



POWER of ATTORNEY

for Health Care

A resource guide for young people
leaving foster/kinship care
developed for you by



KIDS MATTER INC.

As a young person leaving foster/kinship care, you have so many decisions to make. Do you want to share an apartment? Continue your education? Get a job? Who has time to worry about health care?

Unfortunately, COVID-19 is a serious reminder for just how important it is to make decisions about health care. Having a Power of Attorney (POA) for health care will determine who gets to make life and death health care decisions for you in the event you are seriously ill and who can visit you in the hospital. If you do not appoint someone, your biological or adoptive parent will make those decisions for you. If you “aged out” of foster care, your closest relative may be a biological parent or relative. They will also be the only person able to visit you.

Jess is a 20-year-old UW-Milwaukee student who aged out of foster care. She lives near campus with her older foster sister. Jess had limited contact with her biological parents since she entered foster care when she was twelve. Four days after Jess was diagnosed with COVID-19, she was admitted into the hospital and put on a ventilator. Jess never filled out a POA for health care, so the hospital did not know that she would have chosen her older foster sister to make decisions. As her closest legal relatives, her biological parents were responsible for making all decisions related to her care. The hospital was unable to allow her foster sister to visit her. Her foster sister was unable to fulfill her wishes for treatment that they had already discussed together.

What is a power of attorney (POA) for health care?

A POA for health care is the document that states who you give the legal authority to make medical decisions for you if you are unable to make these decisions for yourself. The person you give authority to is called your “health care agent.”

Why do I need a POA for health care even if I am young and healthy?

While no one ever expects something bad to happen, all kinds of unexpected events happen from car accidents to health emergencies. It is good to have a plan in place. If something happens to you and you are not able to make medical decisions for yourself due to incapacity (see question below for definition), it is important to have someone you trust available and able to make these decisions for you. Discussing your wishes with your trusted person and asking them to be your health care agent ensures that medical decisions will represent your desires and best interests.

What does it mean to become “incapacitated”?

To be incapacitated means that you are not able to understand, make or communicate your decisions. This may include being unconscious due to COVID-19 or brain injury. Some very severe mental illnesses can also lead to incapacity. Incapacity is determined by an examination and certification of at least two doctors.

What happens if I do not designate someone to have POA for health care?

If you do not designate a health care agent, someone will still need to make medical decisions for you if you are unable to. Medical providers will usually look to close family to make these decisions, such as a biological or adoptive parent. Your closest relative may not be someone you want making decisions for you--medical providers do not know your family history and have no way to know who you want in that role unless you have a POA for health care.

Joey is 19 years old and was raised by his grandmother. Joey’s grandmother was his legal guardian and never adopted him. The guardianship expired when Joey turned 18. He does not have a stable relationship with his mother who struggled with addiction for most of his life. Joey was struck by a car while riding his bike to work and has been on life support for three days. His grandmother knows that Joey would want to continue receiving support until otherwise advised by a doctor. Joey’s mother, who is his closest legal relative, does not agree. Without a POA for health care, Joey’s grandmother does not have a say in Joey’s medical care.

If I don’t have a POA for health care, how do I figure out who my closest relative is?

If you “aged out” of foster care, your closest relative may be a biological parent or relative. Some youth have legal guardians and are not adopted. Guardianship expires at 18, so your former legal guardian may not be your closest relative. For example, if your grandparent was your legal guardian, that grandparent would not be considered your closest relative if your parent is still alive. If you were adopted, your adoptive parent(s) is your closest relative.





Who can I designate to be my health care agent?

Almost any person over age 18 who agrees can be designated as your health care agent in your POA. They cannot be your health care provider, an employee at the health care facility you are a patient at or a spouse of anyone in these positions unless they are also your relative. You may also designate an alternate health care agent as a back-up.

Here are some examples of how young adults have chosen a health care agent:

Jayden is preparing for a risky surgery and has already discussed the worst-case scenarios with his doctor. Jayden wants his doctor to be his health care agent. Because your medical provider cannot be designated as your health care agent in a POA, he will have to choose someone else. He does not have any close friends or relatives, so Jayden speaks with his mentor who agrees to become his health care agent.

Kayla does not have very many close family members and wants a friend from work to be her health care agent. Since Kayla's coworker is not an employee of Kayla's health care facility and has no relation to any of her medical providers, her coworker is an acceptable person to choose.

James is 25 and still has a close relationship with his former foster parent. James thinks his former foster parent would make a good health care agent but after discussing his wishes and values, James realizes that his former foster parent does not agree with his wishes for treatment. Even though James generally trusts his former foster parent, he should choose somebody who will act in accordance with how he would decide for himself if he is unable. He decides to choose his biological grandmother instead.

I'm LGBTQ+. Can my significant other be my health care agent?

Yes, your significant other can be your health care agent. If you are not married, this is the only way your significant other can visit you in the hospital or make medical decisions if you are incapacitated. Same-sex married couples and heterosexual married couples are given the same rights and are considered for health care decisions, even without a POA for health care.

Ryan and Aiden were at home making dinner when Ryan fell to the floor, unconscious. Aiden called 911 and Ryan was taken to the ER by ambulance. They have been in a relationship for six years but because they are not married and do not have a POA for health care, Aiden will not be able to enter the emergency room with Ryan or communicate his wishes to his medical team.



How do I choose someone to be my health care agent?

Choose someone you trust to make medical decisions for you in the event you are not able to make these decisions. This may be a relative, close friend, spouse, partner, mentor or someone else you trust. Discuss your beliefs and wishes for your health care with your proposed health care agent. Be sure this person will act in accordance with how you would decide for yourself. You should clearly communicate your preferences for health care.

Note: If you are not married and have a partner you would like to make health care decisions for you, designating them as your health care agent is the only way they can visit you or make medical decisions if you are incapacitated.

What should I discuss with my proposed health care agent?

While it would be impossible to discuss your wishes for every medical scenario, telling your proposed health care agent of your general views and preferences can give guidance. You may want to discuss your preferences based on whether any future condition is short term, long term or terminal. Talk about your views on certain procedures and treatments such as surgery, intubation or medications. Discuss your values and what you consider to be quality of life. Any of your specific preferences you have, such as how long you would want to be on life support if you have no brain activity, should be noted on your POA for health care form.

Once I have chosen who I want as my health care agent, how do I legally show this?

Complete the Power of Attorney for Health Care form with your proposed health care agent. Once complete, sign the form in front of two witnesses. The witnesses may be anyone over age 18. The witnesses may not be your relative, health care provider, an employee at the health care facility you are a patient at, financially responsible for your health care, or entitled to any of your possessions or money should you pass away. The form is also available online in Spanish, Hmong, and Vietnamese.

What do I do once I complete and sign the form?

Once the form is completed and signed, notify your relatives and friends that you have created a POA for health care, where the form is kept, and who your health care agent and alternate are. If desired, file a copy of the form with your health care provider and/or with the Register in Probate (the office of probate court) of your county. You do not need an attorney and do not need to file in court for your POA for health care to be valid.

What does it cost?

Completing a POA for health care is free. If you would like to file your completed POA for health care with the Register in Probate of your county of residence, there is a small fee to file (\$10 in Milwaukee County). Filing with the Register in Probate is optional. You and your health care agent should keep copies easily accessible.

When does POA for health care go into effect?

The POA for health care goes into effect once two doctors (or one doctor and one psychologist) have determined you to be incapacitated. You are able to make changes about the number or type of medical professionals to make the POA go into effect if you choose. If you have a chronic mental health condition, you may want a mental health provider who knows you well to be part of the team that determines incapacity. Until the determination of incapacity is made, you still have the power to make your own medical decisions and manage your own health care.

What powers does my health care agent have?

Your health care agent may make decisions about different services, procedures, treatment and care. This may include but is not limited to choosing your doctor, consenting to surgery, choosing treatment for medical conditions and decisions for pain management. Any powers your health care agent acts on must be made in good faith in accordance with your wishes.

Are there limits to decisions my health care agent can make under a POA for health care?

Yes, there are some medical decisions your health care agent may not make. They do not have any power to make decisions about non-medical issues. The medical decisions your health care agent may not make include consenting to experimental mental health procedures or consenting to your admission to certain inpatient facilities. The facilities they may not consent to have you admitted to include facilities for mental illness, intellectual disabilities and certain treatment facilities.

What if I change my mind? Can I revoke the POA for health care?

Yes, you can revoke the POA for health care if you change your mind. To do so, you may destroy the Power of Attorney for Health Care form, sign and date a written statement that you wish to revoke it, state your intent to revoke it in front of two witnesses, or fill out a new Power of Attorney for Health Care form with your desired changes.

This is general information about Wisconsin law and/or procedure, and is not intended to serve as legal advice. Every situation is unique. General information is not a substitute for legal counsel. Individuals needing legal advice or legal assistance should consult an attorney.

It is important to us that as many Wisconsin youth as possible have the opportunity to complete a POA for health care. This material may be freely reproduced and distributed. However, when doing so, please credit Kids Matter Inc.

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