

POWER OF ATTORNEY FOR HEALTH CARE: AN OVERVIEW

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I. 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 individual (the “agent”) to make your health care decisions for you if you ever become unable to make those decisions for yourself.

II. Why Should I Have A Power Of Attorney For Health Care?

A POA-HC is a way for you to plan ahead to authorize someone else (the “agent”) to make your health care decisions if you ever become temporarily or permanently unable to do so yourself. Completing a POA-HC allows you to choose the individual you want to make these decisions and to discuss with them what you want those decisions to be.

If you do not complete a POA-HC but later are unable to make your own health care decisions, there may be health care decisions that need to be made which no one else is authorized to make for you. ***In Wisconsin, a family member is not automatically authorized to make health care decisions for you unless you complete a POA-HC document naming the family member as your agent.***

Without a POA-HC, it may be necessary for your family or others to ask the court to appoint a guardian of the person for you. This process can be costly, time-consuming, cumbersome and emotionally draining. It may not result in the appointment of the person *you* would have chosen to be your guardian. Additionally, the person chosen to be guardian may not know your wishes about your health care or what care you might or might not want.

III. What Is The Difference Between A Living Will And A Power Of Attorney For Health Care?

A Living Will is a set of instructions signed by a patient telling a doctor what to do in very limited situations. 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.



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 in accordance with your wishes if you ever become incapacitated. However, you must have a person available to act as the agent.

IV. Should I Have Both A Living Will And A Power Of Attorney For Health Care?

It is not necessary to have both a Living Will and a POA-HC. The Living Will is not a grant of authority to another person to make your health care decisions. It is only instructions to your doctor about what to do in two limited situations. A POA-HC can include the same kind of written instructions contained in a Living Will, or you can give your agent oral instructions. If you do have a Living Will and a POA-HC, make sure that your wishes are expressed consistently in both documents so that your agent or loved ones do not struggle to discern your true wishes should you become unable to make your own health care decisions.

V. When Does The Agent’s Authority Become Effective? May I Continue To Make Decisions After Completing A Document?

The agent's power is typically activated upon a determination by two physicians or one physician and one advanced practice clinician (a psychologist, a nurse practitioner, or a physician’s assistant) who have personally examined you that you have become incapacitated. The certification of incapacity must be attached to the POA-HC document. Incapacity means that a person is unable 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.” See Wis. Stat. § 155.01(8). If you remain able to make your health care decisions, the agent’s authority to make health care decisions is not effective. You can change the manner of activation by specifying the number or type of professionals you want to activate the document. Despite creating the document, you continue to handle all your own health care decisions as long as you retain the capacity to make your own health care decisions.

VI. What Kinds Of Decisions Will My Agent Be Able To Make?

Decisions that an agent might make include choosing a doctor, treating a medical condition, managing pain, maintaining or refusing artificial hydration and nutrition, and consenting to or refusing surgery. Health care decisions include decisions about services, procedures, treatment, and care. Your agent will not have the power to make decisions about non-health care issues. Consider completing a Durable Power of Attorney for Finances to handle non-health care issues.

VII. Whose Wishes Control After A Power Of Attorney 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.



Because your agent is required to follow your wishes, it is imperative that you talk to your agent about your wishes in advance of your possible incapacity. If you have become incapacitated and are not able to express your wishes, your agent must act according to your previously expressed wishes. 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 and are still able to express your wishes, your agent is required to follow your current expression of wishes. If your wishes are not known, your agent must act in your best interests.

VIII. What Are The Requirements For A Valid Power Of Attorney For Health Care?

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

- a) Be in writing.
- b) Be voluntarily executed by an individual who is 18 or older and who is of sound mind.
- c) Be signed and dated by the principal in the presence of two disinterested witnesses.
- d) Be signed and dated by the two disinterested witnesses at the same time as the principal.
- e) 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."

See Wis. Stat. § 155.10 and 155.30. These requirements apply to all POAs-HC.

In Wisconsin, certain actions may not be undertaken by the agent without specific authorization by the principal in the POA-HC document. If you would like your agent to be able to admit you to a nursing home or community-based residential facility (CBRF) for long-term care, your POA-HC must explicitly grant that authority to your agent. Specific authorization is also required if you would like your agent to have the power to withhold or withdraw feeding tubes. Specific authorization is also required for an agent to make health care decisions for a principal who is pregnant.

IX. How Can I Complete A Power Of Attorney For Health Care?

There are several ways to complete a POA-HC. One way is to use the fill-in-the-blank form created by the state. Another way is to hire a lawyer to draft a document tailored to your specific needs. One may also purchase blank forms. Some facilities like hospitals and clinics may distribute their own POA-HC forms. Any



form is acceptable as long as it meets the statutory requirements for a valid POA-HC in Wisconsin noted above.

X. What Are The Advantages Of Using The State Form?

The state form is free and easy to complete. It contains specific provisions instructing your agent as to your wishes about admission to nursing homes and CBRFs, feeding tubes and decisions for pregnant women. It also has a section so that you can include any other special desires, provisions, or limitations.

Using the state form that has been correctly completed can ensure that you have a valid POA-HC that will satisfy all of Wisconsin's requirements. The provisions covering nursing homes, CBRFs, feeding tubes and pregnant women ensure that these issues are not overlooked. The section where you can include special desires, provisions, or limitations allows you to communicate clearly to your agent what your wishes are in particular situations.

Copies of the state POA-HC form are available free if you send a stamped, self-addressed business-size envelope to:

Power of Attorney, Division of Public Health
P.O. Box 309
Madison, WI 53701

You may request two copies of the form and may photocopy the forms if you need more. The forms are also available online at <https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm>.

You can also request our "Planning for Future Health Care Decision-Making Do-it-Yourself Packet" that includes the state POA-HC form by contacting us at:

Wisconsin Guardianship Support Center
Greater Wisconsin Agency on Aging Resources, Inc.
(855) 409-9410 or email guardian@gwaar.org.

Copies of the packet are also available at www.gwaar.org.

XI. What Factors Should I Consider When Selecting An Agent?

The most important consideration is whether the individual you are considering to be your agent is willing to follow your wishes about your health care decisions. 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 the agent's own ideas of what the right decision would be?



Also consider the individual's experience in dealing with hospitals, doctors, and stressful health care situations. Will the individual be able to understand the choices surrounding your particular injury or conditions? Will the individual be good at communicating with doctors and hospitals about your needs and wishes?

Is the individual assertive? Will they be able to ensure that you are being treated properly? Will they ask enough questions about the impact of certain decisions? Will your agent be able to insist that providers contact them with details about your treatment, about any change in your condition or medications, or about injuries?

Is the individual geographically close? If the individual does not live near you, are they willing and able to travel in order to be with you when you need health care decisions made for you? How long would it take your agent to arrive? If your agent is not near you, it may be essential to have an alternate to ensure that you have someone there to make your health care decisions for you if you or your agent are unable.

Your agent cannot be your health care provider or a spouse or employee of your health care provider or an employee of a facility where you are a patient or reside, unless they are a relative.

XII. What Should My Agent Do To Advocate For Me In Making My Health Care Decisions?

Your agent should visit you as often as possible with a minimum visit of once a month. If you are experiencing rapid medical changes, your agent should be visiting you much more often. This is a responsibility that you should discuss with your agent before completing your POA-HC. Your agent will also serve to ensure that you are not suffering abuse or neglect in your incapacitated state.

Your agent should attend meetings discussing your health care to ensure that your wishes are represented and respected when developing care plans.

Your agent must also provide informed consent or refusal for all your health care needs once your POA-HC document becomes activated. To adequately do this, your agent must be willing to understand your condition and the proposed treatments and be able to apply your wishes to unforeseen health care decisions.

XIII. Should I Name An Alternate Agent?

Your agent could be on vacation, ill, unable to assist you or deceased when you need help. Because of this, it is important to consider naming at least one alternate agent on the POA-HC form. If for any reason, the primary agent cannot fulfill the responsibilities of the agency, the alternate can be called upon to make your health care decisions for you should you ever become unable to do so.

You may also name other alternate agents if the first agent and alternate agent are not available or able to act.



XIV. What Should I Do If I Cannot Physically Sign The Document?

The statute governing the requirements of the POA-HC allows you to execute 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 chose to sign for you should not be your agent, alternate agent, or witness.

XV. Can I Add An Addendum To My Power Of Attorney For Health Care Document?

If you use the state POA-HC form, you will notice that the space for adding specific instructions to your agent is small. You may wish to add an addendum with longer instructions. If you wish to do so, make sure to reference the addendum in the document. Also be sure that the dates in the addendum are the same as in the POA-HC document. Finally, sign, date, and witness the addendum in the same manner as the POA-HC document.

XVI. 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 any other body opening.” See Wis. Stat. § 155.01(2m). It is important to understand that a “feeding tube” 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. An agent may never withhold or withdraw orally ingested nutrition or hydration unless provision is medically contraindicated.

XVII. Will A Power Of Attorney For Health Care Allow Me To Be Admitted To A Nursing Home Or Community-Based Residential Facility For Long-Term Care Against My Wishes?

No. In order for your agent to have the authority to admit you to a nursing home or CBRF 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 for long-term care. However, your agent can still admit you for short-term stays. If the nursing home or CBRF admission is for recuperative care for less than three months and admission is directly from the hospital, your agent can admit you even if you withheld the specific grant of authority, unless the hospitalization was for psychiatric treatment. If the admission is for respite care for less than 30 days and you and your agent live together, your agent may admit you even if you withheld the specific grant of authority. Even if you grant your agent authority to admit you for long-term care purposes, you can withdraw the authority by objecting. However, a guardianship and protective placement order may then be obtained in order to keep you in a nursing home or CBRF against your wishes.



XVIII. What Happens If I Check “No” Or Leave Blank The Questions About Admission To A Nursing Home Or A Community-Based Residential Facility Or Don’t Specifically Authorize Admission?

If you check “no” to these questions or leave them blank on the state form, your health care agent may only admit you to a nursing home or CBRF for short-term stays for recuperative or respite care. Your health care agent may not admit you for any other purpose including long-term care. If you use an attorney-drafted form that does not include specific authorization for nursing home or CBRF admission, your agent may not admit you for long-term care. However, refusing to give your agent this authority does not mean you will never be admitted to a nursing home or CBRF for long-term care. If your condition requires admission to either a nursing home or CBRF, a guardian will have to be appointed and a protective placement order issued by the court to give consent.

XIX. Will Completing A Power Of Attorney For Health Care Always Avoid The Need For A Guardian?

Completing a POA-HC will usually prevent needing to have a guardian of the person appointed in the event that you are unable to make your own health care decisions. However, there are some circumstances where a guardian of the person may still need to be appointed. If your agent is unable to fulfill his or her responsibility and no alternate was named, a guardian will be needed. A guardian will also be needed if you did not authorize nursing home or CBRF admission but now need those services. Another reason is 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. Also there might be decisions that need to be made that are not covered by a POA-HC.

XX. Is A Power Of Attorney For Health Care That Was Executed In Another State 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. For instance, specific authorization for nursing home and CBRF admission, withholding or withdrawing of feeding tubes, and making decisions for a pregnant principal must be specifically authorized in the POA- HC document. This is so regardless of the law of the state where your document was executed. 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.

XXI. What Should I Do Once I Complete The Power Of Attorney For Health Care Form?

Once the form is completed, you should make several photocopies. You should keep the original in an accessible place (not in a safe deposit box) and distribute copies to your physician, your agent, your alternate agents, your hospital, and family members. For a small fee, you may file a copy at the probate court in the county in which you live.



XXII. How Do I Revoke An Already Existing Power Of Attorney For Health Care?

There are several ways to successfully revoke an existing POA-HC. You may destroy all the copies of the existing document. You may sign and date a written revocation. You may orally revoke the document in the presence of two witnesses or you may execute a new POA-HC. All of these actions will effectively revoke an existing POA-HC.

XXIII. Who Can I Contact If I Have Questions?

The Wisconsin Guardianship Support Center is operated by the Elder Law and Advocacy Center of the Greater Wisconsin Agency on Aging Resources, Inc. to answer questions about Powers of Attorney.

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

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