



Keep It Legal! Understanding and Preparing Legal Documents for Decision-Making

Presented as part of the Pierce County ADRC
"Hot Topics" series

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Disclaimer

The information provided during this presentation is not intended to serve as an exhaustive list of legal documents used in long-term care planning. Seniors, their spouses and partners, and their family caregivers needing support should review legal resources including consultation with an elder law attorney during their planning process.

Presentation topics

1. Why planning for decision-making is important for everyone
2. What are the legal documents for decision-making?
3. Financial and Health Care Durable Power-Of-Attorney documents
4. Protective Payee documents for Social Security
5. Advance Directives for Health Care (Living Will)
6. Guardianship Filings
7. Portable Orders for Life-Sustaining Treatment (POLST) documents
8. Hospice and Palliative Care services
9. Last Will and Testament
10. Information, resources, and legal assistance

Why Planning for Decision-Making is Important for Everyone



The number of older adults who need care is rapidly growing. The fastest growing group of people in the United States are those who are 80 years or older. This leaves fewer young family members to provide adequate care and support for seniors.

Dual income households are increasingly more common, leaving less time for caregiving. People are having fewer children or staying childless, there are higher divorce rates, more people are declining marriage, and there are more blended families.

These factors mean that **fewer people can act as decision-makers** for family members and loved ones. If patients do not have a family member to make decisions, they must pay privately for care management, apply for government sponsored care in the home, or seek placement in a care facility. Professional care facilities cannot act as decision-makers but are often the only option for family members seeking consistent quality care for loved ones.

More on Why Planning for Decision-Making is Important

An illness or injury causing loss of work and/or lifelong disability can happen at any age. Family caregivers then often must take over care and decision-making.

Overall, 30% to 70% of husband/wife/partner caregivers ages 60 and older **die before their care receivers die**. Planning ahead for this likelihood is essential, not only for the caregiver and care receiver but also for everyone else in the family.

What are the Legal Documents for Decision-Making?

The documents that we will consider are *specific* to the State of Washington. Each state administers these documents specifically within their *own* legal guidelines for the residents of that state.

Remember that if you move to another state you need to update these documents to follow *their* state legal guidelines.

Similarly, if you have friends or family members who move to Washington State, they must update their documents to follow *our* state legal guidelines.

Durable Powers of Attorney Documents for Financial and Health Care

A Durable Power of Attorney document designates another person (or persons) to be your agent to make decisions for you when you are no longer able to do so.

Durable Powers of Attorney documents for financial and health care decision-making should be completed by parents consulting with their adult children (or other trusted adults) and should be written to be effective immediately (avoid effective-at-incapacity clauses if possible).

Must be signed and witnessed in front of a notary or in front of two “disinterested witnesses” who then must also sign the documents (and in the case of a notary also stamp the document).

Protective Payee Documents for Social Security

Social Security does not recognize Durable Power of Attorney documents for sharing confidential recipient information.

You must be a Protective Payee of the Social Security recipient to act on their behalf with Social Security, obtain information, and make changes when needed.

Visit Social Security at <https://www.ssa.gov/> to learn more about Protective Payees.

Advance Directive for Health Care (Living Will)

An Advance Directive document, also known as a Living Will, provides instructions the designated agent can follow for your end-of-life wishes, like medical treatments you do or do not wish to have if you are terminally ill or permanently unconscious and unable to make decisions.

Instructions for when you are dying might include whether you want only hospice care to keep you comfortable and free from pain, whether you want artificial hydration, and whether you want artificial nutrition or other means of life support.

A document known as Five Wishes expands the basic Advance Directive instructions to include other aspects of your end-of-life experience.

More on Five Wishes at <https://www.fivewishes.org/for-myself/>.

Guardianship Filings and Petitions

A guardian is a person appointed by the court to help you make decisions about your health, safety, and self-care.

You usually do not need a guardianship if you have a Durable Power-of-Attorney document in place

However, if your Durable Power- of-Attorney form does not cover certain decisions, or some other problem comes up, you might need to have a guardian or conservator appointed for you.

A person can fight (oppose) the petition for guardianship. You have the right to have a lawyer help you. If you cannot afford a lawyer, the court will appoint one for you at public expense.

Portable Orders for Life Sustaining Treatment (POLST) Document

If you are seriously ill or in very poor health, a physician, physician assistant, or advance registered nurse practitioner can use the Portable Orders for Life-Sustaining Treatment to represent your wishes for future care as clear and specific medical orders, indicating what types of life-sustaining treatment you want or do not want in the case of a medical emergency.

If you have poor health from one or more chronic or serious medical conditions, it is important to talk to your physician or advanced practitioner about the risks you face if you were to have a medical emergency. You may want to make decisions about whether you would want to have life-sustaining treatments, such as cardiopulmonary resuscitation, started by emergency responders and be taken to a hospital or intensive care unit.

Hospice Care and Palliative Care Services

Hospice services are always covered under Original Medicare Part B, even if you are enrolled in a Medicare Advantage Plan. Palliative Care can be covered by Original Medicare Part B or by Medicare Advantage.

Hospice care is a type of end-of-life medical care that provides emotional and physical support for patients with terminal illnesses. It is reserved for those with a life expectancy of 6 months or less.

Palliative care focuses mainly on improving your well-being if you have a long-term serious illness. Palliative care offers a support system to you and your family so you can continue to have a good quality of life. Unlike hospice care, those receiving palliative care can continue to undergo curative or life prolonging treatments.

Last Will and Testament

More commonly referred to as a “will,” a last will and testament is a legal document that allows a person (called a testator) to designate who will receive certain items of the testator’s property after the testator’s death, appoint a personal representative to administer the testator’s estate, appoint a guardian to look after the testator’s minor children after the testator’s death, create a custodianship and appoint a custodian to care for property held for the benefit of a minor, create a trust for any of a variety of purposes, such as placing restrictions on gifts or planning for estate taxes.

A will is a common part of an estate plan.

Some Important Health and Safety Tips for Family Caregivers

- First AID classes.
- Fundamentals of caregiving classes.
- Back and leg and arm supports.
- Private caregivers.
- Respite care in the home or outside the home at Adult Day Health programs.
- Relaxation techniques such as yoga, meditation, aromatherapy, massage
- Change the negative ways you view situations to avoid despair.
- Attend a caregiver support group in-person or online.

Even More Important Health and Safety Tips for Family Caregivers

- Learn and use stress-reduction techniques, e.g. meditation, prayer, yoga, Tai Chi.
- Attend to your own healthcare needs.
- Get proper rest and nutrition.
- Exercise regularly, even if only for 10 minutes at a time.
- Take time off without feeling guilty.
- Participate in pleasant, nurturing activities, such as reading a book, taking a bath.
- Seek and accept the support of others.

Even more important health and safety tips for family caregivers (cont'd)

- Seek supportive counseling as needed, talk to a trusted counselor, friend, or pastor.
- Identify and acknowledge your feelings, you have a right to ALL of them.
- Change the negative ways you view situations to avoid despair.
- Attend a caregiver support group in-person or online.

Information, Resources, Legal Assistance

Pierce County Aging and Disability Resource Center at 253-798-4600 or www.pierceadrc.org

Pierce County Long-Term Care Ombudsman for care facility info at 253-798-3789

Free Legal Guidance and Legal Forms available at www.washingtonlawhelp.org

Social Security information at <https://www.ssa.gov/>

Five Wishes information at <https://www.fivewishes.org/for-myself/>

Social Security at <https://www.ssa.gov/> to learn more about Protective Payees

Medicare information at <https://www.medicare.gov/> for more information about Hospice and Palliative Care

Washington Long-Term Care Trust Act (WA Cares) information at <https://wacaresfund.wa.gov/>

Tacoma-Pierce County Bar Association at <https://www.tpcba.com/> or 253-383-3432

Dementia Legal Planning Project at www.dementialegalplanning.org or 425-780-5589