

Alzheimer's Patients Should Sign Powers of Attorney and Advance Directives

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A diagnosis of Alzheimer's disease is overwhelming. There are concerns about treatment, care management, housing, finances and the impact on other family members. It can be difficult to know where to begin. One important but often overlooked task is for the patient to seek advice about legal documents which will assist the family in planning for the patient's incapacity.

In New Hampshire, there are two basic documents which should be considered. The "Durable Power of Attorney" will assist with financial matters, and the "Advance Directive," provides assistance with health care. The patient must be able to understand the documents in order to sign them, which is why this should be discussed as soon after the diagnosis as possible.

The Durable Power of Attorney is a document which allows the patient to name another person (called the "Agent"), to act on his or her behalf regarding property and financial matters. The Agent can be the patient's spouse, child, or other trusted family member or friend. The Durable Power of Attorney is important because it allows the Agent to have access to property and manage the patient's affairs when he or she becomes unable to do so. This is necessary even for married couples who own their assets jointly. Consider the following example:

A husband and wife own their home jointly. The husband is rendered incapacitated because of Alzheimer's disease. The wife wishes to sell their home. Under the law, the house cannot be sold without the signature of both joint owners. The husband is not capable of signing for himself. Who can sign? If the husband previously appointed his wife or his child as agent under a Durable Power of Attorney, the Agent will be able to sign. If the husband has not signed a Durable Power of Attorney, then the wife (or another family member), will need to go to the Probate Court and ask to be appointed as the husband's legal guardian in order to have the authority to sell the house on his behalf.

The authority granted to the Agent under a Durable Power of Attorney is usually quite broad, and allows the agent to handle everyday matters, such as paying bills and depositing income, as well as less routine matters such as selling real estate or applying for public benefits. Without a Durable Power of Attorney, it may be necessary for a family member to go to the Probate Court and request legal appointment as the patient's Guardian, as described in the example above. Guardianship proceedings can be expensive and time consuming, as they usually involve filing fees, a formal hearing and annual reports to be filed, with ongoing Court supervision over the financial decisions made for the patient going forward. Given a choice, the vast majority of families prefer to deal with financial matters privately, with a family member appointed as Agent under a Durable Power of Attorney. However, if the Alzheimer's patient

waits too long, he or she will not have the ability to sign such a document, and guardianship will be the only option.

The New Hampshire Advance Directive deals with health care, and it has two parts. The first part is the Durable Power of Attorney for Health Care. The second part is the Living Will.

A Durable Power of Attorney for Health Care allows the patient to name another person (called the “Health Care Agent”), to make health care decisions for the patient once he or she becomes incapacitated. The Health Care Agent has no authority to make any decisions for the patient until the patient’s physician specifically determines that the patient is incapable of making a decision for him/herself.

The Durable Power of Attorney for Health Care allows the Health Care Agent to make routine decisions (such as whether to get a flu shot or have a tooth removed), as well as end of life decisions (such as whether to sign a “Do Not Resuscitate Order” or whether to remove the patient from life support). The Health Care Agent will have authority to discuss the patient’s condition with medical providers, review options, and make decisions about treatment. The Durable Power of Attorney for Health Care can also allow the Agent to override the patient’s objection to medical treatment. Consider the following example:

A mother has Alzheimer’s disease and she previously appointed her son to serve as her Health Care Agent through a Durable Power of Attorney for Health Care. The mother’s physician has certified that she is incapacitated, so the son is making health care decisions for her. The son and the physician both agree that the mother needs minor surgery. The mother, in her incapacitated state, refuses to have the surgery. If, in the course of signing the Durable Power of Attorney for Health Care, the mother gave her son the authority to override her objection, then the son and the physician can proceed with the necessary surgery. If the mother did not give her son that authority, then it would likely be necessary for the son to go to the Probate Court and seek legal guardianship over his mother in order to authorize the surgery.

If a patient does not sign a Durable Power of Attorney for Health Care, then no one will be legally authorized to make health care decisions for the patient once he or she becomes incapacitated. As described above, a guardianship may become necessary.

The second part of an Advance Directive is the Living Will. A Living Will is a document which allows the patient to declare that, in the event of permanent unconsciousness or terminal illness, the patient does not want life support systems or heroic measures used to keep the patient alive and prolong the dying process. It provides the patient with an opportunity to make an affirmative election about whether he /she would want to have artificial nutrition or hydration tubes. The Living Will provides the Health Care Agent with guidance regarding the patient’s wishes. It can be a great source of comfort to the Health Care Agent to know the patient’s wishes so that they can feel confident about the decisions they are making on the patient’s behalf.

There are many things families must think about when there is a diagnosis of Alzheimer's disease. It is important not to overlook the question of alternate decision makers. In order to best protect the patient, there should be a discussion early after the diagnosis about who should step in to handle the patient's finances and who is the most appropriate person to make health care decisions for the patient when he / she is no longer able to. The hope is that these kinds of discussions will help the family to avoid inevitable (and often costly) court proceedings, at a time when the family should be focusing on caring for their loved one.