

Reminder: Make Health Care Decisions While You're Healthy

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Estate planning isn't just about what happens to one's assets after death. It's also about protecting one's self and loved ones. This includes having a plan for making critical medical decisions in the event a person is unable to do so independently. And, as with other aspects of an estate plan, the time to act is now, while healthy. If an illness or injury renders a person unconscious or otherwise incapacitated, it will be too late.

Without a plan that expresses a person's wishes, family members may have to make medical decisions on his/her behalf or petition a court for a conservatorship. Either way, there's no guarantee that these decisions will be made as desired by the person, or by the person he/she would have chosen, had planning been done.

2 documents, 2 purposes

To ensure that wishes are carried out, and that family is spared the burden of guessing — or arguing over — what a person would decide, put those wishes in writing. Generally, that means executing two documents: 1) a living will and 2) a health care power of attorney (HCPA).

Unfortunately, these documents are known by many different names, which can lead to confusion. Living wills are sometimes called "advance directives," "health care directives" or "directives to physicians." And HCPAs may also be known as "durable medical powers of attorney," "durable powers of attorney for health care" or "health care proxies." In some states, "advance directive" refers to a single document that contains both a living will and an HCPA.

Regardless of terminology, these documents basically serve two important purposes: 1) to guide health care providers in the event a person becomes unable to communicate or are unconscious, and 2) to appoint someone trusted to make medical decisions on their behalf.

Living will

A living will expresses the preferences for the use of life-sustaining medical procedures, such as artificial feeding and breathing, surgery, invasive diagnostic tests, and pain medication. It also specifies the situations in which these procedures should be used or withheld.

Living wills often contain a do not resuscitate order (DNR), which instructs medical personnel to not perform CPR in the event of cardiac arrest.

HCPA

An HCPA authorizes a surrogate — a spouse, child or another trusted representative

— to make medical decisions or consent to medical treatment on a person's behalf if he/she is unable to do so. It's broader than a living will, which generally is limited to end-of-life situations, although there may be some overlap.

An HCPA might authorize a surrogate to make medical decisions that don't conflict with the living will, including consenting to medical treatment, placement in a nursing home or other facility, or even implementing or discontinuing life-prolonging measures.

It's a good idea to have both a living will and an HCPA or, if allowed by state law, a single document that combines the two. For more information, or to discuss these items in greater detail, contact your Anchin Relationship Partner or a member of [Anchin Private Client](#) at 212.840.3456 or info@anchin.com.