

2014 Changes to Ohio Advance Directives

In March 2014, the 130th Ohio General Assembly passed Sub. H.B.126. This act specifically affects the language of the durable power of attorney for health care (see the act summary at <http://www.lsc.state.oh.us/analyses130/13-hb126-130.pdf>). In addition to making changes to address the new legislation, the Ohio State Bar Association, with help from its partner organizations (Midwest Care Alliance, Ohio State Medical Association, Ohio Hospital Association, and Ohio Association of Osteopathic Physicians), took the opportunity to revise the advance directive forms that have been widely used across the state for a number of years.

Briefly, the following changes were made to the advance directive forms packet:

- A cover page was added to indicate which advance directive documents the principal/declarant has and whether they include special instructions.
- The Health Care Power of Attorney (HCPOA) document now precedes the Living Will Declaration (LW) in the packet.
- Definitions were reviewed, amended and augmented in both HCPOA and LW as necessary.
- A box was added to the HCPOA (p. 3 of 12) to authorize an agent to obtain protected health care information (per Sub. H.B. 126).
- “Guidance to Agent” in the HCPOA now immediately follows “naming of agent” information (p. 3 of 12).
- A “Nomination of Guardian” section was added to HCPOA (p. 6 of 12) to comply with Sub. H.B. 126, which allows for nomination of a guardian of the person and the estate to be made through the HCPOA (note: this is an option and not a requirement; if no guardian is appointed, unused lines should be crossed out).
- References to anatomical gifts and the Donor Registry Enrollment Form have been removed from the HCPOA and LW by request of the organ donation organizations. Previous legislation allowed mention of organ/tissue donation in advance directive documents, but confusion has arisen with respect to the Bureau of Motor Vehicles Donor Registry. Accordingly, organ/tissue donation information, including an Ohio Donor Registry Enrollment Form, is included in the back of the advance directives packet (pp. 1-3, Ohio Organ/Tissue Donation).
- An “addendum” was added to the “Notice to Adult Executing This Document” following the HCPOA (page 12 of 12) to address changes made in March 2014 per Sub. H.B. 126.
- In LW, “No Expiration Date,” “Copies the Same as Original,” “Out of State Application” and notice of completion of HCPOA have been moved to precede “Notifications” (p. 4 of 7).
- In LW, the language and instructions for health care in terminal condition or permanently unconscious state (p. 5 of 7) were condensed and a box added at the bottom of the page to allow the principal to include additional instructions or limitations.

Please note:

The advance directive forms were drafted to provide basic documents to attorneys and the public. There is no requirement to use the forms, as long as the advance directive documents comport with Ohio law. Existing advance directive documents are valid, but, going forward, we suggest using the new forms or drafting/revising your own forms so that they comport with the March 2014 legislation.