



*Helping Older Persons with Legal &  
Long-Term Care Problems*

# ***Health Care Power of Attorney***

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## ***1. What Is A Durable Power Of Attorney For Health Care (DPOAHC)?***

A DPOAHC allows another person (your agent) to make health care decisions for you when you are no longer able to make those decisions yourself. [\[1\]](#) A health care decision is any choice you would normally make that affects your health, such as whether to take medication, have an operation or terminate life support. [\[2\]](#) The word "durable" means the power you grant to your agent lasts even after you become incompetent. In fact, your DPOAHC does not even become effective, which means your agent has no power to direct your health care, until your attending physician determines that you have lost the capacity to make informed health care decisions. [\[3\]](#)

Also HIPAA requires that the DPOAHC agent be treated as the principal with respect to disclosures of protected health information. An additional box on the DPOAHC form, if initialed, gives your agent permission to immediately access your protected health care information. [\[4\]](#) [\[5\]](#)

## ***2. How Does A DPOAHC Differ From A Living Will?***

A living will contains your instructions about withholding or withdrawing life support, food and water if you are terminally ill or permanently unconscious. [\[6\]](#) A DPOAHC, on the other hand, allows your agent to make health care decisions for you and to decide general medical treatment after you become incapacitated. [\[7\]](#) If you have both, the living will controls if you are terminally ill or permanently unconscious. [\[8\]](#)

## ***3. How Does A DPOAHC Differ From A Financial Power Of Attorney?***

An agent appointed by a DPOAHC has no authority to manage your financial affairs; and an agent appointed by a financial power of attorney has no authority to handle your medical matters. [\[9\]](#) [\[10\]](#)

## ***4. What Must My Agent Do?***

Your agent must make the same health care decisions as you would if you were competent to make those decisions. If your agent does not know what decision you would have made, then he or she must use his or her best judgment to decide what is in your best interest in any particular situation. [11] However, your agent has no authority to refuse or withdraw food and water if you are permanently unconscious, unless you specifically granted him or her such authority or your attending physician and at least one other physician who has examined you determine that nutrition or hydration will not serve to provide comfort, or alleviate pain. [12]

### ***5. What Must A DPOAHC Contain To Be Valid?***

A DPOAHC is a form that you fill in with your name and address and the name, address and phone number of the person you choose to be your agent. You may also designate two alternate agents in case the first agent is not readily available or is unwilling or unable to serve. It must then be signed in front of a notary public or two witnesses. [13] A witness can be any adult except for

- (a) any person related to you by blood, marriage or adoption;
- (b) your agent or alternate agent;
- (c) your attending physician; or
- (d) the administrator of a nursing home in which you are receiving care. [14]

### ***6. Who Can Be My Agent?***

You may designate any competent adult as your agent in a DPOAHC except

- (a) your attending physician;
- (b) an administrator of a nursing home in which you are receiving care; and
- (c) an employee or agent of one of the above except if they are related to you by blood, marriage, adoption, or if the individual is a competent adult and you and the individual are members of the same religious order. [15]

### ***7. Why Should I Have A DPOAHC?***

Everyone should have a DPOAHC. The form is easy to understand, simple to fill out, and puts your future health in the hands of a person you trust. Without it, no one has legal authority to make health care decisions for you. If you are incompetent and you do not have a DPOAHC, it may become necessary for someone to file for guardianship in probate court before any medical treatment can be given. After probate court finds you incompetent, it will appoint a guardian to make health care decisions for you. [16] This procedure involves court costs and attorney fees, and can result in long delays. You may purchase an Advance Directives Packet, which includes a DPOAHC form, for \$4.00 or download the forms for free at:

[http://www.midwestcarealliance.org/aws/LAO/pt/sp/advance\\_directives](http://www.midwestcarealliance.org/aws/LAO/pt/sp/advance_directives).

## ***8. Can My Agent Be Sued?***

No. The person you choose as your agent must be willing to accept the appointment and should know how you feel about medical procedures and treatments in order to be able to make the same decision you would if you were able to give informed consent. Your agent is not liable for making a good faith effort to fulfill his or her duty even if he or she failed to make the same choice you would have in the same situation. [\[17\]](#) Neither is a physician liable for following the decisions of your agent, but all health care providers remain liable for negligence or deviations from reasonable medical standards causing you injury or death. [\[18\]](#) [\[19\]](#)

## ***9. Can I Change Agents?***

Yes, but in order to do so, you must create a new DPOAHC naming the new person as your agent. By doing so, you automatically revoke, or cancel, any earlier DPOAHC. [\[20\]](#) You may also revoke a DPOAHC without creating a new one. You may revoke a DPOAHC in any way at any time, but your revocation does not affect your attending physician until he or she is notified that you revoked your DPOAHC. [\[21\]](#) Unless a DPOAHC contains an expiration date, it remains valid as long as you are alive. If, however, you lack capacity to make informed health care decisions for yourself on the expiration date, the DPOAHC shall continue in effect until you regain the capacity. [\[22\]](#)

## ***10. Can My Agent Withdraw Or Refuse Life-Sustaining Care?***

Your agent may not withdraw or refuse life-sustaining treatment unless

- (a) your attending physician and a statutorily qualified physician determine that you are in a terminal condition or permanently unconscious state; and
- (b) your attending physician determines there is no reasonable possibility that you will regain the capacity to make health care decisions for yourself. [\[23\]](#)

“Terminal condition” means there can be no recovery and death is likely to occur within a relatively short time without life-sustaining treatment. [\[24\]](#)

“Permanently unconscious state” means you are irreversibly unaware of yourself and your surroundings, you have lost cerebral cortical functioning and you can’t experience pain or suffering. [\[25\]](#)

### ***11. Can My Agent Refuse Or Withdraw Artificially Supplied Nutrition And Hydration?***

Your agent may never refuse or withdraw “comfort care,” which includes nutrition, hydration or any other measure taken to diminish pain or discomfort, but not to postpone death. [26] [27] If you are terminally ill, however, and if your attending physician and a statutorily qualified physician determine that artificially supplied nutrition and hydration will no longer provide comfort or alleviate pain, artificially supplied nutrition and hydration can be refused or withdrawn. [28]

If you are permanently unconscious, artificially provided nutrition and hydration can be refused or withdrawn only if you have authorized your agent to do so by checking and initialing the appropriate paragraph in the DPOAHC and if your attending physician and a statutorily qualified physician determine that the nutrition and hydration will no longer provide comfort or alleviate pain. Also, your agent cannot be subject to a temporary protection order, civil protection order, or any other protection order in this state or another state in which you are the alleged victim. [29]

### ***12. Must A Health Care Provider Follow My Agent’s Instructions?***

No, but it cannot prevent or unreasonably delay your transfer to the care of a physician or health care facility that is willing to comply. [30]

### ***13. May Someone Object To My Agent’s Instructions?***

If your agent makes a decision regarding life-sustaining treatment, your attending physician must make a good faith effort to contact a certain person or group of persons, and only that person or group, and the next person or group on the list, has a right to file a complaint in probate court objecting to the decision. [31] The same people may also object to lack of proper comfort care. [32] These are the only persons and situations where an objection can be filed. The one person or group that must be contacted is, in order:

- (a) your guardian, if any;
- (b) your spouse;
- (c) your adult children (if easily available);
- (d) your parents; or
- (e) a majority of your adult siblings who are easily available. [33] [34]

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Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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**Endnotes:** *[Click the endnote number "[1]" to return to the text]*

[1] [O.R.C. § 1337.12\(A\)](#) – Statutory authority for DPOAHC

[2] [O.R.C. § 1337.12\(A\)\(1\)](#) – DPOAHC effective when principal loses capacity  
[O.R.C. § 1337.11\(G & H\)](#) – Power of Attorney Definitions (“healthcare” & “healthcare decision”)

[3] [O.R.C. § 1337.12\(A\)\(1\)](#) – DPOAHC effective only after lost capacity; DPOAHC may authorize agent to immediately obtain protected health care information.

[4] [45 C.F.R. 164.502\(g\)\(2\)](#) – Used and disclosures of protected health information

- [5] See Health and Human Services guidance regarding the Privacy Rule:  
<http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/>
- [6] [O.R.C. § 2133.02](#) – Statutory authority for a living will
- [7] [O.R.C. § 1337.12\(A\)](#) – Statutory authority for DPOAHC
- [8] [O.R.C. § 2133.03\(B\)\(2\)](#) – Where the DPOAHC & Living Will conflict, the Living Will controls
- [9] [O.R.C. § 1337.01 -.10](#) – Statutes regarding general powers of attorney
- [10] [O.R.C. § 1337.13\(A\)\(1\)](#) – Defines the power of the DPOAHC attorney in fact
- [11] [O.R.C. § 1337.13\(A\)\(1\)](#) – Defines the power of the DPOAHC attorney in fact
- [12] [O.R.C. § 1337.13\(E\)](#) – Conditions necessary for attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal
- [13] [O.R.C. § 1337.12\(A\)\(1\)](#) – Execution formalities for DPOAHC
- [14] [O.R.C. § 1337.12 \(B & C\)](#) – Witness and notary requirements for DPOAHC
- [15] [O.R.C. § 1337.12\(A\)\(2\)](#) – Who can be appointed attorney in fact
- [16] [O.R.C. § 2133.08](#) – Statutory procedure for withdrawal of nutrition and hydration where there is no DPOAHC or Living Will
- [17] [O.R.C. § 1337.15\(G\)](#) – Immunity of attorney in fact
- [18] [O.R.C. § 1337.15\(A\)](#) – Immunity of attending physician
- [19] [O.R.C. § 1337.15\(H\)](#) – No immunity for negligent actions
- [20] [O.R.C. § 1337.14\(C\)](#) – The creation of a DPOAHC revokes any prior DPOAHC
- [21] [O.R.C. § 1337.14 \(A\)](#) – Revocation of DPOAHC
- [22] [O.R.C. § 1337.12\(A\)\(3\)](#) – Expiration of DPOAHC
- [23] [O.R.C. § 1337.11\(BB\)](#) – Definition of “terminal condition”
- [24] [O.R.C. § 1337.11\(V\)](#) – Definition of “permanently unconscious state”
- [25] [O.R.C. § 1337.13\(B\)](#) – Authority of attorney in fact to withdraw or refuse informed consent to life-sustaining treatment
- [26] [O.R.C. § 1337.11\(C\)](#) – Definition of “comfort care”
- [27] [O.R.C. § 1337.13\(C\)](#) – Authority of attorney in fact to withdraw comfort care
- [28] [O.R.C. § 1337.13\(E\)](#) – Refusing or withdrawing comfort care

- [29] [O.R.C. § 1337.13\(B\), \(C\) & \(E\)](#) – Authority of attorney in fact to withdraw or refuse informed consent to the provision of nutrition or hydration to the principal
- [30] [O.R.C. § 1337.16\(B\)](#) – Provider may refuse to follow instructions of attorney in fact
- [31] [O.R.C. § 1337.16\(D\)\(1\)](#) – Physician must make good faith effort to notify
- [32] [O.R.C. § 1337.16\(E\)](#) – Complaint by objecting person regarding comfort care
- [33] [O.R.C. § 1337.16\(D\)\(1\)\(B\)](#) – Persons who must be contacted by the attending physician prior to withdrawing life-sustaining treatment
- [34] [O.R.C. § 1337.16\(E\)\(2\)](#) – Persons who can object regarding comfort care