

Advance Directives and Powers of Attorney: Frequently Asked Questions

What is an advance directive?

An **advance directive** allows you to plan for future healthcare decisions. You can use it to make choices about the kinds of treatment you will receive, to pick whom you want to make healthcare decisions for you (a healthcare agent), or both. Advance directives address medical decisions such as end-of-life care, medical treatment options, organ donation and resuscitation.

An advance directive can be written or oral. Each state has its own requirements for advance directives. In Maryland, your written advance directive must be signed and dated by you and by two witnesses. The witnesses must be adults, and at least one of them must be someone who will not receive money or property after you die. If you name a healthcare agent, that person cannot be a witness. In Maryland, your oral advance directive must be made in the presence of an attending healthcare provider and one witness.

What is an advance directive for mental health treatment?

If you have a mental health condition, you may want to complete an **advance directive for mental health treatment** too. This kind of advance directive addresses mental health treatment preferences and decisions, including information about medications and other treatments, such as the use of seclusion and restraint.

Note: Under certain circumstances, Maryland law permits treatment in contradiction with the person's expressed wishes.

When does an advance directive go into effect?

An advance directive can go into effect as soon as it has been created. Or you can specify that it will go into effect when a healthcare provider certifies that you are no longer able to make your own healthcare decisions due to incapacitation or inability to communicate your wishes.

What is a power of attorney?

A **power of attorney** gives someone (referred to as an agent) legal authority to act for another person (referred to as a principal). You can use it to identify the person whom you want to manage your legal and financial matters, which will mean doing things like paying your bills, managing your finances and making legal decisions. Unlike an advance directive, a power of attorney must be in writing. Like with advance directives, each state has its own requirements for powers of attorney. In Maryland, a power of attorney must be notarized and signed by the principal and by two adult witnesses.

A power of attorney can be "general" or "limited." A general power of attorney gives the agent authority to act in all business and personal matters, subject to any limitations in the document. A limited (also known as "special") power of attorney limits the agent's authority to specific tasks or time periods (e.g., signing documents while you are traveling).

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When does a power of attorney go into effect?

A power of attorney usually goes into effect as soon as it is signed. Or you can specify that it will go into effect at a later date or when certain conditions are met.

Will my power of attorney end if I become incapacitated?

In Maryland, powers of attorney are “durable” unless they indicate otherwise. That means the power of attorney does not end if the principal becomes incapacitated.

Who can create an advance directive or power of attorney?

To create an advance directive or power of attorney, you must meet all three of the following requirements:

- You must be at least 18 years of age.
- You must be mentally competent, meaning that you understand the nature and effect of the document, the powers or instructions being granted, and to whom those powers are being given.
- You must intend to give the power or make the directive to the person named in the document.

What is a surrogate decision-maker?

If you do not have an advance directive identifying a healthcare agent and you are unable to make healthcare decisions for yourself, a surrogate decision-maker is the person who will make those decisions for you. The surrogate decision-maker is required to make treatment decisions based on your known wishes. Maryland law sets out a list of people who may act as a surrogate, in order of priority:

- A legal guardian (if one has been appointed by a court)
- A spouse or domestic partner
- Adult children
- Parents
- Adult siblings
- Other relatives or close friends

If you do not choose your own healthcare agent in advance, your medical team may turn to this list when needed. Choosing a specific person ahead of time in an advance directive ensures that someone you trust will be the one making decisions for you.

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Can I use advance directives and powers of attorney in another state?

If you complete an advance directive or power of attorney in one state according to that state's legal requirements, it is likely valid in another state, including Maryland. However, some states require additional documentation or use different terminology (e.g., "healthcare agent" vs. "proxy"). For example, Maryland does not require that an advance directive be notarized, but some states do. To avoid complications, it is best to ensure that your documents comply with the laws of any state where you spend significant time or may receive care.

If you regularly travel out of state, spend a part of the year in another state, or may receive care across state lines, it is a good idea to do all of the following:

- Bring a copy of your documents with you when you travel.
- Inform your healthcare agent or power of attorney agent of your travel plans.
- Review legal requirements in each relevant state (especially for advance directives).
- Consider having state-specific documents prepared.
- Consult with an attorney in each state where you live or receive medical treatment if you have questions.

Tip: Keep copies of your documents in a place that is easy to access, such as a phone app, a wallet card or a secure cloud storage account shared with your agent. You can also ask hospitals where you receive care to add the documents to your records.

How can Project HEAL help?

Project HEAL (Health, Education, Advocacy, and Law), a community-based program of the Maryland Center for Developmental Disabilities at Kennedy Krieger Institute, can help answer specific questions about advance directives and powers of attorney in the state of Maryland.

For more information on Project HEAL and the types of services available, visit:

KennedyKrieger.org/ProjectHEAL

To connect with Project HEAL, call **443-923-4414** or complete an [online intake form](#).

For more information on advance directives and powers of attorney, visit:

- Project HEAL's resources page: KennedyKrieger.org/ProjectHEAL/Resources
- The People's Law Library of Maryland: [Advance Directives](#) and [Powers of Attorney](#)
- CaringInfo: caringinfo.org/planning/advance-directives/
- Justia: justia.com/estate-planning/power-of-attorney/power-of-attorney-laws-50-state-survey/

State laws and policies may change. Contact your state government or Project HEAL for updates.