

Before the surrogate decision-making process can be used, two requirements must be satisfied:

1. A physician must determine and record in your medical record that you lack decision-making capacity.
2. You must not have an applicable Living Will, Declaration for Mental Health Treatment, or Power of Attorney for Health Care.

Your surrogate may not forgo life-sustaining treatment unless two physicians agree that you lack decision-making capacity and have at least one of the following:

- a terminal condition;
- an incurable or irreversible condition; or
- permanent unconsciousness.

The law calls any one of these three conditions a “qualifying condition.”

No surrogate may make decisions concerning admission to a mental health facility or mental health treatment including psychotropic medication or electroconvulsive therapy. These decisions must be made with court involvement. A surrogate, however, may petition a court to order any of these forms of care.

Even though you can rely on a surrogate, you should still consider naming an agent under a Power of Attorney for Health Care. First, your agent can do everything a surrogate can do and much more. Second, with an agent, you reduce the risk that your wishes will not be carried out because the agent will be following your written directions. Third, you may prefer someone other than the surrogate to make these important decisions for you. Fourth, you could end up with adult children or several brothers and sisters as surrogates who may disagree. You can reduce the risk of disagreements between them or court challenges by naming your own agent.

CONSULT AN ATTORNEY

As with any major life decision, it is always wise to consult with an attorney. In addition to providing accurate answers to your questions, a qualified attorney will know whether the current laws have become outdated. To find an attorney, you can log onto IllinoisLawyerFinder.com, or call the Illinois State Bar Association at (217) 525-5297 toll-free in Illinois.

For additional information on these issues, including copies of the applicable legal forms in English and Spanish, visit the Illinois Department of Public Health web site at www.idph.state.il.us/public/books/advin.htm

If you're looking for an Illinois lawyer, look to **IllinoisLawyerFinder.com**



IllinoisLawyerFinder.com is the Illinois State Bar Association's statewide lawyer directory on the Web. Search for lawyers by practice area, name, county or town.

Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



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For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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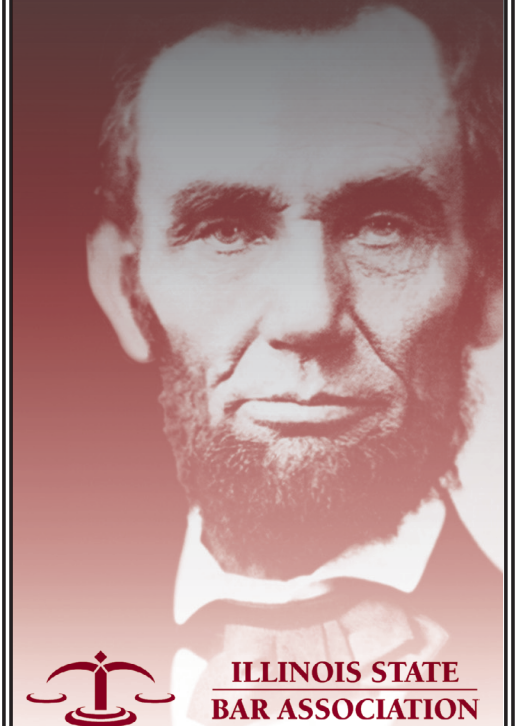
For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit **www.ISBALawyers.com**

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Consumer Legal Guide

Your Guide to Your Health Care

In Illinois, who decides?



**ILLINOIS STATE
BAR ASSOCIATION**

YOUR HEALTH CARE IN ILLINOIS, WHO DECIDES?

Now, while you are in good health, is the time to decide what kind of care you prefer if you are ever incapacitated and unable to make your own health care decisions. You can do this by signing a Power of Attorney for Health Care and/or a Living Will. In addition, a Declaration for Mental Health Treatment for specific forms of mental health care may be executed.

POWER OF ATTORNEY FOR HEALTH CARE

No matter what your age is or the current state of your health, a personal tragedy could strike at any time. You could be severely injured in a car accident, for example, and kept alive solely by feeding tubes, respirators, or other means of modern technology without ever regaining consciousness.

With a Power of Attorney for Health Care, you would have already named a person whom you trust to make health care decisions for you in a circumstance such as this one. In legal terms, this person is called your “agent.” Even if you plan to have a friend or a member of your family serve as your agent, you must name one of them in writing as your agent; the law does not automatically grant family members or friends with these broad powers. Your agent will have the power to make final health care decisions for you, including continuing or stopping your medical treatment in accordance with your wishes.

PREPARING THE WRITTEN DOCUMENT

In order to name an agent legally, you may use a form called “Short Form Power of Attorney for Health Care,” which you can obtain from your lawyer or a physician. (You should know that a Power of Attorney for Property is

completely different and does not include provisions for health care.)

The law does not require you to use this short form. Instead, you may write your own Power of Attorney for Health Care provided it:

- names the person who will serve as your agent;
- describes the power you grant your agent; and
- is signed and dated while you are still able to make decisions for yourself.

You may give your agent the power to make all health care decisions for you or you may set whatever limits you want. For example, you may want to tell your agent to do everything possible to keep you alive and to agree to any treatment that would limit your pain and suffering.

At any time, you may change your agent or any section of your Power of Attorney for Health Care by identifying the change in writing, then signing and dating it. You may also cancel your Power of Attorney for Health Care by simply tearing it in half or drawing an “X” across it.

WHO RECEIVES A COPY OF THE DOCUMENT

You should make sure that an updated copy of the Power of Attorney for Health Care is provided to the person you have named as your agent as well as to your physician. In addition, you should communicate your wishes verbally to both parties so they not only understand your decisions but also your beliefs and values underlying your decisions.

A LIVING WILL

In addition to naming an agent under a Power of Attorney for Health Care, you may also want to sign a Living Will. A Living Will

is a written statement that gives you the right to stop or not begin medical treatment delaying your death if you have a terminal condition. The law defines a “terminal condition” as an incurable or irreversible condition where death is imminent and where the use of death-delaying procedures serves only to prolong the dying process.

HOW A LIVING WILL DIFFERS FROM POWER OF ATTORNEY FOR HEALTH CARE

Even though a Power of Attorney for Health Care and a Living Will apply to similar situations, a Living Will is very different.

You do not name an agent in a Living Will. Instead you indicate your wishes about death-delaying procedures that your physician can rely upon in certain specific situations. A Living Will applies only if you have a “terminal condition” which is determined by your doctor. A Living Will does not permit your doctor to stop water and tube feeding if their withdrawal would be the only cause of your death.

You may want to refuse medical treatment in a state other than Illinois that will not enforce your Power of Attorney for Health Care, but may enforce your Living Will. A Living Will, therefore, increases the chances that your wishes will be followed in the event you have a medical emergency in another state.

DECLARATION FOR MENTAL HEALTH TREATMENT

With a Declaration for Mental Health Treatment, you name a person whom you trust to make specific mental health treatment decisions for you. This person is an attorney-in-fact, similar to an agent but with limited authority. Your attorney-in-fact will have the legal right and responsibility to make limited mental health treatment decisions concerning admission (for up to 17 days in a mental health facility), psychotropic medication, and electroconvulsive treatment.

An agent under a Power of Attorney for Health Care may make all the decisions an attorney-in-fact may and more. This advance directive is for individuals with specific mental health treatment preferences.

DO NOT RESUSCITATE (DNR) ORDER

It is important to inform your doctor, both verbally and in writing, of advance directives. One of these is a DNR order, a physician’s order which may be documented in a medical record or as a separate document executed by the physician and patient. A DNR order means that cardiopulmonary resuscitation (CPR) will not be used if your breathing and/or heart stop. The Illinois Department of Public Health has established a uniform DNR order form.

WHO DECIDES IF YOU HAVE NO SIGNED DOCUMENT?

If you do not sign a Power of Attorney for Health Care or a Living Will, the Health Care Surrogate Act, may allow a certain person or persons to make medical and life sustaining treatment decisions without court involvement. This person is called a surrogate. Under the surrogate decision-making process, your physician will identify a surrogate in the order listed below:

1. a court appointed guardian of your person
2. your spouse
3. your adult children
4. your parents
5. your adult brothers or sisters
6. your adult grandchildren
7. one of your close friends
8. a court appointed guardian of your property