

# Advance Directives

## *Planning ahead for your own care*

### Topical Education for Today's Investor

### ESTATE PLANNING

You may not want to think about it, but it is vital that you do — you may someday face a sudden health crisis due to an accident or serious illness that leaves you unable to make your own medical decisions. Fortunately, there is a legal means to addressing this potential future concern — it's called an **advance directive**.



An advance directive is a written statement that you complete in advance of a serious illness. Generally speaking, this document names someone to act on your behalf or outlines how you want medical decisions to be made when you are no longer able to make decisions for yourself. Some types of advance directives may be able to do more for you than others, so it is important to know the differences.

Keep in mind that advance directives should not be confused with financial directives (such as a durable power of attorney — see sidebar titled “A Proxy for Your Money”). In addition, advance directives are not financial documents. However, it is possible that during a visit with your financial advisor or attorney to discuss financial and estate planning affairs, advance directives may be discussed and, in some cases, packaged together with other documents (e.g., wills, trusts, etc.).

### Why a Health Care Proxy?

The two most common forms of advance directives are a **living will** and a **durable power of attorney** for health care (commonly referred to as a health care proxy). A living will can explain — in writing — the care you wish to receive (or avoid) in the event you

are incapacitated by a terminal illness or serious accident. For instance, it can express your wishes for controlling pain, receiving nutrition, or making life-support decisions.

Unlike a living will, a health care proxy allows you to legally designate someone — a proxy — to make medical decisions for you. Keep in mind that in some states you may even be able to combine a health care proxy and living will into a single document.

Hospitals and nursing homes are required to ask about the existence of any advance directive when you are admitted. In most states, a health care proxy does not take effect until you can no longer make medical decisions for yourself; until then, only you can legally consent to any treatment. In addition, you can always change or cancel the document as long as you are mentally alert. If you decide to make changes to any of these documents, be sure to do so in writing.

A **comprehensive health care advance directive** combines both a health care proxy and living will into one document. Organizations such as AARP, American Bar Association (ABA), and the American Medical Association (AMA) have joined forces to create a simple, yet comprehensive, form.

## Know the Potential Drawbacks

Though it is a legal document, a health care proxy cannot handle every medical situation. Here are a few key points to consider before you designate a proxy.

- **Some caregivers could override your document –** Some states permit a doctor or health care facility to reject any advance directive for reasons of conscience. In these cases, the doctor or facility must tell you or your healthcare proxy about this when you are admitted to care and must offer to help transfer you to another party or facility that will comply with your wishes or the health care proxy.
- **The advance directive may not be followed by emergency medical services (EMS) –** If EMS is summoned to treat you in case of a life-threatening situation, they are usually required to resuscitate and stabilize you until you reach the hospital, regardless of an existing advance directive.
- **Know state laws –** Though all states accept health care proxies as legal, each varies considerably in what is required of these documents. Also, if a health care proxy is written to your state's specification but you undergo medical treatment when visiting another state, the rules regulating health care proxies in the state in which treatment takes place will usually prevail. Also, if you don't have a health care proxy, many states will appoint a person to make medical decisions on your behalf. Usually, this person is your closest relative, which may or may not coincide with your intentions.
- **Do not use a health care proxy unless you fully trust the person you have named –** In the case that a health care proxy is not an appropriate choice, the ABA recommends that you use only a living will.

## A Proxy for Your Money

As you devote time to possibly setting up a health care proxy, you can also designate a durable (or general) power of attorney for your financial affairs. As with a health care proxy, a durable power of attorney can specify how you want your financial affairs dealt with in case you become disabled or suffer a serious illness, and it designates someone who can make any financial decisions on your behalf.

A big advantage of this financial proxy is it can help prevent your loved ones from having to go to court to request guardianship over your financial affairs if you become incapacitated. This arrangement can also give the person you designate the ability to pay your debts, manage investment transactions, and even make charitable gifts that could help reduce your estate taxes.

As with an advance directive, it is important to update a financial proxy at least every five years — otherwise, some financial institutions may not accept the directive as valid. And some financial institutions may not accept the document regardless of the date, so it is best to check with each institution you deal with regarding their policy. (In these cases, you may need to draw up more binding agreements via your financial advisor.)

For more on whether a durable power of attorney could be appropriate in your financial situation — and how your state's laws treat this arrangement — consult your attorney or financial advisor.

## Collect Your Thoughts

Before you talk to a financial advisor or lawyer about what type of advance directive may be best for you, you can save valuable time by understanding the types of issues the document should cover.

Start by talking to your family, doctor(s), and potential health care proxy about your medical wishes in as much detail as possible, outlining any information about the types of medical decisions that may come up at a later time based on your current health. Then, have your attorney draw up your advance directive. You and several witnesses will need to sign it.

Once it is written, store this directive with your other important documents and make sure your family and lawyer know where to find it. Also, give copies to anyone you've named as health care proxy, your doctor, and health care facility (such as a nursing home). In addition, you and/or your lawyer should review this document at least once every five years, or when there is a major change in your life (such as a divorce or the death of a spouse).

Informing loved ones and doctors about the types of medical care you would choose in a wide variety of situations can bring peace of mind to those most concerned with your health. Though you cannot anticipate an unexpected health crisis, you can prepare ahead of time to ensure that you are cared for in a manner that coincides with your intentions, even if you cannot make this decision for yourself.

**For more information, please consult with your financial or legal advisor.**

## Points to Remember

1. Both a living will and a health care proxy are advance directives, allowing you to put in writing how you want medical decisions made if you are no longer able to make decisions for yourself. However, a health care proxy has the added advantage of permitting you to designate someone to make medical decisions for you when you cannot speak for yourself.
2. Legal safeguards exist to ensure that health care proxies are not misused. Hospitals and nursing homes are required to ask if you have an advance directive, and you can always override, change, or cancel your proxy.
3. Having a health care proxy can be a wise step. If you do not have a health care proxy, many states will appoint a decision maker for you if you can no longer make your own medical decisions.
4. Advance directives are not financial documents. However, it is quite possible that during a visit with a financial advisor or attorney to discuss financial and estate planning affairs, advance directives may be packaged together with other estate planning documents.
5. Before setting up any advance directive, review your current health and future wishes in as much detail as possible with family, your financial advisor, legal counsel, and a chosen proxy. Once a document has been executed, store the document in a safe and known place and give all involved parties a copy.

### Important Additional Notes

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