Advance Directives for Healthcare and Property

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Legal Services of Northwest Minnesota
Advance Directives must be completed before incapacity.

Incapacity – "physical or mental inability to do something or to manage one's affairs"
What are these 2 documents?

Health Care Directive—is for making medical decisions when you become incapacitated and cannot make your own decisions.

Power of Attorney for finances—allows another person to make decisions and take action regarding your money and property.
Both are legal documents created by state law.

Documents must comply with state law.
Health Care Directive (HCD)

A legal document you must do *prior to becoming incapacitated* (or else it is too late to create one)

You create the HCD *in case* you ever become incapacitated

**Written instructions** about medical care you would or would not want or appoint someone to make decisions or both
Health Care Directive (HCD)

You may name a person to carry out your instructions

You give that power to someone else

Only used after incapacity
How are HCDs helpful?

HCD-helpful to share your thoughts, instructions, values, and beliefs if you can’t speak for yourself

HCD-you name an Agent to speak/act for you

HCD-you give the Agent instructions to guide him/her when making decisions for you
Caution Advised!

Be sure you **trust Agent** to act as you wish!

Is the **Agent** available and willing to make these tough decisions according to your wishes?
Power of Attorney (POA)

- A legal document that allows another person to make decisions and take action regarding your money and property.
- You create this POA when you have capacity.
- You select what powers you want the Attorney in Fact to have regarding your money and property.
A POA can be active immediately or not until you become incapacitated.

A POA must contain specific language if you want it to continue to allow your Attorney in Fact to act after you become incapacitated.
You retain the power to make your own decisions about your money and property so long as you have capacity.

In a POA you are *sharing* your power with the Attorney in Fact.
How are POAs helpful?

POA for finances - helpful to allow Attorney in Fact to act regarding your property and money. You can still act for yourself if you have capacity.

POA-if it contains language making it “durable” then the POA powers will continue even after you are incapacitated.
Caution Advised!

This document is NOT supervised by the court

Nobody is watching the Attorney in Fact act regarding your money or property

You can write in limits/restrictions or require Attorney in Fact to make an accounting to you or others
Where can I get help with these documents?

- LawHelpMN.org
  - S-o8 Powers of Attorney.pdf (lawhelpmn.org)
  - Honoring Choices Minnesota Health Care Directive
What if I didn’t do anything in advance?

- If incapacity happens and decisions regarding healthcare or finances need to be made:
  - For healthcare, the hospital will look to the next of kin
  - For finances and property: a Guardianship or Conservatorship through the court may be necessary
Other actions to consider in advance of incapacity

- E-banking-direct deposit, etc
- Auto-payment of regular bills
- Authorized signers on accounts- **caution advised**
- Joint accounts- **much caution advised**
- Representative Payee for Social Security
- Transfer on death designation
Other actions to consider *in advance of incapacity*

- Will-document for distribution of assets AFTER DEATH
  - Must be created while you still have capacity
  - Must be done before death
Thank you!

Legal Services of Northwest Minnesota

Apply for services at:
1-218-233-8585
LSNMLAW.org

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