

Advance Planning Tools: Making Decisions

Planning is essential to make sure that your wishes are carried out, even if you think that your loved ones know what you want. This is true whether you are healthy or whether you are nearing the end of your life or facing a period of time where you will need assistance with managing your health care or finances.

Financial Power of Attorney

What is a financial power of attorney?

A financial power of attorney is a legally binding document that you prepare or have prepared for you to sign which names a trusted person, known as your agent, to act and make decisions for you. This document must be signed and may need to be notarized depending on your state's law. The legal duties and obligations created by this document end when you pass away.

What are different types of financial power of attorney?

There are two different types of financial powers of attorney: durable and non-durable. If you want someone to start making decisions for you today, and for that person to continue making decisions for you if you should become incapacitated (unable to make decisions for yourself), then you would create a durable power of attorney. A durable power of attorney will remain in effect if and when you become incapacitated. However, if you want to create a power of attorney that goes into effect now, but ends if and when you become incapacitated, you would create a non-durable power of attorney.

If you do not need someone to help you make decisions now, but want to name someone to be your agent to act only once you are unable to make your own decisions, then you would create a springing power of attorney. A springing power of attorney "springs" into effect when a certain condition takes place (such as you becoming incapacitated), and is considered a type of durable power of attorney, since it remains in effect while you are incapacitated.

It is important to think about at what point you would like to give someone you trust authority to manage your financial affairs.

Your Rights at the End of Life

In every state, people who are at the end of their lives have certain rights regarding treatment. These rights include: the right to make decisions for yourself; the right to refuse food, including through a feeding tube (also known as Voluntary Stopping of Eating and Drinking (VSED)); the right to refuse medical treatment; the right to palliative care (care that focuses on reducing pain rather than prolonging life); the right to palliative sedation, and the right to have your wishes

CANCER LEGAL RESOURCE CENTER

Page 2 of 4

upheld. It is important to document your wishes using the correct planning tools. Some tools include an advance directive or POLST in order to ensure that your rights and wishes are upheld, even when you may no longer be able to make decisions for yourself.

Advance Directive or “Living Will”

What is an advance health care directive?

Advance health care directives have different names in different states. Sometimes they are called a living will, but most often they combine a living will with a power of attorney for health care. They can also include sections for organ donation and noting your primary physician.

Generally, advance health care directives are documents that allow you to: (1) name an agent to make health care decisions for you when you are unable; and (2) include written instructions that state your wishes about the medical care and treatment you want to receive if you become unable to make medical decisions for yourself (this part is sometimes known as a living will).

This document must be created while you are able to make decisions for yourself (“competent”). Often, an individual must be 18 years old to create an advance health care directive; the document must be signed in the presence of two witnesses, and must also be signed by the witnesses or notarized. The exact requirements vary by state, so you may need to contact an estate planning attorney to find out the specific requirements for creating an advance health care directive in your state.

What is a living will and what can I include in it?

A living will is a written document where you give clear instructions about the type of medical treatment you would want when you are terminally ill or permanently unconscious. It can include the types of life-sustaining treatment you want or do not want, including: mechanical breathing, tube feeding, or resuscitation. In some states, a living will is referred to as a health care directive.

What is a power of attorney for health care?

A power of attorney for health care or medical power of attorney is what you use to name a health care agent who makes medical decisions for you when you become unable to do so. There are guidelines as to who can serve as a health care agent, and these will vary based on the state in which you live and are intended to protect you from being taken advantage of. You also have the option of selecting a secondary health care agent in case the primary agent is unwilling, unavailable, or unable to serve. In a power of attorney, you can specify which medical decisions you want to let your agent make for you.

What is the difference between a living will/instructions and a power of attorney for health care?

Both the living will and the power of attorney for health care serve the purpose of helping your medical team understand what your wishes are.

However, you may not cover or be able to anticipate every possible situation when you are creating your living will/instructions. Therefore, it is important to also name a power of attorney for

health care. The person you name as your agent in a power of attorney for health care will be guided by your living will, but also has the authority to interpret your wishes in situations that are not described in your living will. A power of attorney for health care may also be a good idea if your family is opposed to some of your wishes or is divided about them, because it allows you to decide who will be in charge of your medical treatment when you no longer have the ability to make decisions for yourself.

How specific should I be in my advance health care directive?

In determining your wishes, think about your values, such as the importance to you of being independent and self-sufficient, and what you feel would make your life not worth living. Would you want treatment to extend your life in any situation? Would you want treatment only if a cure is possible? Would you want palliative care to ease pain and discomfort if you were terminally ill? Although you cannot predict what medical situations will arise, be sure to discuss the following treatments with your doctor and loved ones.

- Resuscitation: Restarts the heart when it has stopped beating (cardiac death). Determine if and when you would want to be resuscitated by cardiopulmonary resuscitation (CPR) or by a device that delivers an electric shock to stimulate the heart.
- Mechanical ventilation: Takes over your breathing if you are unable to do so. Consider if, when, and for how long you would want to be placed on a mechanical ventilator.
- Nutritional and hydration assistance: Supplies the body with nutrients and fluids intravenously or via a tube in the stomach. Decide if, when, and for how long you would want to be fed in this manner.
- Dialysis: Removes waste from your blood and manages fluid levels if your kidneys no longer function. Determine if, when, and for how long you would want to receive this treatment.

What is a POLST?

A Physician Order for Life Sustaining Treatment, POLST, also known as a Medical Order for Life Sustaining Treatment (MOLST) addresses issues such as pain management, resuscitation orders, feeding procedures, and other medical interventions. POLST is intended as instructions for *current* medical treatment or for someone who is seriously ill, to avoid unwanted or medically ineffective care, reduce patient and family suffering, and ensure that patients' wishes are honored at the end of life. A POLST form is completed with the approval of both the patient and the physician. It has the force of a physician's medical order and stays with the patient in his or her medical records. POLST is not available in all states.

An Advance Directive, on the other hand, allows an individual, regardless of their current state of health, to direct future treatments and name a health care agent. It is a good idea for patients to use both a POLST form and an Advance Directive if appropriate.

Resources

For more information on powers of attorney, living wills, advance health care directives or POLST, you can contact an estate planning attorney in your state, or we suggest you contact the following resources and organizations:

My Wonderful Life

www.mywonderfullife.com

(MyWonderfulLife.com is a free on-line service to help you plan and personalize your own funeral, so it reflects the way you lived.)

Caring Info

www.caringinfo.org

(free state-specific advance directives and a variety of brochures on advance care planning including how to communicate your end-of-life wishes, choosing a health care agent, end-of-life decisions such as artificial nutrition and hydration, and others)

Compassion and Choices

PO Box 101810 Denver, CO 80250-1810

800-247-7421

www.compassionandchoices.org

(Provides advocacy, education and support at end-of-life)

National POLST Paradigm Task Force

Oregon Health & Science University Center for Ethics in Health Care

3181 SW Sam Jackson Park Road (Mail Code: UHN-86)

Portland, Oregon 97239

503-494-3965

www.polst.org

(More than 40 states have, or are developing, POLST programs. Check to see if your state is one of them by going to the following website: <http://www.polst.org/programs-in-your-state/>)

DISCLAIMER: This publication is designed to provide general information on the topics presented. It is provided with the understanding that the author is not engaged in rendering any legal or professional services by its publication or distribution. Although these materials were reviewed by a professional, they should not be used as a substitute for professional services. The CLRC has no relationship or affiliation with the referral agencies, organizations or attorneys to whom we refer individuals. Resources and referrals are provided solely for information and convenience. Therefore, the CLRC disclaims any and all liability for any action taken by any entity appearing on the CLRC's resource and referral lists.