

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

	<b>Illinois Power of Attorney for Health Care, 755 ILCS 45/4-1</b>	<b>Illinois Living Will Act, 755 ILCS 35/1</b>	<b>Declaration for Mental Health Treatment, 755 ILCS 43/1</b>	<b>Uniform DNR Advance Directive, 755 ILCS 40/65</b>	<b>Health Care Surrogate Act, 755 ILCS 40/1</b>
<b>Is there a standardized form available?</b>	Yes. <a href="http://www.idph.state.il.us/public/books/advin.htm">http://www.idph.state.il.us/public/books/advin.htm</a>	Yes. <a href="http://www.idph.state.il.us/public/books/advin.htm">http://www.idph.state.il.us/public/books/advin.htm</a>	Yes. <a href="http://www.idph.state.il.us/public/books/advin.htm">http://www.idph.state.il.us/public/books/advin.htm</a>	Yes. <a href="http://www.idph.state.il.us/public/books/advin.htm">http://www.idph.state.il.us/public/books/advin.htm</a>	No
<b>What does this advance directive do?</b>	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, when near death, 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 and 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.
<b>When does it become effective?</b>	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 and death is <i>imminent</i>	Only after 2 physicians or a court determine that you lack capacity (you’re “incapable”) to refuse or consent to treatment due to your mental condition.	Only when your heartbeat and breathing are stopped.	Only when: 1. You have no advance directive; and 2. You lack decisional capacity according to an attending physician.  Decisions to forego life-sustaining treatment require two physicians to concur in writing that you lack decisional capacity, and 3. You have a “qualifying condition,” as defined in the Act.

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

	<b>Illinois Power of Attorney for Health Care, 755 ILCS 45/4-1</b>	<b>Illinois Living Will Act, 755 ILCS 35/1</b>	<b>Declaration for Mental Health Treatment, 755 ILCS 43/1</b>	<b>Uniform DNR Advance Directive, 755 ILCS 40/65</b>	<b>Health Care Surrogate Act, 755 ILCS 40/1</b>
<b>Who needs to sign the form?</b>	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 IHCPOA, 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> have a “qualifying condition.”
<b>Are witnesses required?</b>	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. There are no restrictions on who can be witnesses.	Yes, a surrogate decision maker must express the decision to <i>forego life sustaining treatment</i> to your attending physician <u>and</u> one adult witness.
<b>Can it be revoked or does it automatically expire?</b>	There’s no automatic expiration unless a date for termination is designated on the form. The agency appointment may be revoked by any means and at any time regardless of your mental or physical condition.	There’s no automatic expiration, but a Living Will may be revoked by any means 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 the form may be revoked by any means and at any time by the patient or patient’s legal representative.	A recent appellate court decision held that the Health Care Surrogate Act ceases to apply once a patient is discharged from a facility. <i>Bergland v. IDPH</i>

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

	<b>Illinois Power of Attorney for Health Care, 755 ILCS 45/4-1</b>	<b>Illinois Living Will Act, 755 ILCS 35/1</b>	<b>Declaration for Mental Health Treatment, 755 ILCS 43/1</b>	<b>Uniform DNR Advance Directive, 755 ILCS 40/65</b>	<b>Health Care Surrogate Act, 755 ILCS 40/1</b>
<b>How does this law comport with the other laws?</b>	<p>A Living Will is inoperable so long as an agent is available under this law.</p> <p>The IDPH, in its guidance on the DNR Advance Directive, says that an agent may sign and/or revoke a DNR advance directive.</p>	<p>A Living Will is inoperable so long as an agent is available under a Power of Attorney for Health Care.</p>	<p>Healthcare providers may act contrary to the Declaration in cases of an emergency endangering life or health.</p> <p>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.</p>		<p>Surrogates are not to be identified when an agent under the Power of Attorney for Health Care can be found.</p> <p>Agents and Surrogates may sign, and according to the IDPH, may revoke, DNR Advance Directives.</p>