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Durable Power of Attorney for Health Care/Health-Care Proxy

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What is it?

A durable power of attorney for health care (DPAHC), also known as a health-care proxy, health-care power of attorney, or appointment of a health-care agent, is your written appointment of a representative to make medical decisions on your behalf if you become unable to make or communicate a responsible decision for yourself. It allows you to exercise control over your health care through this representative, who will have the authority to make most medical care decisions for you. You may want to appoint such a representative to act on your behalf. If you don't, medical professionals will generally be compelled to do everything possible to save and sustain your life. A DPAHC can resolve conflicts over your medical treatment and help ensure that your choices regarding medical treatment are respected.

Example(s): *Ken was severely injured in a car accident and remained in a coma for 16 months. When he regained consciousness, he remained incompetent and was kept alive with a feeding tube and other medical technologies. His wife asked the hospital to remove his feeding tube, believing he wouldn't want to be kept alive with such treatments. His mother strongly disagreed, claiming that her son should be kept alive. Unfortunately, Ken never appointed a representative to make such a choice and the question of who speaks for him is pending before the state court. If Ken had executed a DPAHC, his appointed representative would have made the choice and avoided the stress, delay, and cost of this dispute.*

When can it be used?

When permitted by state law

Not all states permit you to have a durable power of attorney for health care. Make sure to check the law in your state, as well as other states where you spend a significant amount of time.

Strengths

Authorizes someone to make medical decisions on your behalf

By executing a durable power of attorney for health care (DPAHC), you name a representative to make decisions regarding health care for you if you become incompetent. This representative can make most of the decisions that you would have made for yourself if you were competent. Without such a representative, your physician generally makes your health-care decisions (usually with the participation of one or more family members), unless a court formally appoints a representative for you.

Caution: *Deciding whether to decline medical treatments that sustain your life would likely be stressful for your representative. You might prefer to make decisions regarding life-prolonging treatment in a living will instead of leaving the decision to the person you appoint through your DPAHC. It is often best to have both a living will and a DPAHC.*

Allows for evaluation of specific proposed treatment in light of your circumstances

Your representative under a DPAHC is able to exercise judgment on your behalf, evaluating any proposed course of action in light of an understanding of your wishes, your condition, and present medical technology. In contrast, a living will is a set of general statements regarding how you want to be treated if you become incompetent and generally cannot take into account the specific circumstances, your condition, or the specific treatments being considered.

Tradeoffs

Requires reliance on another person

By executing a durable power of attorney for health care (DPAHC), you are essentially entrusting your life to your representative. If you don't have that much faith in another person, this strategy isn't for you.

Generally not effective in an emergency

Your representative must be contacted before he or she can act on your behalf. In an emergency or while you are traveling, your representative may not be able to be contacted before treatment must begin. In these instances, a living will or a do not resuscitate order may be more effective. It would also be wise to name an alternative representative under your DPAHC, assuming your state law allows you to do so, in case your first choice representative is not available to serve.

How to do it

Select a representative

The representative appointed by your durable power of attorney for health care (DPAHC) will have the power to consent to or decline medical treatments on your behalf. By doing so, you may be giving that person the power to decide when and how you die. Thus, this is an important decision and you should give considerable thought to this choice. Consider choosing a person who knows you well and understands your wishes regarding medical treatment and how you want to be cared for. You should also select one or more substitute representatives in case the original representative is unwilling or unable to serve (assuming state law allows you to name substitute representatives).

Tip: Make only one person representative at a time to prevent disagreements between your representatives that may give conflicting directions to the medical professionals treating you. Some state laws require that only one representative can serve at a time for this reason.

Specify the authority being given to the representative

You control how much power you want your representative to have through the specific terms of your DPAHC. You can give your representative the general power to act in your best interests or limited specific powers.

Caution: Defining your representative's powers may limit his or her ability to exercise judgment on your behalf. For example, instructing your representative to decline all resuscitation efforts prevents the representative from weighing the risks and benefits of new resuscitation procedures that may become available after you write your instructions.

Ensure that your durable power of attorney for health care is written to comply with the law in your state

Your state may require that you execute your DPAHC in accordance with certain formal guidelines. You should be familiar with the law of your state and any other state in which you spend a significant amount of time, and make sure that your DPAHC satisfies those requirements.

Make your durable power of attorney for health care consistent with all of your other written directions regarding medical care

Since a living will and a DPAHC satisfy differing needs, you may want both. If you have both, take care to ensure that the two are consistent and that only one governs at a time. If there are inconsistencies between the two documents, state law will generally decide which one governs.

Consider telling friends, family, and others about your wishes

Think about telling people like your family, friends, attorney, advisor, and physician that you have a DPAHC. This will increase the chances that it will be located when needed and may prevent disagreements about who is responsible for acting on your behalf.

Tip: Generally, telling people that you have a DPAHC isn't required. However, some states do require you to inform your physician of the DPAHC before it can be effective.

Update regularly

You should review your DPAHC regularly, especially to ensure that it still conforms to your wishes as to the choice of representative.

Tax considerations

Income Tax

None

Gift and Estate Tax

None

Questions& Answers

Can't your family act as your representative without a durable power of attorney for health care?

In the absence of a DPAHC, a court may appoint a family member to represent you. However, this process may be stressful, expensive, and time-consuming, especially if there is disagreement within your family. Your medical care provider is more likely to listen to a representative appointed in a DPAHC, especially since a medical care provider may be specifically required by law to follow such direction. Without a DPAHC or a court decree of guardianship, medical providers are generally reluctant to rely on or follow the instruction of a family member, even a close relative.

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