

FAQ: Health Care Representatives

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. Can a family member or friend make my health care choices if I become incompetent and I have not named a health care agent?

A family member or friend who has been designated as your health care representative may make health care choices for you if you are incompetent and you have:

- No health care agent at all, or no health care agent who is reasonably available to make the decision, and
- No guardian of your person to make health care choices for you.

2. May I designate my health care representative?

Pennsylvania law allows you to designate someone as your health care representative while you are of sound mind. You just need to put your choice in writing or tell your health care providers in person.

However, if you have someone who you want to make your health care decisions, it usually is best to formally appoint this person as your health care agent. (See question 6 for differences between health care representatives and health care agents.)

3. **Who may act as my health care representative if I have not designated anyone?**

If you have not designated a health care representative, Pennsylvania law allows your family and friends to act as your health care representative, generally in this order:

- Spouse (unless one of you has filed for divorce) and adult children from a different relationship (such as a child from a prior marriage)
- Adult children
- Parents
- Adult brothers and sisters
- Adult grandchildren
- Adults who are familiar with what you would want

While you are of **sound mind**, you may change the order of this list or take someone off this list. You just need to put your change in writing or tell your health care providers in person.

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 representative, unless they are related to you by blood, marriage, or adoption.

A judge also can remove someone from serving as your health care representative for cause.

4. **What happens if my health care representatives disagree on a health care choice?**

It is possible that there may be more than one person who can be your health care representative. For example, your spouse may have died and all your children may want to act as your representative.

In these situations, your doctors usually will try to work with your representatives to help them reach agreement. If that does not work, they may ask the hospital ethics committee to give an opinion or try mediation to help your representatives come to agreement.

However, your doctors may follow the decision of the majority if no agreement can be reached. In the case of a tie, no decision can be made, and it may be necessary for a court to take action.

5. **Why should I name a health care agent when my family or a friend can speak for me?**

It usually is better to name a health care agent in a health care power of attorney instead of relying on a health care representative to speak for you.

By planning in advance, you increase the chance that the person who speaks for you will make the choices that you would have made.

Problems can develop when several persons may act as your health care representative and cannot agree on the choices for your care (see prior question).

You may want to give your health care agent broader power to refuse or stop life-preserving care than your health care representative will have under the law (see next question).

If you need medical care in another state, there may be different rules for who may speak for you as your health care representative.

6. **How do health care representatives differ from health care agents?**

There are three main differences between health care representatives and health agents.

1. **How they are selected.** You must name a health care agent in a formal legal paper—a health care power of attorney. While this is fairly easy to do, you may name a health care representative in a less formal way—either by putting your choice in writing or by telling your health care providers in person.

2. **When they can act for you.** There may be some situations when you do not want the burden of making your health care choices, even though you are able to do so.

You may give your health care agent the power to make health care choices for you even when you are competent. However, your health care representative may make health care choices for you only when you are incompetent.

3. **Power to refuse or stop life-preserving treatment.** There may be situations when you would not want aggressive medical treatment for a life-threatening condition, even when you do not have an end-stage medical condition and are not permanently unconscious.

An example might be if you had a severe brain disease or injury with no realistic hope of recovery. Your health care agent would be able to refuse or stop the aggressive medical care in these situations, unless you said that you did not want your agent to have this power.

However, Pennsylvania law authorizes health care providers to honor the request of your health care representative to refuse or stop care needed to preserve your life only if you have an end-stage medical condition or are permanently unconscious.