you should you ever become unable to do so. You may name multiple alternate agents; if they are needed, they will be called on in the order in which they are listed.

8. When does the agent’s authority start? May I continue to make decisions after completing a document?

An agent has authority when you are declared incapacitated. If you remain able to make your own health care decisions, the agent’s authority to make health care decisions doesn’t take effect.

“Incapacity” is defined by Wisconsin law as “the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions.” [Wis. Stat. § 155.01\(8\)](#). It is an assessment of whether you are capable of informed consent for health care at the time you are being asked to make a decision: are you able to understand your options and alternatives for care, choose between them, and express your decision?

Incapacity is determined by two physicians or one physician and one advanced practice clinician (physician assistant, nurse practitioner, or psychologist). They must personally examine you and sign a statement that you are incapacitated. The statement of incapacity must be attached to the POA-HC document. After this has happened, the agent’s authority becomes effective.

If you want your document to be activated some other way, you can specify that in the document. Creating the document doesn’t cause you to lose any decision-making authority. You continue to handle all your own health care decisions as long as you retain the capacity to make those decisions.

9. What kind of decisions will my agent be able to make?

Your agent will have the authority to make most health care decisions, which include decisions about services and procedures, providers, medications, and care. You may make your POA more specific if you wish. You can add your preferences about where you want to receive care, who you want to treat you, and the types of care you want to receive. you can also limit the types of decisions your agent can make. Your agent will not have the power to make decisions about non-health care issues, including who can visit you, changes to your health insurance, and other similar matters. You may want to complete a Financial Power of Attorney to allow someone to handle insurance and other financial matters.

In Wisconsin, three decisions must have specific authorization in the POA-HC:

- 1) Admission to a nursing home or community-based residential facility (CBRF) for purposes other than post-hospital rehab or respite (e.g., long-term care),
- 2) withholding or withdrawing feeding tubes, and
- 3) health care decisions for a principal who is pregnant.

If you want your agent to be able to make these decisions, you must grant them the authority in your POA document. You may choose to add special instructions or limitations within the document.

In addition, your agent will not be able to admit you to a mental health facility or to a hospital for inpatient mental health treatment.

10. What is the definition of a “feeding tube”?

A feeding tube is a “medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth, or other body opening.” [Wis. Stat. § 155.01\(2m\)](#). Feeding tubes can be used to administer both nutrition and hydration. If you want your agent to have the authority to withhold or withdraw a feeding tube, you must provide specific authorization in your POA-HC. That authorization does not *require* your agent to have feeding tubes withheld or withdrawn, but without the authority, they cannot make the decision at all. You may limit that authority in the special instructions if you only want them to be able to make the decision certain circumstances. An agent may never withhold or withdraw orally ingested nutrition or hydration unless there is a medical reason that it may be harmful, e.g., you are at severe risk for choking.

11. Can my agent admit me to a nursing home?

For your agent to have the authority to admit you to a nursing home or Community Based Residential Facility for *long-term care*, you must specifically grant that power in the POA-HC. Without that specific grant of authority, your agent cannot admit you to a nursing home or CBRF for long-term care. Checking “NO” or leaving the box blank on the state form will prohibit your agent from admitting you for long-term care. If you want to give this authority to your agent, you must check the “YES” box on the form.

However, without specific authorization your agent can still admit you for short-term stays:

- For recuperative care for less than three months if admission is directly from the hospital, unless the hospitalization was for psychiatric treatment.
- For respite for less than 30 days if you and your agent live together.

Even if you give your agent authority to admit you for long-term care purposes, you can withdraw the authority by objecting. You don’t lose the right to object even if you are considered incapacitated. However, if your condition requires it, a guardianship and protective placement order may then be obtained to keep you in a nursing home or CBRF against your wishes.

12. Whose wishes control after a POA for Health Care is completed?

You remain in charge of your health care decisions. If you are no longer able to make your own health care decisions, your agent must act in good faith consistent with your wishes as expressed at any time, even after incapacity.

Because your agent is required to follow your wishes, it is very important that you talk to your agent about your wishes BEFORE you lose capacity. You may have included these wishes in your POA-HC document, or you may have expressed them verbally to your agent or other family or friends. If

you have become incapacitated but are still able to express your wishes, your agent is required to follow your current expression of wishes. If your wishes are unknown, your agent must act in your best interests.

13. What should my agent do to advocate for me when making my health care decisions?

Visit or contact you as often as necessary. If you are experiencing rapid medical changes, your agent should be communicating with you and your providers much more often. This is a responsibility that you should discuss with your agent before completing your POA-HC.

Ensure that you are not suffering abuse or neglect in your incapacitated state.

Attend meetings with your care team to discuss your care options and ensure that your wishes are represented and respected when developing care plans.

Provide informed consent or refusal for all your health care needs once your POA-HC document becomes activated. Your agent must be willing to learn about your condition and the proposed treatments and be able to apply your wishes to unforeseen health care decisions.

Some questions you may wish for your agent to consider or ask when making health care decisions:

- Why is this procedure or treatment necessary?
- How will it benefit my care?
- Are there any other reasonable alternatives or options?
- What might happen to me if I do not accept the treatment?
- What can I reasonably expect the outcome to be?
- What are the major risks involved?
- What is likely to be ahead? What are the best and the worst scenarios? What benefit and burden will the treatment offer?
- Will it relieve suffering, restore function, or enhance quality of life?
- Will it prolong the dying process without offering benefit?

For additional information, please see our guide on the [Responsibilities of a Health Care Agent](#).

14. What are the requirements for a valid POA for Health Care?

POA-HC documents that are created in Wisconsin must meet certain requirements to be valid. The document must:

- 1) be in writing,
- 2) be voluntarily executed by a principal who is 18 or older and who is of sound mind,
- 3) be dated and signed by the principal in the presence of two disinterested witnesses,
- 4) be signed and dated by the two disinterested witnesses, and

- 5) include the exact notice provisions contained in the state form OR a certificate signed by the principal's attorney stating: "I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this POA-HC and the applicable law."

"Sound mind" means you understand the purpose of the document and can sign it voluntarily and free of any undue influence or coercion.

"Disinterested" means that your witnesses are not:

- your agent,
- related to you by blood, marriage, or adoption,
- financially responsible for your care,
- expected to inherit from you,
- your health care providers or employees of your providers or an inpatient facility in which you are receiving care (chaplains and social workers may witness, however).

15. What should I do if I cannot physically sign the document?

You may still complete the document even if you are physically unable to sign the document. If you are unable to sign, you may direct a person 18 or older to sign in your presence and in the presence of two disinterested witnesses. The person you choose to sign for you should not be your agent, alternate agent, or a witness.

16. How can I complete a POA for Health Care?

Both the state Department of Health Services and the Wisconsin Medical Society provide free forms; many hospitals and clinics use one or the other. You can find these online, request them from your clinic or facility staff, or request that DHS mail forms. The Guardianship Support Center has both forms linked from our website as well.

To request forms by mail, send a self-addressed, stamped business-size envelope to:

Division of Public Health
ATTN: POA
P.O. Box 2659
Madison, WI 53701

Please note which forms you would like. You may make copies of the forms.

You may also hire an attorney to draft a document tailored to your specific needs if you wish.

Other forms may be available and acceptable as long as they meet the statutory requirements for a valid POA-HC in Wisconsin noted above.

17. Can I add an addendum to my POA for Health Care?

Yes. If you use the state POA-HC form, you will notice that the space for adding specific instructions to your agent is small. If you have additional instructions, you may write them down in an addendum and attach it to your POA. Make sure to reference the addendum in the special instructions space. Sign, date, and witness it at the same time as your main POA document.

18. Will completing a POA for Health Care avoid the need for a guardian?

Completing a POA-HC usually prevents needing to have a guardian of the person. However, there are some situations where a guardian of the person may still need to be appointed, including:

- If your agent is unable or unwilling to act and no alternates are available and willing,
- If you did not authorize nursing home or CBRF admission but now need those services,
- If you object to any of the decisions your agent is making, such as admission to a nursing home for long-term care which you previously authorized.

A POA-HC agent will not be able to make *financial* decisions for you unless you have given them authority in a financial Power of Attorney document. Also, there may be decisions that need to be made that are not covered by a POA-HC. A guardian might be appointed to handle those matters.

19. I completed my POA for Health Care in another state. Is it valid in Wisconsin?

If your POA-HC is valid in the state in which it was executed, it is valid in Wisconsin. However, the agent only has the authority that is permitted by Wisconsin law. Decisions about nursing home and CBRF admission, withholding or withdrawing of feeding tubes, and care for a pregnant principal must still be specifically authorized in the POA-HC document. If your document lacks the specific authorization required in Wisconsin for long term admission to a nursing home or CBRF, your agent will not be able to admit you to a Wisconsin nursing home or CBRF for long term care without a guardianship and protective placement order. The document itself is still valid, but that decision is treated the same as if you had checked “no” on the Wisconsin form.

If you are new to Wisconsin or planning a move, you may want to review your existing POA-HC to make sure it still meets your needs and includes authority you may want your agent to have here. If you frequently travel or spend part of the year in another state, you do not need to have documents in both states – either one will be fine.

20. What should I do once I complete my POA for Health Care?

Once the form is completed, you should make copies or scan the document. Keep the original in an accessible place (not in a safe deposit box, since this document needs to be accessible to work) and distribute copies to your health care providers, your agent, your alternate agents, your hospital, and family members. You can also scan it and send the file to your agent and alternates if you wish.

Copies are as valid as the original. For a small fee, you may be able file a copy with the register in probate at the courthouse in your county.

21. When should I review or update my POA for Health Care?

We recommend following “The 5 Ds” as a guideline for when to review or update your POA:

- Decade – Every new decade of your life.
- Death or Dispute – When a loved one or health care agent dies or disagrees with your preferences.
- Divorce – When a divorce occurs.
 - If you have named your spouse or domestic partner as your agent and you divorce or dissolve your domestic partnership, your POA-HC will be automatically revoked. If you would like your former spouse or partner to continue to serve, you must create a new POA-HC naming them after the divorce is final.
- Diagnosis – when you are diagnosed with a serious illness.
- Decline – when your health begins to decline, especially when you are unable to live on your own.

Your views on your health and quality of life will likely change as you age. Your POA-HC should account for those changes and be updated to reflect them. A POA-HC prepared when you were age 25 may or may not still work for you at age 85.

22. How do I revoke a POA for Health Care I may have made before?

All the options below will successfully revoke an existing POA-HC.

- Destroy all the copies of the existing document.
- Sign and date a written revocation.
- Orally revoke the document in the presence of two witnesses.
- Execute a new POA-HC. The POA-HC with the most recent date is the valid one.

Note: A POA-HC may be revoked at any time, even after the individual is determined to be incapacitated.

23. Who can I contact if I have questions?

The Wisconsin Guardianship Support Center can answer questions about Powers of Attorney.

Phone: 1-855-409-9410

Email: guardian@gwaar.org

Website: <https://gwaar.org/gsc>