



## Community Health Connections

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# Fact Sheet

## Act 169: Summary

### Act 169 addresses Advance Health Care Directives and Health Care Decision-making for Incompetent Patients.

**Advance Directives** refers to a living will, a health care power of attorney, or combination document.

**A living will** is a written statement of the patient's personal desires regarding life-sustaining treatment and other end-of-life care. It is not in effect unless patient is incompetent *and* has an end-stage illness or is permanently unconscious.

**A health care power of attorney** is a written document in which the patient appoints another person to serve as his health care agent and make health care decisions for him.

New definitions for **incompetent** and **competent** are among the most important improvements Act 169 brings to health care decision-making.

#### Act 169:

1. Defines three critical elements in health care decision-making. When all three are present, the person is competent to make the health care decision at hand and his choice should be respected.
  - a. Understanding the risks, benefits, and alternatives
  - b. Making a decision
  - c. Communicating the decision to any other person
2. Limits an assessment of competency to a specific health care decision. The new law permits people to make whichever decisions they can.
3. Recognizes that competence may be present at one time, and absent at another time.
4. Recognizes that a person can be considered competent if information is provided in a way that can be understood.
5. Acknowledges that determining competency is often a group effort that involves family and others who together assess if a person is able to make a particular decision.

**In emergency situations, consent is implied by the law.** The health care provider will provide emergency care without requiring a substitute decision-maker (unless it is known that the patient, when conscious and competent, refuses the procedure).

### Substitute health care decision-makers are **Agents, Guardians, or Representatives**

**Health Care Agent (or Health Care Proxy):** An individual designated by the patient in an Advance Healthcare Directive to make health care decisions when the patient cannot make those decisions for himself. Health care agents are not restricted to end-of-life decision-making.

**Guardian:** A person authorized by the court to make decisions on behalf of a person with severe cognitive impairment who needs protection and there is no less restrictive alternative to guardianship. Guardians make decisions about person, property or both.

**Health Care Representative:** In the absence of a proxy or guardian, any member of the following, in descending order of priority, who is reasonably available, may make health care decisions on behalf of the patient.

1. Spouse (unless divorce is pending)
2. An adult child
3. A parent
4. An adult brother or sister
5. An adult grandchild
6. An adult who has knowledge of the patient's preferences and values and is able to assess how the patient would make health care decisions.

**Individuals who are not competent when a medical decision needs to be made, the decision-maker should be chosen in the following order:**

1. A Health Care Agent
2. A Guardian of the individual's person
3. A Health Care Representative
4. The Facility Director: The MH/MR Act of 1966 has been interpreted to allow the patient's associated residential services provider to make medical decisions when the patient is not competent and does not have involved family members.

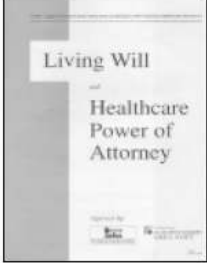
**Important:** In some instances a health care provider might not be willing to accept an informal substitute decision-maker such as a family member or the residential services provider. In those instances, it may be necessary to seek another health care provider who will accept an informal surrogate's consent, or it may become necessary to seek court-appointment of a limited guardian to make the medical decision at hand.

**An excellent consideration** may be to encourage the individuals in your care to complete a Living Will and Healthcare Power of Attorney in advance of any medical need. By having these documents (or combination document) signed and notarized before two witnesses, *capacity* is established and the individual's end-of-life wishes and choice of a surrogate are expected to be honored when the need arises. This is not appropriate for individuals with severe cognitive impairment who clearly do not have the capacity to make those decisions.

The ad on this page is just one of many resources where you may obtain a copy of the Living Will and Healthcare Power of Attorney forms. To download these forms at no cost, visit [www.caringinfo.org](http://www.caringinfo.org).

For additional information or questions on this topic, please visit us at [www.hcgu.org](http://www.hcgu.org). Click on *Ask the HCQU* to enter and submit your question. We will respond within three business days.

**Living Will and Healthcare Power of Attorney**



A living will is a legal form that allows you to tell your family and physicians how you want to be treated in case you are unable to make or communicate decisions about your medical care.

The *Living Will and Healthcare Power of Attorney* form was developed and approved by Allegheny County's Medical Society and Bar Association. Copies of the form cost \$2.50 each and discounts are available for orders of 10 or more.

To order copies of the *Living Will and Healthcare Power of Attorney* form, please send a check or money order payable to "ACMS," to:

Allegheny County Medical Society  
713 Ridge Avenue  
Pittsburgh, PA 15212

For more information, call 412-321-5030.