



## **There Is No Autopilot for Navigating Advance Directives**

***I have an Advance Directive not because I have a serious illness but because I have a family.    Ira Byock***

As Final Exit's Surrogate Consultant, people often ask me for advice on the best Advance Directive (AD) to cover their medical and end-of-life (EOL) wishes. Unfortunately, the answer is not that simple. An AD is a "legally recognized" document usually containing a Living Will spelling out your preferences and treatment options when you cannot speak for yourself. It also includes the designation of a health care surrogate/proxy to follow your wishes after you are declared incapacitated by one or two doctors. Another form, a Power-of-Attorney (HC-POA) for health care, is a separate legal document, often created by an attorney, that grants another person the right to make ALL of your healthcare decisions.

**AD and HC-POA forms are STATE-SPECIFIC, meaning that each state and the District of Columbia have laws controlling them.**

These forms are often fileable online and have instructions for use but are typically very basic and, most important, have rules for witnessing your signature. The Attorney General's Office offers these forms free in most states, but you do not need an attorney to fill one out. I find a lot of these state forms a little overwhelming. However, I have access to every state's AD online form through Caring Info, and I email links to people who request them. <https://www.caringinfo.org/planning/advance-directives/>

**Even though the forms are fillable online, they have to be printed, signed, witnessed, and in some states notarized, in person, so the process is not totally online.**

One AD form I suggest people explore is Five Wishes, which offers a printed and online format and is valid nationwide, sometimes with a few caveats. Five Wishes is easy to understand and user-friendly. I recently had a client write two pages of notes included with her Five Wishes, making it adaptable to her individual medical and EOL choices and care.

Five Wishes is not free. It is \$5.00 plus shipping for a printed form and \$10.00 for the online version. <https://fivewishes.org/five-wishes/individuals-families/individuals-and-families> Another form I suggest is PREPARE, which is free, easy to use, and covers all of the states: <https://prepareforyourcare.org/advance-directive>

The first section in most directives is naming a healthcare agent to speak for you when you are incapacitated. This person is also referred to as a surrogate, agent, or proxy, depending on the jurisdiction. There are many misconceptions about the surrogate vs. the health care POA role. You might have a scenario where someone names a surrogate in an AD **AND** creates an HC-POA through their attorney and they appoint a different person. The person with the HC-POA has the force of the law behind them to make your health care decisions if you cannot. It is an area ripe for conflict if you name more than one person to help honor your wishes. An article from the American Cancer Society addresses the issue of having both a surrogate, chosen in a living will, and a separate durable POA for health care. <https://www.cancer.org/treatment/treatments-and-side-effects/planning-managing/advance-directives/faqs.html> With a durable POA, “the person you selected to be your health care agent (proxy), will make all of your health care decisions after your physician certifies that you can’t make your own medical decisions. A living will is only used after two physicians confirm that you cannot make medical decisions for yourself and you are in a medical condition defined by your state’s law as terminal illness or permanent unconsciousness. If you have both these documents, it is important to make sure they don’t conflict with each other so that there will be no confusion about who will enforce your wishes if you can’t speak for yourself.”

**There are two kinds of POA’s, health care/medical and financial. They are different forms but both POA’s are needed to handle your affairs when you cannot.**

Another question I often get is, “**will my AD be accepted in another state?**” Charles Sabatino, Director of the American Bar Association Commission on Law and Aging, discusses the portability of an AD in his article, “**Can My Advance Directives Travel Across State Lines?**” The answer is, “it depends.” [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol\\_38/issue\\_1\\_october2016/advance-directives-across-state-lines/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue_1_october2016/advance-directives-across-state-lines/) If you live in two different states, it is best to know each state’s AD law and create your directive to be valid in both. In reality, only about one-third of adults have an AD, so the medical staff is happy to get any AD in an emergent situation, no matter where it was written. AD are legally recognized documents, and doctors will follow your **known wishes** in a “valid” AD to avoid liability, but validity in these cases can be murky. Cover your bases and make your directive usable and valid in every state you live.

**I also suggest making a video spelling out your wishes. Record a video on your phone and state your name, date, and your EOL wishes and goals. The video is used for backup if there are any questions or family conflicts about what you want, when you can’t speak for yourself. Keep it on a thumb drive along with your AD.**

To keep track of these documents, Death with Dignity offers a free **“Life File”** <https://deathwithdignity.org/life-file/> “A Life File is a central place to keep “how and what” documents that ensure your wishes are honored at the end of your life and your loved ones have the information they need to take care of your affairs when you die.” Or, upload your AD to **My Directives**: <https://mydirectives.com/en/how-it-works/>, which “helps you create your digital advance care plan or upload any AD, advance care plan or portable medical order you already have.” You can share it with health care providers, your family, and keep it updated in the comfort of your cloud.

**The essential takeaway is to create an AD using whatever form is best and easiest for you. Have “the conversation” about your medical and EOL wishes with your HC-POA, surrogate, family, and health care providers often. Review your AD regularly and make any needed changes as you age, circumstances change, or as your health declines. Keep your AD updated and easily accessible to ensure your wishes are honored.**

\*This material is intended for general information purposes and does not constitute legal advice.

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