

## 2015 Advance Directives Updates Frequently Asked Questions

Summary: HB 126 implemented key changes to Ohio's advance directives: the Living Will and the Power of Attorney for Healthcare.

### **Q: What are the changes to the new advance directives?**

A: There were three major changes to Ohio's advance directives:

- The Power of Attorney for Healthcare now allows the Principal to give the Agent immediate access to the Principal's protected health information. Previously, the Agent could only access protected health information when the Principal was incapacitated or had otherwise signed a waiver of HIPAA requirements.
- The addition of the nomination of guardian to the Power of Attorney for Healthcare. The Principal may now nominate an individual to serve as his/her:
  - Guardian of Person
  - Guardian of Estate
- If executing the Living Will or Power of Attorney for Healthcare using two witnesses, neither witness may be an alternate Agent named in a Power of Attorney for Healthcare. Previously, an alternate Agent could also be a witness to these documents notwithstanding that the initial Agent could not be a witness.

### **Q: Why did we make these changes?**

A: These changes were advocated by the Estate Planning, Trust and Probate Law Section of the Ohio State Bar Association. The ability of Agents to access protected health information (PHI) immediately makes it easier for Agents to help Principals with health care decisions and may prevent patients from having to sign multiple waivers as they transition from one healthcare provider to another. Prior to HB 126, persons could name guardians in a financial power of attorney. Allowing persons to do so in a Power of Attorney for Healthcare simply placed these documents on a par with financial powers of attorney. The change to the witness requirement is simply a safeguard measure to prevent abuses from happening.

### **Q: What if a person wants to appoint a guardian of the person who is different from the agent named in their power of attorney for healthcare?**

A: This is unlikely because it creates potential for conflict. However, it is important to remember that the nomination of guardian is not the same as the appointment of the guardian, an action that may only be taken by the probate court. The nomination alone affords no special privileges, so the Agent's decisions prevail. If there are concerns about the decisions being made by the Agent, the guardian can bring the matter to probate court, in which case the court would take all of the patient's expressed wishes into account, plus any other information pertinent to determining the appropriate decision maker(s).

**Q: What does it mean to be bonded? In what type of situation would bonding be advisable and/or necessary?**

A: A bond is a type of insurance that protects the minor or disabled individual in cases of unethical or illegal actions of the guardian. Bond is only needed, if at all, for a guardian of the estate and not for a guardian of the person. Bond is paid for by the ward's estate and not by the guardian.

**Q: Does a person have to complete the guardianship portion of the new HPOA for it to be considered complete?**

A: No. If an individual does not wish to make a nomination of guardianship, he/she may simply draw an "X" through that entire portion of the form.

**Q: Do we need to sign a new Living Will and Power of Attorney for Healthcare since there are new forms or are our old forms still valid?**

A: The old forms remain valid and useful. If an individual's preferences and agent are to remain the same, s/he need not complete a new form. Any new advance directives created henceforth, however, should be completed using the new forms included in the Choices brochure.

**Q: Do we need to draft a new Healthcare Power of Attorney if we want our agent to be able to get protected health information immediately?**

A: Yes. If an individual wants his/her agent to be able to immediately access protected health information without having to sign a HIPAA release for each individual provider,