



# *X-Plain*

## *Durable Power of Attorney (DPA)*

### **Reference Summary**

#### **Introduction**

Advance directives are instructions you give your doctors telling them what kinds of medical care you do or do not want if you become unable to make medical decisions for yourself.

A “durable power of attorney for health care” is an example of advance health care directives. In it, you appoint someone to make health care decisions for you only when you cannot make the decisions yourself.

This reference summary explains the durable power of attorney for health care. It is provided for informational purposes and does not replace the advice of your doctor or lawyer.



#### **Advance Directives**

Many terminally ill patients become unable to make decisions or let their doctors know their wishes, as the illness gets worse. Terminally ill means a medical condition that is incurable or irreversible and will most likely lead to death. Even if life-sustaining procedures are used, there is no reasonable expectation of recovery. If a patient cannot make decisions or communicate, and does not have an advance directive, doctors have no way of knowing what type of treatment the patient wants or does not want.

Examples of medical situations where a person can no longer make decisions include:

- Being in a permanent coma also called a permanent vegetative state
- Losing the ability to think competently, such as after a massive stroke
- Losing the ability to think and communicate due to severe dementia

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A person who has been given a durable power of attorney for health care can make health care decisions when the patient is unable to communicate his or her wishes.

## **DPA for Health Care**

A durable power of attorney for health care lets you name another person to make medical decisions for you if you become unable to make and express your own decisions. Power of attorney documents expire when the patient becomes incapacitated unless it is a durable power of attorney. The term “durable” indicates that the document is still valid even if the person appointing the agent becomes incapacitated. The agent you name acts as your appointed proxy but only for making decisions regarding the healthcare matters you specify AND when you cannot make the decisions yourself. The person appointed as agent in the durable power of attorney for health care is also referred to as health care proxy, health care surrogate or attorney-in-law.

The legal document for durable power of attorney for health care may include a statement such as,

*“I designate John Smith as my agent and give my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make healthcare decisions for myself.”*

For your health care agent to act according to your wishes when you cannot make your own decisions, you must trust him or her. Make sure your agent knows what YOU want and believe regarding health care decisions. The only way to ensure this is to discuss your wishes and beliefs regarding medical treatments with your agent.

A durable power of attorney for finances is different from a durable power of attorney for health care. Even if you have a legal document assigning an agent to handle your finances in case you become incapacitated, you will need a separate document to assign an agent to make health care decisions on your behalf. Your healthcare agent is not liable for your bills and has no control over your finances.

In a durable power of attorney for health care, you can specify how much authority you want your agent to have. You can also name other people to act as alternate agents if your primary agent is not available.

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If family members disagree with each other or disagree with the doctors, they may need to go to court to get authority to direct medical care. This is why it is so important to appoint a health care agent when writing advance directives. Otherwise, doctors and relatives may make critical decisions for you that might not be based on your wishes.



You can specify in your durable power of attorney for healthcare the names of people you do not want to act as your agent. If you do not trust anybody, do not name a healthcare agent.

The laws in your state specify who can and cannot be your health care agent. Make sure the person you choose meets the criteria. Most states prohibit your doctor and other healthcare professionals from being your agent, unless they are your relatives.

As you choose your healthcare agent, look for a person that

- You trust
- Understands your healthcare values and is willing to speak on your behalf
- Lives close by or could travel to be available at your side if needed



Speak to the person you wish to appoint before signing your advance directives. Confirm his or her willingness to act for you and understand your wishes.

### **Other Directives**

The durable power of attorney for health care is one type of advance directives. However, there are other advance directives. The living will and your desires regarding organ donation after death are also advance directives.



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A living will comes into effect while you are still alive but unable to make decisions. It specifies the medical care you do or do not want to receive if you become unable to make decisions for yourself.

Many states use ID cards and hospitals use forms to ask if you would like to donate your body organs after death. Answering “yes” or “no” to such questions is a form of advance directive. In general, people dying of a chronic illness can donate only corneas, skin and bone. People who die unexpectedly generally can donate more organs, such as kidneys, liver, heart and lungs.

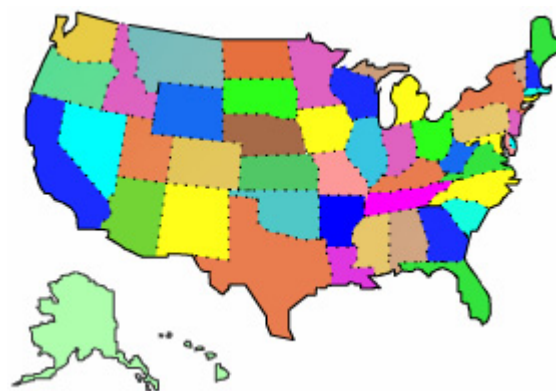
Some hospitals have a special form called a “Do Not Resuscitate (DNR) order form”. It is another kind of advance directive. A DNR is a request not to have cardiopulmonary resuscitation (CPR) if your heart or breathing stops. Unless given other instructions, hospital staff will try to help anyone whose heart has stopped or who has stopped breathing.

You can also include in your advance directives your wishes regarding nursing homes, blood transfusions, autopsies, donating your body for medical research and any other issue of importance to you.

It is possible to combine forms into one legal document that lists a patient’s wishes regarding medical treatment and appoints an agent. Such a legal document is usually called “Advance Health Care Directives”. As you consider designating your healthcare proxy, consider other advance directives you want to put in writing, such as the living will, DNR order, and organ donation.

## Legal AD Forms

State laws govern advance directives documents. All 50 states and the District of Columbia have laws that permit individuals to sign documents stating their wishes about health care decisions when they cannot speak for themselves. The laws vary from state to state, but the basic idea of honoring a patient's wishes is the same across the United States.



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You do not need a lawyer to write advance directives. Most states have laws that provide special forms. However, use a lawyer if you think your family situation is complex or if you expect problems to arise.

Some states have forms for a living will AND a durable power of attorney for health care. Some recognize one form only, and other states combine the two forms into one. If your state form does not allow you to express all your wishes, you can attach an additional page to the form recognized by your state.

To obtain advance directive forms that are specific to your state, ask for the forms at your hospital or health care facility. You can also check with your state's medical or legal association.

If you use a computer, your state forms may be available online. You can also buy computer software packages that provide the legal forms for your state.

The laws in your state specify who can and cannot be your health care agent. Make sure your health care agent meets the criteria. Most states prohibit your doctor and other healthcare professionals from being your agent, unless they are related to you.

Plan before you fill out your advance directives forms.

1. Consider your values and specify your goals.
2. Understand your treatment options and outcomes.
3. Specify your wishes.

Specify how much authority you want your health care agent to have. It can be unlimited or follow your wishes in the living will. If your state does not have a living will form, attach a statement to the durable power of attorney document stating the limitations or power of your agent, if you have any. State laws may put restrictions on what an agent can order. For example, an agent cannot order an abortion.

When you are satisfied with your directives, the document should be notarized or signed according to your state requirements. States usually require 2 witnesses. Some require or permit a notarized signature. It is very important that you follow your state requirements, which are explained on your state form.

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After signing your advance directive, give copies to:

- your durable power of attorney for health care
- your family
- and your doctor

You may want to keep a small card in your wallet or purse indicating that you have advance directives.



You can review your advance directives at any time. Inform your doctor, attorney, healthcare agent and family of any changes. Changes must be made, signed and notarized according to the laws in your state. It may be as easy to write a new medical directive instead of changing the current one since the signing requirements are the same.

In most states, advance directives are in effect until you cancel them or change them. In some states, they expire and you have to renew them every few years. Check your state forms for instructions.

You can cancel your advance directives verbally or in writing. However, it is best to do it by writing a new directive. Remember to sign it according to your state rules, and then give it to your agent, doctors or anyone else who has a copy of the previous directive. Destroy your old copy and ask them to destroy their old copies.

## Conclusion

A terminal illness or a sudden injury can leave you unable to convey your decisions regarding your medical care. Advance directives tell your doctor what kind of medical care you would like to receive if you become unable to make medical decisions.

The 2 main types of advance directives are the living will and the durable power of attorney for health care. In a durable power of attorney for health care, you appoint someone else to make medical treatment decisions for you if you cannot make them for yourself. In a living will, you state your wishes about life-sustaining medical treatments if you are terminally ill.



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Laws about advance directives vary from state to state. You should use the forms for your state. Forms should be available in hospitals, healthcare facilities, and your state medical and legal associations. Consult an attorney if you think your family or medical situation is complex.

Advance directives are not only for the elderly. Incapacitating accidents can hit anyone at any age. The time to write your advance directive is when you can still communicate your desires. This way, you will ensure that your healthcare wishes will be followed, and may relieve your family members of the burden of making difficult health care decisions for you.

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