

***Illinois Advance Directives
and the
Illinois Healthcare Surrogate Act***

	Illinois Power of Attorney for Health Care, 755 ILCS 45/4-1 (“POAHC”)	Illinois Living Will Act, 755 ILCS 35/1	Declaration for Mental Health Treatment, 755 ILCS 43/1	Uniform DNR Advance Directive, 755 ILCS 40/65	Health Care Surrogate Act, 755 ILCS 40/1
Is there a standardized form available?	Yes. http://www.idph.state.il.us/public/books/advin.htm	Yes. http://www.idph.state.il.us/public/books/advin.htm	Yes. http://www.idph.state.il.us/public/books/advin.htm	Yes. http://www.idph.state.il.us/public/books/advin.htm	No.
What does this advance directive do?	Allows you to appoint someone (your “agent”) to make healthcare decisions for you. The power may be broad, or very limited, depending upon your instructions. You cannot appoint any of your healthcare providers as an agent. You cannot appoint more than one agent at a time.	Allows you to leave written instructions that, <i>when near death</i> , your moment of death should not be artificially postponed by the use of death delaying procedures. Authorizes the provision of comfort care.	Allows you to: 1. specify your consent, or refusal to consent, to ECT, psychotropic meds, and short-term admission to a mental health facility; and 2. allows you to appoint an “attorney in fact” to make decisions regarding mental health treatment. An attorney-in-fact cannot be your healthcare provider if unrelated to you by blood, marriage or adoption.	Allows you to refuse CPR in the event your heartbeat <u>and</u> breathing stop (a cardiopulmonary arrest.) Also provides an opportunity to authorize limited resuscitative measures in the event your breathing stops and your heart is still beating.	This is not an advance directive. This law allows an attending physician to identify someone (your spouse, adult child, etc.) to make decisions regarding your healthcare. If no one, not even a friend, can be identified, a court appointed guardian may make decisions.
When does it become effective?	Whenever you say, or after you become “incapacitated,” which means you lack decision-making capacity, as determined by a physician or a court.	Only when you have a terminal condition <u>and</u> death is <i>imminent</i>	Only after 2 physicians, or a court, determine that you lack capacity (you are “incapable”) to refuse or consent to treatment due to your mental condition.	Only when your heartbeat <u>and</u> breathing are stopped.	Only when: 1. You have no advance directive; and 2. You lack decisional capacity according to an attending physician. <i>Decisions to forego life-sustaining treatment require two physicians to concur, in writing, that you lack decisional capacity, plus you must have a “qualifying condition,” as defined in the Act.</i>

Prepared by the Illinois Hospital Association’s Legal Department, *updated September, 2009*

The information contained here is informational and is not intended to serve as legal advice. Anyone having particular questions on advance directives or the Health Care Surrogate Act should seek legal counsel.

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Who needs to sign the form?	You	You or another at your direction	1. You AND 2. your attorney-in-fact, who must accept the appointment in writing.	1. You, your legal guardian, agent under the POAHC, or healthcare surrogate decision maker; AND 2. An attending physician.	There is no form. Your physician must document in your medical record that you lack decisional capacity. Before your surrogate can decide to <i>forego life sustaining treatment</i> , two physicians must concur in writing that you lack decisional capacity <i>and</i> that you have a “qualifying condition.”
Are witnesses required?	Yes, there is a space on the form for one witness to sign.	Yes, two adults who are not entitled to any portion of your estate, nor financially responsible for your medical care, must sign the form.	Yes, 2 impartial witnesses must sign the form, neither of whom can be your healthcare provider or person related to you by blood, marriage, or adoption.	Yes, two adults must sign the form. <u>After 1/1/10, only one witness need sign the form.</u> There are no restrictions on who can be witnesses.	Yes, when a surrogate decision maker expresses the decision <i>to forego life sustaining treatment</i> for you, he/she must do so to your attending physician <u>and</u> to one adult witness.

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Can it be revoked or does it automatically expire?	There is no automatic expiration unless a date for termination is designated on the form. You may revoke the agency appointment by any means and at any time, regardless of your mental or physical condition.	There is no automatic expiration, but you may revoke a Living Will by any means and at any time, regardless of your mental or physical condition.	Automatically expires in three years unless you are mentally incapable at that time. May be revoked <i>in writing</i> at any time, as long as you are not deemed incapable.	There's no automatic expiration, but you or your legal representative may revoke the form, by any means and at any time.	<u>New Public Act 96-0492: Your surrogate maintains his/her authority until you regain decision-making capacity, the appointment of a guardian, or your death.</u>
How does this law comport with the other laws?	A Living Will is inoperable so long as an agent is available under this law. The Illinois Department of Public Health, in its guidance on the DNR Advance Directive, states that an agent under a Power of Attorney for Health Care may sign and/or revoke a DNR advance directive.	A Living Will is inoperable so long as an agent is available under a Power of Attorney for Health Care.	Healthcare providers may act contrary to the Declaration in cases of an emergency endangering life or health. The law is unclear if an agent with Power of Attorney has authority over an attorney-in-fact when it comes to mental health decisions.	The Illinois Department of Public Health, in its guidance on the DNR Advance Directive, states that an agent under a Power of Attorney for Health Care may sign and/or revoke a DNR advance directive.	This law is inoperative when there is an agent under the Power of Attorney for Health Care. Agents and Surrogates may sign, and according to the IDPH, revoke, DNR Advance Directives. <u>Public Act 96-0448 requires nursing homes to ask newly admitted residents to identify potential surrogate decision-makers in the event one becomes needed.</u>