

# Documents for Medical Preparedness

By Eriko Hashimoto

When considering estate planning documents, it is important to include advance health-care directives so your family and loved ones have the appropriate guidance to make the desired and responsible health-care decisions should you no longer be able to yourself. While it is difficult to think about injury or falling ill, none of us are immune to medical risks. Further, you have the right to direct your medical care. As such, having the right documentation to define and address your health-care needs and desires is imperative to ensure your caretakers have clear guidelines. State laws vary concerning the legality and enforceability of these documents, so it is best to consult your attorney to determine the appropriate documents to prepare. While you may not fall ill in the state for which your documents are enforceable, at the very least having these documents will provide written evidence of your desired wishes. It is never too early to get these documents in order as it is best to execute them well before any medical needs arise. Lastly, communicating your thoughts on different medical treatments, quality of life and end-of-life care with your family and doctor is critical. The more they know, the easier it will be for them to fulfill your wishes.

## Document Checklist

### Health Care Proxy

A health care proxy, also known as a durable medical power of attorney, authorizes another person, a representative you appoint, to make medical decisions on your behalf in the event you are unable to express them yourself. By executing this document, you still maintain the power to make your own medical decisions, but it allows your representative to step in if you do not have the capacity to make your own medical decisions. It is best to appoint one person to serve as a representative at a time and to name an alternate should your primary representative be unable to act on your behalf. Prior to appointing a representative, you should confirm his or her agreement and ability to carry out your wishes. Your representative will have the power to consent or decline medical treatments on your behalf. As such, you can outline how much authority your representative will have on this document. We recommend putting this document in place for anyone over the age of 18.

### HIPAA Waiver of Authorization

Patient-privacy regulations under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 make it difficult for your appointed representative(s) to obtain your protected health information. The HIPAA Waiver of Authorization allows doctors to provide information on your health to third parties such as family members, other doctors, or attorneys. This document should accompany your health care proxy so your representative will have access to your health information in order to make decisions on your behalf.

### Living Will

A living will provides specific directives about the course of treatment to be followed by health care providers. In most states, this directive applies when you have no hope of survival, such as terminal injury or illness, therefore addresses decisions regarding life-sustaining treatments. As such, living wills do not determine your medical treatment in situations that do not affect your continued life, such as routine medical treatment. Having a clear understanding of the implications of your directives is important. We recommend providing a copy of your living will to your doctor and local hospital to maintain with your medical records so it is readily available when needed.

### Durable or Springing Power of Attorney

While the other three documents are specific to medical care, a durable or springing power of attorney enables the appointed representative to make financial decisions on your behalf in the event of an incapacitating illness or injury. This is an important aspect of medical preparedness as you will need someone to look after your financial affairs in the event of incapacity. A standard power of attorney becomes ineffective when its grantor becomes incapacitated. As such, it is important to have a durable power of attorney, which is in effect when you are both cognizant and incapacitated or a springing power of attorney, which only goes into effect once you become incapacitated. Determination of incapacity varies state to state, but generally, there is some sort of formal procedure. If you elect to use a springing power of attorney, it is helpful to note in your document exactly what you consider "incapacitated." Often times, language is included that requires a doctor's certification of incapacitation.



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