



In the third and final Foundational Estate Planning Documents article of the Wealth Council Insights Education Series we will focus on Incapacity Documents. Incapacity Documents is the general term given to the suite of documents which may also be referred to as Advance Directives. The suite of Incapacity Documents typically consists of the General Durable Power of Attorney and Health Care Directives, which may include the following:

- I. Durable Power of Attorney for Health Care
- II. Living Will
- III. Do Not Resuscitate (DNR) Order
- IV. Psychiatric Advance Directives
- V. HIPAA Authorization(s)
- VI. Organ and Tissue Donation Preference
- VII. Body Disposition Preference

As a foundational matter, it is important to have an understanding of each of the various documents generically referred to as an Incapacity Document and what each document accomplishes, as these documents provide direction to those charged with your medical and financial decisions in the event of incapacity. Each state may have specific recommended forms and language for these and other matters and often combine several of the items into one document. It is of vital importance that your documents are in comport with state guidelines and are reviewed regularly to ensure continued compliance.

GENERAL DURABLE POWER OF ATTORNEY

The General Durable Power of Attorney is a document that authorizes someone to act, in your place, in a wide range of legal and business matters. The person appointed to act in your place is known as the Power Holder, Agent or Attorney-in-Fact. Some states allow for this document to be “springing,”

meaning that the powers do not take effect until the occurrence of some future event (generally incapacitation). Without the springing power, the document is generally effective at the date of execution and the authorization to act takes effect at that time. This document is customizable and as such careful consideration and consultation should be given to each power to ensure the document is executed in comport with your wishes. In general, this document allows for your appointed Agent to:

- I. Buy/sell property
- II. Manage bank accounts, bills and investments
- III. File tax returns
- IV. Apply for government benefits

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DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND ESTABLISHMENT OF A HEALTH CARE REPRESENTATIVE

This document is fundamental in that it names the person or persons you wish to receive health care information and make health care decisions for you when you cannot. In this document you may state your preferences given certain medical circumstances and you may specify guidance and limits on the powers you wish to grant your Health Care Representative. In all cases, your Health Care Representative must make such decisions in line with your wishes, to the best of their knowledge, so providing specific guidance through this and other Health Care Directive documents is important.

LIVING WILL

A Living Will is the written document that details your wishes surrounding end-of-life care in the event you are terminally ill or permanently unconscious, death will occur in a short time and the use of life-prolonging procedures would only serve to artificially prolong the dying process. Generally, a Living Will documents your preference on treatments such as CPR, artificial nutrition and hydration, surgery, maintenance on a respirator and blood transfusions. You may specify your preferences regarding the use

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or prohibition of life-prolonging treatments or you may defer the decision to your named agents in this document or your Durable Power of Attorney for Health Care.

DO NOT RESUSCITATE (DNR) ORDER

Generally, if you are in the hospital, this matter will be discussed and documented; however, if you are not in a hospital and an emergency occurs, an executed DNR order (if presented) protects your wish not to be administered CPR.

PSYCHIATRIC ADVANCE DIRECTIVES

This is a less common yet impactful consideration to be made and allows for you to express your preferences and consent to treatment for specific mental health diagnoses during periods of incapacity.

HIPAA AUTHORIZATION FORM/DOCUMENT

A HIPAA Authorization Document or Form is designed to comply with the Health Insurance Portability and Accountability Act (HIPAA) which limits the access to your medical records to yourself or your named agents. This document names your agents and allows for your medical records to be provided to them. You can also designate specifics about your medical history that you do not want shared. Such medical information could be of significance to those who are charged with making medical decisions for you.



ORGAN AND TISSUE DONATION PREFERENCE

In some states organ donation is addressed on your driver's license, but this is a general and generic declaration. Should you have specific preferences on donations, consider documenting them as a separate document or in conjunction with other Health Care Directive documents.

BODY DISPOSITION PREFERENCE

This item may be a separate document or a component of an existing document and allows you to specify any preference you may have regarding how your body is disposed of after death, including cremation, burial and any other related preferences.

Regardless of whether you elect to address all or some of the above Health Care Directive specifics, it is imperative that you share your wishes and executed documents with your chosen health care representative, immediate family members, physician and any other health care providers.

Your specific suite of Incapacity documents is a highly personal and customizable compilation of legal documents which should be completed with consultation from your attorney and trusted advisors. Oxford's team of advisors stands ready to provide families with the guidance and coordination to best ensure that their wishes are documented.

WEALTH COUNCIL INSIGHTS EDUCATION SERIES

ABOUT THE SERIES

In the Wealth Council Insights Education Series, we endeavor to deconstruct some of the complexities that exist around many commonly utilized estate and financial planning concepts in order to provide you and your family with the basic knowledge needed to better understand and create a blueprint for your overall wealth enhancement needs.

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