**Medicare Minute Teaching Materials — May 2024**

**Preparing for Future Health Care Needs**

**1. Why is it important to prepare for future health care needs?**

Many people assume that their family members would automatically be able to make decisions about medical treatments if they were to become incapacitated. However, rules vary greatly from state to state. In some cases, decisions are left up to the health care providers and institutions in charge of your care unless you have appointed someone as your legal representative. If the decision falls to your family, they may not all agree on the best course of action. It is therefore important to have a plan ahead of time to avoid disagreements around treatment issues and ensure your wishes are honored if you are incapacitated. Advance directives, living wills, health care proxies, and powers of attorney can help ensure that decisions made on your behalf meet your needs and preferences.

Advance directives and living wills are legal documents that give instructions to your family members, health care providers, and others about the kind of care you would want to receive if you can no longer communicate your wishes because you are incapacitated by a temporary or permanent injury or illness. Other kinds of documents, like health care proxies and powers of attorney, appoint a trusted individual to make certain kinds of decisions on your behalf in designated situations.

**2. What documents will I need to prepare for future health care needs?**

* **Health care proxy:** A document that names someone you trust as your proxy, or agent, to express your wishes and make health care decisions for you if you are unable to speak for yourself (see question 5).
* **Living will:** A written record of the type of medical care you would want in specified circumstances (see question 6).
* **Advance directive:** Often refers to a combination including both a living will and health care proxy documents.
* **Power of attorney:** A document that names someone you trust as your agent to make property, financial, and other legal decisions on your behalf (see question 7).

You may choose to appoint the same person to oversee your medical and financial decisions by naming them your health care proxy and granting them power of attorney. However, doing so usually requires two separate documents.

If you have an advance directive, your doctors should make note of it in your medical record. Be sure to give these documents to the hospital each time you are admitted.

**3. How should I create documents to prepare for future medical care?**

In most cases, you do not need a specific form to create an advance directive or living will, or to make someone your health care proxy or grant them power of attorney. However, your documents should:

* Comply with any rules in your state
* Cover all the issues that are important to you

Make sure to discuss the contents of any future care documents with family members, health care providers, and anyone else you feel should know. You should give your providers a copy and may want to provide copies to others. You should also bring a copy of your documents to the hospital each time you are admitted, if possible.

For help creating these documents or information on how to comply with your state’s rules, you can contact:

* Your state’s attorney general office or department of health: Many state agencies post state-specific advance directive forms on their websites. If no form is posted, call and ask where to get one.
* CaringInfo, a project of the National Hospice and Palliative Care Organization (NHPCO): This nonprofit focuses on end-of-life issues and provides state-specific advance directive forms for all 50 states and Washington, DC. Visit <https://www.caringinfo.org/resources/> or call 800-658-8898 to learn more.
* The American Bar Association Commission on Legal Problems of the Elderly
* Your state bar association
* Your local hospital

Note: Some organizations suggest that you compare the generally accepted advance directive form from your state against at least one or two forms from other sources. This is because you may find that one form provides instructions for a particular medical circumstance that another does not. Generally, though, if you find a form that works well for you, use it. You may also decide to combine information from several forms into one document.

You do not need a lawyer to create an advance directive, living will, or health care proxy. However, you may want legal assistance if you have uncommon wishes, or if you anticipate or know of disagreements among family members.

If you want to create a power of attorney document that appoints a trusted individual to make decisions about your finances, you should usually consult a lawyer (see question 4).

**Note: Appointment of representative forms**

You may also want to appoint a representative to help you when speaking to Medicare or Social Security, or to call them on your behalf. Use the following forms to appoint a representative:

* [Form to appoint your Social Security representative](https://www.ssa.gov/forms/ssa-1696.pdf)
* [Form to appoint your Medicare representative](https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms10106.pdf)

**4. How can I locate legal assistance to help plan future care?**

You do not need a lawyer to create an advance directive, living will, or health care proxy. However, you may want legal assistance if you have uncommon needs, or if you anticipate or know of disagreements among family members. If you want to create a power of attorney document that appoints a trusted individual to make decisions about your finances, you should consult a lawyer.

Elder law attorneys focus on the legal needs of older people. Elder law is a broad field that encompasses estate planning, Medicare law, Medicaid law, insurance issues, nursing home issues, and planning for future health needs. You may want to get help from an elder law attorney if your situation is complex, you have substantial assets, or if you and your family members want more comprehensive assistance with estate and health care planning. You should make sure the lawyer you choose has experience and is willing to focus on the issues that are most important to you.

You may want to ask your family and friends for elder law attorney recommendations. The following organizations may also be able to help:

* **The National Academy of Elder Law Attorneys (NAELA)** assists lawyers, bar associations, and others who work with older clients and their families. Their website offers [referrals, tips, and resources](https://www.naela.org/Web/Web/naela_Resources.aspx?hkey=1e07503a-588d-4e61-98c0-a975d05fb4a6) for finding an elder law attorney.
* **The National Elder Law Foundation** certifies elder law attorneys and can help you [locate certified attorneys in your area](https://nelf.org/search/custom.asp?id=5427).
* **The American Bar Association (ABA)** website has a [Lawyer Locator tool](https://www.americanbar.org/groups/legal_services/flh-home/flh-bar-directories-and-lawyer-finders/) that allows you to search for specialty lawyers in your area.
* **State bar associations** may offer legal information and referrals.
* **Your Area Agency on Aging (AAA)** may be able to provide guidance around legal issues and finding an attorney. [Find your local AAA.](https://eldercare.acl.gov/Public/Index.aspx)

If you have limited resources, you may be able to get free or low-cost legal help:

* **Legal aid societies** offer free or low-cost help to qualifying older adults. You can find them in the phone book by searching under legal aid, or on the internet. Federally funded programs are listed on the website of the [Legal Services Corporation (LSC)](http://www.lsc.gov).
* **State bar associations** may offer reduced or free (pro bono) legal services.

**5. What is a health care proxy?**

A health care proxy is a document that names someone you trust as your proxy, or agent, to express your wishes and make health care decisions for you if you are unable to speak for yourself. A health care proxy may also be called a durable medical power of attorney or an appointment of a health care agent or health care surrogate. Naming a proxy can help ensure that you get the health care you prefer if you cannot communicate your wishes.

You do not have to be terminally ill to designate a health care proxy or for the proxy to make decisions on your behalf. Typically, your proxy will make treatment decisions only if you are incapacitated and unable to communicate due to a temporary or permanent illness or injury. A doctor may have to certify that you are incapacitated before your proxy starts making decisions for you. Your proxy may also have access to your health records and other information, depending on the permissions you give them. If you want to place restrictions on what your proxy can do or see, you should include these in your health care proxy document.

It is important to appoint a proxy you trust who will be assertive and honor your wishes. Make sure your proxy is aware of your:

* Personal attitudes toward health, illness, death, and dying
* Medical treatment preferences, such as feelings about palliative (comfort) care, life-sustaining care (like artificial hydration and nutrition), and treatments you may need in the event you are unconscious
* Religious beliefs
* Feelings about health care providers, caregivers, and health care institutions

All of the above could be included in a living will, a document that your proxy can use to make decisions on your behalf. Many states combine health care proxies and living wills into one advance directive document. Make sure to update these documents as needed and to tell your proxy if your feelings or attitudes change so they can make the most appropriate choices for you. Additionally, it is important to know that you may change your proxy at any time. To do so, create a new health care proxy document.

If you regain the ability to make your own decisions, you can choose to speak on your own behalf again.

Keep in mind some of these important pieces of information about health care proxies:

* Health care proxy documents may let you name a second person as your backup agent if your primary agent cannot fulfill their duties. It is a good idea to name a backup agent, if possible.
* You do not have to name a health care proxy. However, you may want to make sure you have a living will to advise your family and providers about your preferences. Also know that if you become incapacitated and have not appointed a proxy, state law determines who makes decisions on your behalf.
* Your health care proxy can only make medical decisions for you. If you want to appoint an individual to make financial decisions on your behalf, consult a lawyer about granting power of attorney (see question 7) to someone you trust. Depending on your state, decisions about health insurance and paying health care bills may be considered financial decisions.
* You do not need a lawyer to name a health care proxy, but there are organizations that can help you if you wish.

**6. What is a living will?**

A living will is a written record of the type of medical care you would want in specific circumstances. It can be used to make treatment decisions if you can no longer communicate your wishes because you are incapacitated by a temporary or permanent injury or illness. A living will can serve as a valuable guide for your family, health care providers, and other representatives if they have to make medical decisions on your behalf.

Living wills usually take effect after your doctor certifies that you are incapacitated and may be nearing the end of life. The document should provide information on the specific kinds of care you want and do not want at that time. For example, your living will could state that you:

* Do not want to be resuscitated if your illness or injury progresses to a certain stage.
* Never want to receive certain treatments, regardless of the situation or consequences of foregoing care.
* Want to receive all treatments that could prolong life.

If you create a living will, make your preferences as clear and specific as you can. For example, if you have feelings about particular treatments, such as artificial hydration or nutrition (a feeding tube), dialysis, and/or chemotherapy, express them in the document.

If you have appointed a health care proxy, they should use your living will to guide them in making medical decisions on your behalf. Many states combine health care proxies and living wills into one advance directive document. You do not have to name a health care proxy, but you may still want a living will to advise your family and providers about your preferences. If you have not appointed a proxy, state law determines who makes decisions on your behalf.

You do not need a lawyer to create a living will, but there are organizations that can help you if you wish (see question 4).

**7. What is a power of attorney?**

A power of attorney is a document—typically prepared by a lawyer—that names someone you trust as your agent to make property, financial, and other legal decisions on your behalf. Rules about powers of attorney—including limitations on what an agent can and cannot do—vary from state to state. You can also set customized limits on your agent’s authority. Generally, you can give your agent the ability to:

* Collect your Social Security benefits
* Use your money to pay your bills
* File your taxes
* Operate your small business
* Conduct your banking transactions
* Manage your investments
* Buy, sell, and/or manage your property
* Manage your retirement accounts
* Hire someone to represent you in court
* Give gifts or donations on your behalf

You may also give your agent the ability to make certain health care decisions for you, such as:

* Managing your funds to pay for medical treatments or other care
* Choosing or changing your health insurance plan
* Appealing coverage denials

Note: You may need to name someone your health care proxy (see question 5) if you want them to be able to make medical decisions on your behalf, not just decisions related to insurance and payment. You can appoint the same person as your health care proxy and power of attorney, but you may be required to fill out two separate documents.

Power of attorney documents are valid until you revoke your agent’s power, become incapacitated and unable to communicate due to a temporary or permanent illness or injury, or die. If want your agent to make decisions on your behalf when you are incapacitated, you have the option of creating a **durable** power of attorney document. Your agent will still be bound by the restrictions you specify in the document.

It is important to know that you do not give up the right to make decisions for yourself by appointing an agent. However, any decision your agent makes has the same legal weight as if you had made it yourself. You should periodically review your power of attorney document and can make changes at any time to better suit your needs, including (but not limited to) appointing a new agent or changing your agent’s permissions and/or restrictions.

Power of attorney documents may let you name a second person as your backup agent if your primary agent cannot fulfill their duties. It is a good idea to name a backup agent, if possible.

**Consult a lawyer to create a power of attorney document** (see question 4). The document needs to meet state requirements, be tailored to your individual needs, and be drafted with precise legal language.

**8. What is long-term care and how does it work with Medicare?**

Long-term care (LTC) refers to a range of services and support that help you perform everyday activities. LTC can be provided in a nursing home, assisted living facility, or other setting, and may include medical care, therapy, 24-hour care, personal care, and custodial care (homemaker services). Medicare usually does not cover LTC services. However, if you need care, there are other organizations and forms of insurance you can try:

* **Medicaid** is a state and federal program that provides health coverage if you have a limited income. Medicaid is the country’s largest payer of LTC services and will pay for nursing home care. Medicaid benefits also coordinate with Medicare.
* An **Area Agency on Aging** may be able to provide information and assistance to connect you with services in your area. [Find your local AAA.](https://eldercare.acl.gov/Public/Index.aspx)
* **Local senior centers** may have programs that can deliver meals, provide transportation and shopping assistance, and offer case management. To find senior centers in your area, call your local AAA.
* **Faith-based organizations and charities** may offer services, financial assistance, and/or referrals to other organizations in your area.
* **Geriatric care managers** are health and human services professionals who work privately with you and your family to create a plan of care that meets your needs.

**State Health Insurance Assistance Programs, or SHIPs,** can help you understand your Medicare coverage, including when Medicare will cover skilled nursing care services and hospice. Contact information for your SHIP is on the final page of this document.

If you are unsure what kind of care you need, you should start by asking your provider.

**9.** **What does hospice care fraud, error, or abuse look like, and how can I protect myself?**

Hospice can be an important benefit for people on Medicare. When a person is faced with a terminal diagnosis, it can be hard to accept and to make decisions about end-of-life care. Fortunately, the hospice program enables people to die with dignity and respect. It also supports the importance of the need for end-of-life care, including the right to make decisions about that care. However, hospice fraud and abuse can lead to patient harm, premature death, and big profits for dishonest individuals taking advantage of people and hospice.

Hospice fraud and abuse can occur when Medicare is falsely billed for any level of hospice care or service. Scammers can get beneficiaries to agree to hospice even though they do not qualify for the benefit. As a Medicare beneficiary, you should look out for suspicious behavior from health care providers that might indicate Medicare fraud or abuse. Report potential hospice fraud, errors, or abuse if:

* You have been falsely certified as being terminally ill (in other words, having a life expectancy of six months or less if the disease runs its normal course)
* You were in enrolled in hospice without you or your family’s permission or knowledge
* You find out someone is falsely certifying or failing to obtain physician certification on plans of care
* You were offered gifts or incentives to receive hospice services or to refer others for hospice services
* You see on your Medicare Summary Notice (MSN) or Explanation of Benefits (EOB) that you were billed for a higher level of care than was needed or provided, or for services not received
* You experience high-pressure and unsolicited marketing tactics of hospice services

If you suspect that a provider is committing potential hospice care fraud, errors, or abuse, you should contact your local Senior Medicare Patrol (SMP). Your SMP can help you identify potential fraud, errors, and abuse, and report your concerns. Contact information for your local SMP is on the final page of this document.

You can help prevent hospice fraud and abuse by following a few guidelines.

* Be sure a trusted doctor has assessed your condition and certified that you are terminally ill.
* Be wary of deals that seem too good to be true. For example, never accept gifts in return for hospice services.
* Review your Medicare Summary Notices (MSNs) or Explanation of Benefits (EOB) often.
* Report any potential fraud, errors, or abuse to your local Senior Medicare Patrol (SMP).

**10. Who should I contact for more help?**

**State Health Insurance Assistance Program (SHIP):** Contact your local SHIP for help understanding your Medicare coverage, such as for hospice or skilled nursing services. Contact information for your local SHIP is on the final page of this document.

**Senior Medicare Patrol (SMP):** Contact your SMP if you have experienced potential Medicare fraud, errors, or abuse. Contact information for your local SMP is on the final page of this document.

**Elder law attorney:** You may want to get help from an elder law attorney if your situation is complex, you have substantial assets, or if you and your family members want more comprehensive assistance with estate and health care planning. You should make sure the lawyer you choose has experience and is willing to focus on the issues that are most important to you. The following organizations may be able to help you find an elder law attorney: the [National Academy of Elder Law Attorneys (NAELA)](https://www.naela.org/Web/Web/naela_Resources.aspx?hkey=1e07503a-588d-4e61-98c0-a975d05fb4a6), the [National Elder Law Foundation](https://nelf.org/search/custom.asp?id=5427), and the [American Bar Association (ABA)](https://www.americanbar.org/groups/legal_services/flh-home/flh-bar-directories-and-lawyer-finders/).

**Area Agency on Aging (AAA), Aging and Disability Resource Center (ADRC), or Eldercare Locator:** Contact your local AAA or the national Eldercare Locator for help finding other local services to prepare for your future health care needs. The national Eldercare Locator can connect you with your local AAA, Aging and Disability Resource Center, legal services, and other helpful services locally. To reach the Eldercare Locator, visit eldercare.acl.gov or call 800-677-1116.

**SHIP case study**

Lorena was recently diagnosed with ALS (commonly known as Lou Gehrig’s disease) and enrolled in Medicare. She is currently able to make and communicate her own health care decisions, but she is worried about what will happen when her ability to communicate deteriorates. She wants to make sure her family, friends, and health care providers understand her health care decisions. She also doesn’t know what Medicare will pay for, such as for hospice care, when that time comes.

**What should Lorena do?**

* Lorena can contact her State Health Insurance Assistance Program (SHIP) for assistance.
  + If Lorena doesn’t know how to contact her SHIP, she can call 877-839-2675 or visit [www.shiphelp.org](http://www.shiphelp.org)
* A SHIP counselor can let Lorena know about Medicare coverage for skilled nursing care and hospice care, and also let Lorena know about how Medicare works with long-term care.
  + While Medicare does not cover most services associated with long term care, the SHIP counselor can help connect Lorena with her local Medicaid office or an Area Agency on Aging to learn about her long-term care coverage options.
* The SHIP counselor will also suggest that Lorena may also want to appoint a representative to help her when speaking to Medicare or Social Security, or to call Medicare or Social Security on her behalf.
  + The counselor will help Lorena locate the forms she should use to appoint a representative, which are available online.
* The SHIP counselor can explain that there are multiple steps she can take to prepare for her future health care needs and help connect her with helpful resources in the area, either through the local AAA, Aging and Disability Resource Center, legal services and elder law referral services, or other local information and assistance service providers.
  + The SHIP counselor will emphasize that if there are other decisions, particularly financial decisions, that Lorena thinks someone may need to make on her behalf, she can contact a lawyer to help her prepare a power of attorney.

**SMP case study**

Eileen is 89 years old. She fell a few weeks ago and it resulted in an open wound on her leg. She went to see her doctor because it was not healing. Her doctor told her that she now has a severe infection that needs to be treated with surgery. Her doctor’s office said that Eileen couldn’t receive the treatment, though, because her Medicare benefits show that she is receiving hospice services. Eileen has no idea why she would be on hospice since she is not terminally ill. Eileen and her family have talked about hospice services and the benefits of them if she would ever need them in the future, but Eileen and her doctor never enrolled her in hospice.

**What should Eileen do?**

* Eileen should contact the hospice provider that is billing her Medicare to request information and to be disenrolled, so she can get her surgery as soon as possible.
* If she cannot contact the provider, Eileen can contact her local Senior Medicare Patrol (SMP), which helps Medicare beneficiaries (as well as family members and caregivers of those with Medicare) detect and prevent Medicare fraud, errors, and abuse.
  + If Eileen does not know how to contact her local SMP, she can visit [www.smpresource.org](http://www.smpresource.org) or call 877-808-2468.
* The SMP will collect information and assist in reporting this to CMS and as potential fraud or abuse to the proper authorities.
* The SMP will encourage Eileen to continue to look for red flags and to call the SMP with any future concerns of Medicare fraud, errors, and abuse.

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| **​Local SHIP Contact Information** | **​Local SMP Contact Information** |
| **​SHIP toll-free:** | **​SMP toll-free:** |
| **​SHIP email:** | **​SMP email:** |
| **​SHIP website:** | **​SMP website:** |
| **​To find a SHIP in another state:**  ​Call 877-839-2675 and say “Medicare” when prompted or visit [www.shiphelp.org](http://www.shiptacenter.org/). | **​To find an SMP in another state:**  ​Call 877-808-2468 or visit [www.smpresource.org](http://www.smpresource.org/). |
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