



Advance Directives: What They Are And Why You Need Them

Polly Shoemaker, JD
Guardianship Support Center Attorney
Greater WI Agency on Aging Resources, Inc.

December 2020



Greater Wisconsin
Agency on Aging Resources, Inc.

WI Guardianship Support Center

- Legal information provided to attys, guardians, APS, families, professionals, and vulnerable adults
- Guardianships, POA, Protective placement, DNR, Living wills
- Free quarterly newsletter
- Consumer publications
- No court representation or legal advice





What are advance directives?

Advance Directives

- Documents that allow you to tell family, friends, and/or care providers what you want if you are unable to communicate for yourself
- Types of advance directives:
 - Powers of attorney for health care and finance
 - Living wills
 - Authorizations for Final Disposition (burial/funeral instructions)



Why do I need advance directives?

Why advance directives matter

- Wisconsin isn't a next-of-kin state – your family can't make decisions for you
- You have the power to decide what you want and make your wishes clear to family and friends
- You decide who you want to handle your care, financial affairs, and end-of-life matters and how much authority they should have
- The people you choose must follow your wishes if known
- If you don't have them and you can no longer make or communicate your decisions, a court will choose a guardian for you and decide what decisions they can make – and they do not have to follow your wishes

Power of Attorney

- Wisconsin separates into POA for Health Care and POA for Finances
- A power of attorney is a legal contract between a **principal** (that's you!) and an **agent** (the person you choose to act for you)
- State provides standard forms for both (available from DHS); not required to use these forms
- **Agent** must act according to **principal's** wishes if known – if your wishes are not known, they must act in your best interest

Power of Attorney for Health Care

- Makes **health care** decisions on Principal's behalf
 - Health care is any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition
 - No authority to make other decisions (ex: who can visit)
 - Must follow Principal's wishes if ascertainable (even by nodding or blinking)
- Principal can designate an alternate agent – no authority to act unless primary is unable/unwilling

Power of Attorney for Health Care

- End of life care
- Decide between treatment options
- Consent to surgery
- Admission to nursing home or CBRF

ADMISSION TO NURSING HOMES OR COMMUNITY-BASED RESIDENTIAL FACILITIES

My health care agent may admit me to a nursing home or community-based residential facility for short-term stays for recuperative care or respite care.

If I have checked “Yes” to the following, my health care agent may admit me for a purpose other than recuperative care or respite care, but if I have checked “No” to the following, my health care agent may not so admit me:

1. A nursing home - - Yes No
2. A community-based residential facility - - Yes No

If I have not checked either “Yes” or “No” immediately above, my health care agent may admit me only for short-term stays for recuperative care or respite care.

Power of Attorney for Health Care

- Valid signature
 - **Principal** is adult of sound mind
 - 2 disinterested witnesses (not related, not your care providers)
 - In writing, signed and dated
 - **Principal** can direct someone to sign for them in their presence
- Voluntary
- Typically activated on incapacity
 - Inability to receive/evaluate information and/or communicate decisions relating to **health care decisions only**
 - Determined by 2 physicians or physician and advanced practice clinician (psychologist, nurse practitioner, physician's assistant) OR as stated on POA document itself

Deactivation

- Regaining capacity
- No formal process required in the statutes
- Can be done in the opposite way, ex 2 physicians sign certification that individual has regained capacity to make decisions
- Some facilities use 1 provider and that is probably sufficient as there are no statutory requirements

Power of Attorney Finances and Property

- AKA “durable” power of attorney
- Principal retains their own rights to manage property/finances
- Allows agent to manage property and finances
 - State law provides some limits/protections – may wish to consult with attorney if any specific needs
- Typically active upon signing (but can be created to be active on incapacity or other specified event)
- Recommended to be notarized
- No witnesses required
- Principal can direct another to sign their name



End of Agency

- **An Agent may be in place until:**
 - Capacity regained
 - Expiration of event for some POA-Fs
 - Revocation
 - Resignation
 - Removal by court
 - Death
 - Guardianship (possibly)

Revocation of Power of Attorney

- Person can revoke at any time
- Revoke in writing
- Tear up/burn document
- Execute new POA-HC
 - But note: executing a new POA-F does not automatically revoke the previous one!
You must specifically state in the new document that it revokes previous POA-Fs.

Top issues I see with POAs:

- Incorrect dates
- Didn't actually give agent authority
- POA-HC and POA-F agent not getting along
- Didn't list alternates or alternates unable, unwilling or have passed away
- Missing pages
- Not picking someone trustworthy
- Family issues
- Crossing things out after execution
- Agent exceeds authority

Living Will

- Directive to a health care provider – physician, PA, NP
- What the patient's wishes are
- Circumstances must fit exactly the question asked
- No agents designated
- If also have a POA, choices must match
- (POA-HC provides *much broader* authority)
- Requires two witnesses



Authorization for Final Disposition

- Allows you to state your wishes for burial/cremation/funeral, including who you want to handle matters
- Designate special requests for religious observances, source of funds, etc.
- Requires two witnesses or a notary

What do I do with my advance directives
after I've completed them?

What happens with completed forms

- Copies are as good as the original
- Keep your originals in a safe place or deposit with probate court for a small fee
- Care providers should get copies of HC POA and/or living will
- Financial institutions should get copies of F POA
- Can give to agents or let them know where they are if/when needed
- Don't send to DHS – they'll send them back!



Who can help me complete advance directives?

Where to get assistance

- Forms available from Dep't of Health Services
- Health care provider may have HC POA and/or living will forms
- Senior centers
- Attorneys, especially if you have specific needs for F POA
- Auth for final disposition: funeral homes may be able to help
- Aging & Disability Resource Center (ADRC)
- Guardianship Support Center
- American Bar Association Free Legal Answers, <https://wi.freelegalanswers.org/>

DHS forms

- Online at:
<https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm>
- By mail:
 - Send a self-addressed stamped envelope with your request to DHS at:
Division of Public Health
ATTN: POA
PO Box 2659
Madison, WI 53701
 - One stamp = one health care POA + one living will; financial POA needs at least \$0.69 postage at current rates

WI Guardianship Support Center

Contact us:

Polly Shoemaker, Managing Attorney

Phone: 855-409-9410

Email: guardian@gwaar.org

Website: gwaar.org/gsc

Email me or visit the website to sign up for our newsletter!

