

Senior Citizens' Law Office, Inc.

4317 Lead Ave. SE, Ste. A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

Frequently Asked Questions about Health Care Powers of Attorney

A Health Care Power of Attorney (HPOA), also known as an Advance Health Care Directive and a Living Will, is a form that lets you name a person to make health care decisions for you if you are not able to make or voice those decisions. The person you appoint is known as your Agent.

These health care decisions have been described as the Five Wishes¹ and include:

- the person you want to make health care decisions for you when you can't make them;
- the medical treatment that you want or don't want;
- how comfortable you want to be – such as using medications, food, blankets, etc.;
- how you want people to treat you;
- what you want your loved ones to know.

Although it may be hard to talk about these decisions now when you are healthy and not needing assistance, it is best to make your wishes known before becoming ill. In New Mexico, a Health Care Power of Attorney form can help you with this process.

There are two parts to the HPOA – naming the Agent(s) who you want to make health care decisions for you and then describing your desired health care treatment. You can also just name the Agent and then let the Agent make the decisions about your end-of-life care.

SCLO can help you complete the HPOA. This Fact Sheet provides basic information to assist you.

1. What is a Health Care Power of Attorney?

An HPOA is a form that allows you to provide as much information as you like to help guide your health care, including end-of-life health care, if you are unable to make or voice your decisions. The HPOA provides a guide, a road map to what your wishes are –you can add detailed information to the form if you choose. It is important that you use clear language in describing your wishes. Your Agent will be grateful if you talk to your Agent about your wishes.

2. Who do I appoint as my Agent?

Take good care in deciding who you want to appoint as your Agent. A primary person is typically appointed as your first choice and then a second or third alternative in case the first Agent is not available, unwilling, or unable to act as your Agent. A corporation that offers trustee services can also be appointed as an Agent. A health care facility where you are receiving care cannot be your Agent.

3. What powers does my Agent have?

An Agent can speak for you and communicate your wishes to health care providers. Doctors, nurses, and other health care providers will read your HPOA and then provide care to you based on those instructions. Agents can also request and review your medical records. Agents have the power to make hard decisions for you such as withholding measures that would keep you alive. The HPOA also allows you to limit your Agent's authority if you choose to do so.

¹ See Aging with Dignity, Five Wishes at fivewishes.org, Phone: 850-681-2010.

4. Does an HPOA cover mental or behavioral health care?

No. An HPOA does not empower your agent to make decisions relating to psychiatric or other mental health care. A separate form, called an “advance directive for mental health treatment,” is necessary to appoint an agent to make decisions regarding such care.

5. When does the Agent’s authority start?

An Agent’s authority can become effective immediately or when you are determined to be unable to make health care decisions.

If the HPOA becomes effective immediately, you can discuss and may come to an agreement with your Agent that they will not act unless you are unable to make health care decisions. The advantage of having an HPOA become effective immediately is that it can be used in event of emergencies or unanticipated times when you are unable to make health care decisions. It also is available to family members and provides a guide and comfort to them as to what your wishes are for your health care.

If the HPOA does not become effective immediately, it may become effective when your main health care provider (primary care) and one other health care provider (a doctor, physician assistant, nurse practitioner, etc.) determine that you are unable to make health care decisions. The need for two health care providers to make the decision as to whether you can or cannot make health care decisions can lead to delay in using the HPOA.

You can decide on the criteria that determines when your HPOA becomes effective.

6. How do I give specific instructions for my end-of-life health care?

This form may be used to describe the health care that you want at the end of life. If you prefer that your Agent decides what is best for you at end of life, you can name your Agent, sign the HPOA and give no further instructions on the HPOA. If you have specific instructions about your end-of-life care, the HPOA lists questions for you to answer that will provide direction to your Agent and your health care providers. The HPOA also allows you to add additional instructions.

7. What are end-of-life instructions?

You can decide under what circumstances you want or do not want your life prolonged. You can make decisions about artificial hydration (typically an intravenous), nutrition (typically a feeding tube), and/or assistance with breathing (typically a breathing tube). You can instruct that you want to be kept clean, warm, comfortable, and free from pain. You can also list other wishes that you have for your end-of-life care such as comfort measures - blankets, massage, music, lip balm, lotion, and so forth.

8. What about the gift of life - organ donation?

The HPOA provides an area where you can state that you want to be considered as an organ donor for any acceptable organs and tissues or for only specific organs and tissues. If you choose to give the gift of life, care will be provided so that your organs and tissues are kept healthy and in the best condition for a short period of time prior to use. You can also refuse to be an organ donor, or you can leave the decision up to your Agent.

9. How do I change an HPOA that I already signed?

You can cancel, also known as revoke, an HPOA at any time. You can do this in writing or orally – to do this, you need to notify your main health care provider (primary care) or the supervising health care provider where you are receiving care. You can ask to have the revoked HPOA torn up, deleted, or returned to you. If you have distributed your HPOA to other people or health care facilities, you will need to tell them that the HPOA is no longer current. You can provide them with a new HPOA if you choose to do so.