

FAQ: Health Care Agents

This FAQ gives general information. It does not replace medical or legal advice from a professional. You should talk with your doctor about your advanced health care directive. Consult your attorney if you want legal advice.

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This document is one of a series covering advance directives, living wills, and end-of-life decision making. You can find more information at www.myfamilywellness.org/endoflife.

1. Why do I need a health care agent if I have given instructions about my future care in a living will?

Your instructions in a stand-alone “living will” will not take effect just because you are incompetent. You also must have an end-stage medical condition or be permanently unconscious.

For example, you could be seriously injured in an auto accident, but expected to recover. Any instructions that you made in a stand-alone living will would not apply in this situation.

It also is difficult to give instructions for every health care situation that you may face. By appointing a health care agent, you ensure that a person who you trust and knows your preferences and values will make your choices.

2. Who should I name as my health care agent?

Generally, you can name any adult (18 years of age or older) as your health care agent.

Choose someone who knows you well and can be trusted to honor your wishes. Make sure that this person is willing to be your health care agent and will usually be available to make your health care choices in a timely manner.

Also consider whether your choice for a health care agent is able to make difficult choices under stressful circumstances and to stand up for you to make sure that your wishes are honored as much as possible.

Your doctors, your other health care providers, and people who are employees, operators, or owners of health care facilities that are providing you with care cannot serve as your health care agent, unless they are related to you by blood, marriage, or adoption.

3. May I name my children to act together as my health care agent?

Pennsylvania law allows you to name two or more people to serve as joint agents and make your health care choices together. However, be careful if you do this. If joint agents disagree and you have not said how disagreements are to be resolved, a court may have to take action for someone to make a decision.

4. May my health care agent see and copy my medical records?

When your health care agent has power to make your health care decisions, your doctors and other health care providers may talk to your agent about your medical condition and the options for your care. Your agent also may see and get copies of the medical records containing this information.

5. What must my health care agent consider when making my health care choices?

Your health care agent is required to take the following into consideration, in the order listed, when making your health care choices:

- Any clearly expressed instructions (oral or written) made by you while competent,
- Your preferences and values (including moral and religious beliefs), and
- Your best interests.

Pennsylvania law **does not permit** your health care agent to refuse artificial nutrition and hydration that is necessary to preserve your life, unless it is **clear** that you would not want it under the circumstances.

6. What if I disagree with the choice of my health care agent?

To the extent practical, your doctors and other health care providers are required to let you know when your health care agent makes a health care choice for you.

You can always over-rule a choice of your health care agent to refuse or stop health care that is **necessary to preserve your life**, even if you are incompetent.

You also do not give up your right to make your health care decisions when you choose to give your agent the power to make health care decisions for you immediately (before you become incompetent). You may over-rule **any decision** of your health care agent as long as you still are competent.

7. May my health care agent consent to my admission to a mental hospital?

Health care agents may make many choices about your treatment for mental health issues. However, Pennsylvania law does not permit your health care agent to agree to have you committed to a mental hospital.

If you want to give someone the power to make this decision for you, you must appoint that person as your mental health agent in a mental health power of attorney. This is a different type of document and different rules apply.

You also should consider a mental health power of attorney if you want to give your agent specific instructions about drugs or other treatment for a mental health condition or to give your agent the power to consent to electroconvulsive therapy or mental health treatment that is experimental or for research purposes.

8. Will my health care agent pay my health care bills?

Naming a health care agent does not make your agent responsible for payment of your health insurance premiums or health care bills. You or your estate remains responsible for these costs, even if your agent requested the insurance or health care.

You should consider making plans for someone to use your money to pay health care bills that are not covered by your health insurance. You can do this by naming an agent in a financial power of attorney. In many cases, you can name the same person as your health care agent and your financial power of attorney agent.

If you have specific questions about a financial power of attorney, you should consult your lawyer.