

Questions & Answers

1. What is an Advance Directive?

In Michigan, an Advance Directive is a general term referring to a written legal document in which you name the person—a Patient Advocate—you choose to speak for you should you lose the ability to make decisions for yourself. You may also specify instructions for your Patient Advocate concerning what type of medical care you may want or not want in the future. This form of Advance Directive is called a Durable Power of Attorney for Healthcare.

2. Must I have an Advance Directive?

No. The decision to have an Advance Directive is completely voluntary. No family member, hospital, or insurance company can force you to have one, or dictate what the document should say. A hospital or nursing home or hospice organization cannot deny you service because you do or don't have an Advance Directive.

3. What are the advantages of having an Advance Directive?

Expanding technology has increased the treatment choices we face. Decisions may have to be made concerning your care at a time you can no longer communicate your wishes. A Durable Power of Attorney for Healthcare helps assure that you get the treatment you wish to receive in the event you cannot speak for yourself. Having an Advance Directive may also prevent the need for a guardianship imposed through the probate court.

4. Are there different types of Advance Directives?

Yes. Around the United States there are four types:

1. A Durable Power of Attorney for Healthcare
2. A living will
3. An out-of-hospital do-not-resuscitate declaration
4. A declaration of anatomical gift (organ/tissue donation) to take effect when you die.

Important: Michigan law is weighted to prefer a Durable Power of Attorney for Healthcare over a living will. According to Michigan law, healthcare decisions are managed best when people put in place a Patient Advocate to speak for them in the event they become unable to speak for themselves.

5. Who is eligible to have a Durable Power of Attorney for Healthcare?

Anyone 18 years old or older. All adults are encouraged to think about advance care planning.

6. Who may I appoint as Patient Advocate?

Any person age 18 or older is eligible; you can appoint your spouse, partner, an adult child, a friend, or other individual. You should choose someone you trust, who can handle the responsibility, and who is willing to serve as your healthcare proxy if needed.

Important: You must discuss, in detail, your values and wishes with the individual you propose to name as Patient Advocate before you complete and sign the document.

7. What must I do to have a valid Durable Power of Attorney for Healthcare?

The declaration must be in writing, signed by you, and witnessed by two adults.

There are restrictions on who can be a witness. Witnesses cannot be family members, your doctor, your proposed Patient Advocate, or an employee of a health facility or program where you are a patient or client.

8. What is the duty of my Patient Advocate?

Your Patient Advocate has a duty to take reasonable steps to follow your desires and instructions, oral and written, expressed while you were able to participate. They speak in what is called “substituted judgment” about what they believe your medical healthcare decisions would be.

9. Is there a required form for the document?

No. There are a number of organizations that provide free forms which comply with Michigan state law. You may also have documents drawn up by your attorney.

10. Will my Patient Advocate have power to handle my financial affairs?

Not without a separate Durable Power of Attorney for Finances or Living Trust designation. You can give your Patient Advocate power to arrange for medical and personal care services, and to pay for those services using your funds. However, your Patient Advocate will not have general power to handle all your property and finances.

11. Who determines I am no longer able to participate in my own healthcare decisions?

The doctor responsible for your care and one other doctor or psychologist who examines you will make that determination.

12. What powers can I give a Patient Advocate?

Any healthcare decisions you could normally make for yourself. For example, you can give your Patient Advocate power to consent to or refuse medical treatment for you; arrange for mental health treatment, home health care, or adult day care; or admit you to a hospital or skilled-care nursing facility. You can also authorize your Patient Advocate to make a gift of your organs or body, to be effective upon your death.

13. Can I give my Patient Advocate the right to withhold or withdraw medical treatment—including nutrition and hydration—that would allow me to die?

Yes, but you must express in a clear and convincing manner the Patient Advocate is authorized to make such decisions, and you must acknowledge these decisions could or would allow your death.

14. Are there other limitations to what a Patient Advocate can do?

Michigan law limits certain decisions based on pregnancy and in certain mental health care arenas—for instance, if there is a psychiatric emergency endangering your life or the life of another person.

15. What about mental-health treatment decisions?

You are advised to seek legal counsel about how the authority of a Durable Power of Attorney for Healthcare relates to mental health treatment decisions.

16. Must my Patient Advocate formally accept the responsibility to be my Patient Advocate?

Yes. They must formally sign an acceptance of their willingness to serve as your Patient Advocate. The general language of the acceptance is set forth in law.

17. Can I appoint a second or third person to serve as an alternate Patient Advocate in case the first person is unable to serve?

Yes. However, no more than one person may serve at the same time.

18. What if I haven't expressed any specific wishes concerning medical treatment?

Your Patient Advocate must then make decisions about medical care in a way that he or she sees as consistent with your written and verbal instructions concerning your values and goals for your medical care. The job of

the Patient Advocate is to express the wishes you would express if you were able.

19. Will a hospital or nursing home allow my Patient Advocate to review my medical records?

Yes. Your Patient Advocate, once you are unable to participate in treatment decisions, has the right to view and have copies of your medical records.

20. Once I sign a Durable Power of Attorney for Healthcare may I change my mind?

Yes. You may want to name a different Patient Advocate or alter the expression of your wishes. So long as you are of sound mind, you can sign a new document and then destroy the old one.

Regardless of your physical or mental condition, you can revoke or cancel the durable power of attorney by indicating in any way the document does not reflect your current wishes. Also, any spoken wish to have a specific life-extending treatment provided must be honored by a Patient Advocate, even if the wish contradicts a written directive.

21. Can my Patient Advocate refuse to act in my behalf?

Yes. A Patient Advocate can revoke his or her acceptance at any time. If so, your named alternate Patient Advocate would become Patient Advocate.

22. Who should have a copy of my Durable Power of Attorney for Health care?

1. You keep the original in a safe and accessible place.
2. Your Patient Advocate(s)
3. Your primary care physician
4. Any hospital at which you might wish to have it on file for future hospital admissions.
5. You may upload your Patient Advocate Designation / Advance Directive to Great Lakes Health Connect, for access to healthcare institutions state-wide. See the Great Lakes Health Connect Release Form.

Photocopies are as good as the original.

23. What if there is a dispute when my Patient Advocate is making decisions for me?

If an interested person disputes whether the Patient Advocate is acting in your best interests, or has the authority to act in your behalf, the interested person may petition the local probate court to resolve the dispute.

24. What if I regain the ability to participate in medical or mental health decisions?

The powers of your Patient Advocate are suspended during the time you are able to participate in making healthcare decisions.