Preparing for Coronavirus: The #1 Legal Document Every Adult Needs to Have

As the coronavirus continues to disrupt daily life and leave Americans uncertain of the future, you don’t have to feel helpless during this pandemic. In fact, now is a great time to be proactive and plan ahead should you or a loved one fall ill. One of the most important and relatively easy things you can do (and should do) is to select a medical agent and set up your advance healthcare directive.

**What Is a Medical Agent?**

A medical agent (also called a healthcare agent, healthcare surrogate, a healthcare proxy, or a medical proxy) is a person you authorize in a medical power of attorney to make decisions about your medical care if you are too ill to make them yourself or are otherwise unable to communicate your wishes.

**Why is it important to choose a medical agent now?**

As of April 7, there are [391,665 total cases of coronavirus](https://www.worldometers.info/coronavirus/). Of those, only 9,169 are in critical condition (about 2.34%). So even if you get sick, you’ll most likely have mild symptoms and recover quickly. However, since no one knows exactly how they will be affected by the virus, it’s best to plan for the worst and hope for the best. Part of that planning is making sure someone can make healthcare decisions for you if you fall ill and are unable to make those decisions for yourself.

**Factors to Consider in Choosing Your Medical Agent**

A medical agent is an important role, and the person you choose will have the power to make critical healthcare decisions—like consenting to a treatment plan, whether to accept or refuse medical treatment, and which healthcare providers or hospitals to use for your care. As a result, it is crucial to think carefully about who you choose to fill this role. Many people simply assume that their spouse or their oldest child should take on this role, but they are not always the best suited. Here are some factors to consider when selecting an agent:

1) ***Emotional maturity.*** People handle stress differently, and not everyone is able to set aside their emotions and make level-headed decisions when someone they love is suffering. In addition, some people are simply not assertive enough to act as a strong advocate in the face of differing opinions of other family members--or even health care providers--who suggest a treatment plan you have informed your medical agent you do not want. You should choose someone who is able to think rationally in emotionally difficult circumstances, even if that means you must look outside of your family to find the best person for the job.

2) ***Location.*** The person you choose to act as your medical agent should be someone who lives close by and is able to act on your behalf very quickly in the event of a medical emergency or if you need your advocate to serve in that role for an extended time period. In current times, many people might be under a mandatory or recommended stay-at-home order, or may not be available or willing to travel to another city or state. Consider naming several alternate agents to account for someone’s potential unavailability.

3) ***Is willing/able to serve.*** Acting as a medical agent can be a time-consuming and emotionally draining job. Make sure that the person you choose is willing and able to set aside the time necessary to serve as your patient advocate. Don’t just assume the person you want to be your medical agent is willing: Be proactive and ask if he or she is willing to take on that role. Keep in mind that if you are elderly, you may want to avoid naming a friend or family member who also is older, as there is a greater chance that they will experience mental or physical decline at the same time as you, which could impede their ability to serve as your advocate when the time comes.

4) ***Will honor your wishes no matter what.*** Your medical agent has a duty to make decisions on your behalf that you would have made to the extent that he or she is aware of your wishes. This is the case even if your medical agent disagrees with your choices. As a result, your medical agent needs to be someone who is willing to set aside his or her own opinions and wishes to carry out yours. It may be prudent to appoint someone who has values and religious beliefs that are similar to yours to reduce the instances in which your agent’s opinions differ significantly from yours. Do not choose anyone that you do not trust to carry out your wishes.

**People You Should Not Choose**

Many states have laws prohibiting certain people from acting as your medical agent, even if they are otherwise well-qualified to act in that role:

1) ***Minors.*** Many states have laws expressly prohibiting a minor from being a patient advocate. The age of majority could be 18, 19, or 21 years of age, depending upon the state. Some states have exceptions to this prohibition for married or emancipated minors.

2) ***Your health care providers.*** Some states not only prohibit your health care providers from acting as your medical agent, but also preclude the owner, operator, or any employee of any facility in which you are a patient or resident from acting in that role. Some states that have adopted this prohibition make an exception for individuals who are related to you. A few states, such as Kansas, Missouri, and Kentucky, also have an exception if that person is an active member of the same religious organization as you.

**Need help?**

Medical directives may be among the most important legal documents you prepare - especially in light of COVID-19. Picking a medical agent can be tricky and we can help you think through your choice. We can also help with any other estate planning needs you may have—whether that’s setting up a financial power of attorney, last will and testament, or a trust. Please give us a call today to discuss how we can help you and your family be prepared should you fall ill from the coronavirus.