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## Updates to power of attorney for health-care issues in effect Jan. 1

**E**ffective Jan. 1, the updated Illinois Power of Attorney Act brings about new changes in the execution and application of the power of attorney for health care. The last round of modifications to the act occurred in 2011 with Health Information Portability and Accountability Act (HIPAA) privacy language inserted to ensure that an agent will have access to the principal's health-care records to make informed medical decisions.

This amended law removes the requirement for a specific format, broadens the scope of "attending physician" and makes various technical changes relating to forms, notices, definitions and age requirements as they pertain to power of attorney for health-care privileges.

A power of attorney for health care is a critical document that every individual over the age of 18 should have in place. Just because mom and dad are paying college tuition does not mean that they have access to an adult child's medical records or the authority to speak with a health-care provider in the event of an emergency.

### Goal: efficiency and simplicity

The goal surrounding this new wave of changes stands to improve the efficiency and simplicity of the act in order to get more individuals to fill out the statutory form and make sure that end-of-life wishes are fully communicated and understood.

With this advanced directive, the principal names an agent to make medical decisions on the principal's behalf when the principal is unable to make decisions for him or herself due to incapacitation. The power of attorney for health care gives the agent guidance as to the type of treatment the principal would like to receive, if any.

Consequently, thoughtful con-

sideration should be made to determine who the agent should be as well as any successor agents. Moreover, to further safeguard that end of life decisions are honored, it is important for individuals to discuss their choices with both agents and family members.

As part of the effort to encourage more individuals to execute a power of attorney for health care, one of the revisions to the act provides that a specific format is no longer required. As in the 2011 update to the act, a notice must still precede the form, but the recent amendments provide more detailed changes.

### Issues to consider

The update affects four sections of the act, particularly Section 755 ILCS 45/4-10, which includes the notice and statutory form. The amended act reinstates language concerning the duties and responsibilities that the power of attorney form imparts upon the agent. As such, Section 45/4-10 will now pose several questions to the principal:

- What are the things I want my health-care agent to know?
- What kind of decisions can my agent make?
- Whom should I choose to be my health-care agent?

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- What if my agent is not available or is unwilling to make decisions for me?
- What will happen if I do not choose a health-care agent?
- What if there is no one available whom I trust to be my agent?
- What do I do with this form



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once I complete it?

- What if I change my mind?
- What if I do not want to use this form?

The act also provides that no health-care professional administering health care to the principal may act as an agent. Likewise, no similar person or any employee of such a health-care provider agency may serve as a witness.

### Life-sustaining treatment

Of the more notable changes to the act, statutory descriptions regarding life-sustaining treatment have been substantially revised. No longer does a principal choose from three options. Rather, the principal either selects (a) to take

quality of life and pain into account and forego any life-sustaining treatment or (b) to prolong life as long as and to the greatest extent possible. While the principal can choose to decline treatments that delay death, she can still opt for treatments that improve comfort and decrease pain levels.

### HIPAA authorization

The act restores language that provides the agent with the power to examine and copy the principal's medical records stemming from any information governed by HIPAA. Clients with outdated powers of attorney that do not explicitly reference HIPAA run the risk that the agent cannot access necessary medical records to make an informed decision. This provision ensures that the agent serves as the principal's personal representative, as it is defined under HIPAA.

The power of attorney for health care serves as a significant tool for a principal to control how his or her agent can act in the event of illness, disability or any other form of incapacitation. Not only does this advanced directive ensure that a principal's wishes are respected, but without a properly executed power of attorney for health care, Illinois statutes will govern and possibly lead to undesired outcomes that conflict with the principal's wishes.

As a result, everyone over the age of 18 should have powers of attorney in place. The amended act incorporates a savings clause to assure that any previously executed agency will still be valid. Nonetheless, clients are strongly encouraged to execute a new power of attorney for health care consistent with the latest statutory language to minimize any confusion among health-care providers.

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