

# Understanding Different Healthcare Legal Documents

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Managing healthcare issues today places many HIM professionals in the role of consumer educator. This is especially true when consumers are coping with end-of-life issues. Legal documents are imperative for determining a patient's treatment care wishes, managing requests for information, and facilitating healthcare decisions.

Each form plays a unique role when HIM professionals address requests for information from family members, representatives, and next of kin. However, each state has its own version of these documents, including power of attorney, healthcare power of attorney, living will, do-not-resuscitate orders (DNRs), and advance directives.

HIM professionals should familiarize themselves with the definition of each document in order to help them manage the different requests they receive.

## Power of Attorney: Finances

A power of attorney for finances is a legal document that allows a third party (proxy) to act on behalf of a patient in financial and asset matters. The third party is allowed to perform extensive activities such as writing checks, making investments, and buying or selling property. Individuals can choose anyone to serve in this role and most often will choose a family member or spouse.

## Power of Attorney: Healthcare

The healthcare power of attorney is a broadly scoped document that covers most healthcare decisions. It does not require the patient to be terminal or in an irreversible condition before allowing for third-party medical decisions to be made.

Although the proxy often is the spouse, a spouse does not automatically have the authority to make all medical decisions.

## Durable Power of Attorney

A general power of attorney is not considered a permanent document. It becomes invalid if an individual becomes incapacitated. As such, a companion document, the durable power of attorney, is recommended so that an agent can continue to handle the patient's affairs in the event of incapacitation.

## Durable Power of Attorney: Healthcare

A durable power of attorney for healthcare is a legal document that designates a third party (healthcare proxy or agent) to pay healthcare bills and make healthcare decisions about a patient in the event of incapacitation. These events include when the patient is unconscious, mentally incompetent, or otherwise unable to make decisions.

Healthcare providers should never assume that a patient has designated a healthcare proxy in the event of incapacitation. The proxy should be able to produce the durable healthcare power of attorney in the event that a patient is unable to communicate medical decisions.

Medical providers and hospitals utilize the durable power of attorney for healthcare as permission to discuss protected health information during medical situations, treatment courses, and discharge planning activities to ensure sound medical decisions are made on behalf of the patient. Some states allow a patient to designate specific wishes within the document such as receiving life-sustaining procedures, organ donations, or enabling them to enforce a DNR.

The patient must also sign a statement that he or she has reviewed and understands the document. An attorney is not required to draft or sign this document. Two witnesses are required to sign the document. At least one of the witnesses must not be related to the patient by blood or marriage, entitled to a part of the patient's estate, or have a claim against the estate.

Once a patient becomes incapacitated, the third party must consult with the physician. The physician will determine if the patient is incapacitated, document the information, and file the full healthcare power of attorney in the health record.

As with any document, there are some exceptions or specific situations in which a healthcare power of attorney cannot make treatment care decisions. For example, a third party cannot withhold comfort and care on behalf of the patient, make the decision for an abortion, or commit a patient to a mental health facility.

A patient can grant anyone healthcare power of attorney except the patient's provider, employee of the provider, residential care provider, or employee. The person chosen should have a clear understanding of the patient's healthcare treatment preferences, which may or may not be spelled out within the document. A person can name more than one third party to fulfill this role, and the second person has the same decision-making rights as the first.

Healthcare powers of attorney generally do not expire but do not extend past death unless otherwise documented. Time limits can be set, however, and if included should be a part of the original document and not added at a later date. The healthcare power of attorney becomes effective upon signature and is in the possession of the third party. However, as long as the patient is mentally capable, the third party cannot make a decision that would override the patient's.

A healthcare power of attorney can be revoked at any time by the patient, as long as he or she is competent. A second healthcare power of attorney will override the first as long as the patient signs that the second document was created, signed, and reviewed while being of sound mind. Once the provider has been notified that a revocation exists, it should be recorded within the patient's health records.

## Living Will

A living will allows a patient to express his or her wishes concerning life-sustaining procedures. It differs from a healthcare power of attorney as it does not allow a patient to appoint a specific third party to carry out these wishes.

For example, a patient may choose to request no mechanical ventilation support in the event of a life-sustaining injury. A living will is not expected to cover every situation that may occur. Therefore, most states require both a living will and a healthcare power of attorney to interpret a patient's comprehensive healthcare wishes.

## Do-Not-Resuscitate Orders

A DNR order is a specific request from the patient to not administer cardiopulmonary resuscitation (CPR) in the event that his or her heart or breathing stops. A DNR is recorded as a physician order within a patient's healthcare record. A patient's living will may or may not include a DNR request. A physician can write a DNR order in the absence of a living will.

### Legal Document Definitions

**Power of attorney for finances:** allows a third party (proxy) to act on behalf of a patient in financial and other matters. The third party is allowed to perform extensive activities such as writing checks, making investments, and buying or selling property.

**Healthcare power of attorney:** a broadly scoped document that covers most healthcare decisions. It does not require the patient to be terminal or in an irreversible condition before allowing for third-party medical decisions.

**Durable power of attorney for healthcare:** designates a third party (healthcare proxy or agent) to make healthcare decisions about a patient in the event of incapacitation.

**Living will:** allows patients to express their wishes concerning life-sustaining procedures. It differs from a healthcare power of attorney as it does not allow a patient to appoint a specific third party to carry out these wishes.

**Do-not-resuscitate order:** a specific request from the patient to not administer cardiopulmonary resuscitation (CPR) in the event that his or her heart or breathing stops.

## Advance Directives

Advance directives are documents that reflect a patient's medical care preferences. The word is plural because two primary documents are involved: the healthcare power of attorney and living will. Together these documents can provide a patient's clear and concise medical treatment plan.

In order to inform patients of their rights to dictate their future care, Congress passed the Patient Self-Determination Act in 1991, which mandates healthcare providers educate patients about advance directives. Organizations are required to provide written notice upon admission to the facility regarding patient rights and policies regarding advance directives. These rights include the right to facilitate the patient's healthcare, the right to accept or refuse treatment, and the right to execute advance directives.

In addition, a facility must ask patients whether they have current advance directive documents and include both the inquiry and forms (if available) within the health record. If a patient does not have advance directives, the facility must offer education regarding these documents.

When these documents have been submitted to the provider or healthcare facility, HIM professionals must ensure the health record clearly indicates the existence of these documents and that they are readily available to the healthcare professional.

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