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Health Care Power of Attorney

What Is A Health Care Power Of Attorney (HCPOA)?

A HCPOA allows another person (your agent) to make health care decisions for you when you are not able to make those decisions yourself. A health care decision is any choice you would normally make that affects your health, such as whether to take medication, have an operation or terminate life support. A "durable" HCPOA means the power you grant to your agent lasts even after you become incompetent. In fact, your HCPOA does not even become effective, which means your agent has no power to direct your health care, until your attending physician determines that you have lost the capacity to make informed health care decisions.

HIPAA requires that the DPOAHC agent be treated as the principal with respect to disclosures of protected health information. An additional box on the DPOAHC form, if initialed, gives your agent permission to immediately access your protected health care information.

How Does A HCPOA Differ From A Living Will?

A living will contains your instructions about withholding or withdrawing life support, food and water if you are terminally ill or permanently unconscious. A HCPOA, on the other hand, allows your agent to make health care decisions for you and to decide general medical treatment after you become incapacitated. If you have both, the living will controls if you are terminally ill or permanently unconscious.

How Does A HCPOA Differ From A Financial Power Of Attorney?

An agent appointed by a HCPOA has no authority to manage your financial affairs; and an agent appointed by a financial power of attorney has no authority to handle your medical matters.

What Must My Agent Do?

Your agent must make the same health care decisions as you would if you were competent to make those decisions. If your agent does not know what decision you would have made, then he or she must use his or her best judgment to decide what is in your best interest in any particular situation. However, your agent has no authority to refuse or withdraw food and water if you are permanently unconscious, unless you specifically granted him or her such authority or your attending physician and at least one other physician who has examined you determine that nutrition or hydration will not serve to provide comfort, or alleviate pain.

What Must A HCPOA Contain To Be Valid?

A HCPOA is a form that you fill in with your name and address and the name, address and phone number of the person you choose to be your agent. You may also designate two alternate agents in case the first agent is not readily available or is unwilling or unable to serve. It must then be signed in front of a notary public or two witnesses. A witness can be any adult except for:

(a) any person related to you by blood, marriage or adoption;

(b) your agent or alternate agent;
(c) your attending physician; or
(d) the administrator of a nursing home in which you are receiving care.

Who Can Be My Agent?

You may designate any competent adult as your agent in a DPOAHC except:

(a) your attending physician;
(b) an administrator of a nursing home in which you are receiving care; and
(c) an employee or agent of one of the above except if they are related to you by blood, marriage, or adoption.

Why Should I Have A HCPOA?

Everyone should have a HCPOA. The form is easy to understand, simple to fill out, and puts your future health in the hands of a person you trust. Without it, no one has legal authority to make health care decisions for you. If you are incompetent and do not have a HCPOA, it may become necessary for someone to file for guardianship in probate court before any medical treatment can be given. After probate court finds you incompetent, it will appoint a guardian to make health care decisions for you. This procedure involves court costs and attorney fees, and can result in long delays.

Can My Agent Be Sued?

No. The person you choose as your agent must be willing to accept the appointment and should know how you feel about medical procedures and treatments in order to be able to make the same decision you would if you were able to give informed consent. Your agent is not liable for making a good faith effort to fulfill his or her duty even if he or she failed to make the same choice you would have in the same situation.

Can I Change Agents?

Yes, but in order to do so, you must create a new HCPOA naming the new person as your agent, which automatically revokes, or cancels, any earlier HCPOA. You may also revoke a HCPOA without creating a new one. You may revoke a HCPOA in any way at any time, but your revocation does not affect your attending physician until he or she is notified that you revoked your HCPOA. Unless a DPOAHC contains an expiration date, it remains valid as long as you are alive. If, however, you lack capacity to make informed health care decisions on the expiration date, the DPOAHC shall continue in effect until you regain the capacity.

Can My Agent Withdraw Or Refuse Life-Sustaining Care?

Your agent may not withdraw or refuse life-sustaining treatment until:

(a) your attending physician and a statutorily qualified physician determine that you are in a terminal condition or permanently unconscious state; and

(b) your attending physician determines there is no reasonable possibility that you will regain the capacity to make health care decisions for yourself.

“Terminal condition” means there can be no recovery and death is likely to occur within a relatively short time without life-sustaining treatment.

"Permanently unconscious state" means you are irreversibly unaware of yourself and your surroundings, you have lost cerebral cortical functioning and you can't experience pain or suffering.

Can My Agent Refuse Or Withdraw Artificially Supplied Nutrition And Hydration?

Your agent may never refuse or withdraw "comfort care," which includes nutrition, hydration or any other measure taken to diminish pain or discomfort, but not to postpone death. If you are terminally ill, however, and if your attending physician and a statutorily qualified physician determine that artificially supplied nutrition and hydration will no longer provide comfort or alleviate pain, artificially supplied nutrition and hydration can be refused or withdrawn. If you are permanently unconscious, artificially provided nutrition and hydration can be refused or withdrawn only if you have authorized your agent to do so by checking and initialing the appropriate paragraph in the HCPOA and if your attending physician and a statutorily qualified physician determine that the nutrition and hydration will no longer provide comfort or alleviate pain.

Must A Health Care Provider Follow My Agent's Instructions?

No, but it cannot prevent or unreasonably delay your transfer to the care of a physician or health care facility that will comply.

May Someone Object To My Agent's Instructions?

If your agent makes a decision regarding life-sustaining treatment, your attending physician must make a good faith effort to contact a certain person or group of persons, and only that person or group, and the next person or group on the list, has a right to file a complaint in probate court objecting to the decision. The same people may also object to lack of proper comfort care. These are the only persons and situations where an objection can be filed. The one person or group that must be contacted is, in order:

(a) your guardian, if any;
(b) your spouse;
(c) your adult children (if easily available);
(d) your parents; or
(e) a majority of your easily available adult siblings.

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