

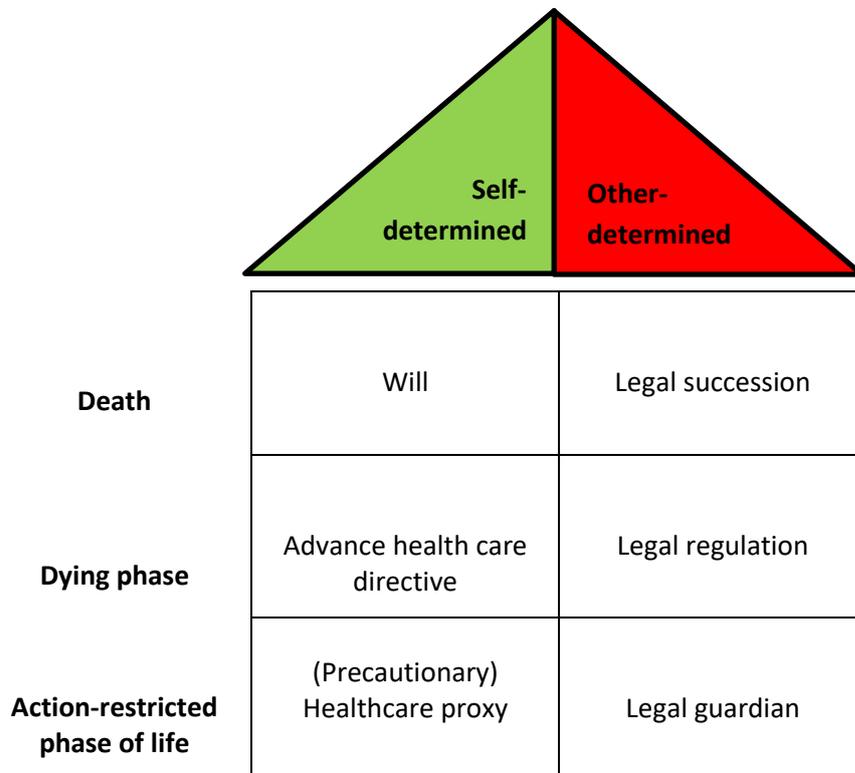
Advance healthcare directive, healthcare proxy, legal representation – what everyone needs to bear in mind

Let's begin with an overview:

An **advance healthcare directive** is used to specify one's future medical treatment. It takes effect when, for health reasons, one is no longer capable of expressing one's will in this matter. The advance healthcare directive can be used, for example, to stipulate if and under what conditions artificial respiration should be provided, or not. It is addressed to the doctor, nursing staff or therapists.

A **healthcare proxy** enables one or more trusted persons to take responsibility for making certain decisions. This could involve medical treatment, banking transactions, house/flat issues or private post.

A **legal representation** specifies who is to be appointed as guardian in the event that legal guardianship (formerly incapacitation) is ordered. This rule applies when a psychological illness or a physical, mental or emotional disability prevents one from fully or partially managing one's affairs, and when one had not previously appointed anyone to act on one's behalf.



The advance healthcare directive

The wish for a dignified death without much suffering unites us all, and this is why such sentences often appear in advance healthcare directives. For doctors, however, such wishes are too vague and the diffuse mistrust of so-called high-tech medicine causes serious problems.

The consumer advice centre explains this using the example of feeding patients via PEG (percutaneous endoscopic gastrostomy), whereby a plastic tube is placed through the abdominal wall during a gastroscopy and the patient is fed a liquid diet. Yes, this sounds like a nightmare, of course, but this is precisely what may be temporarily prescribed after a stroke or brain injury, and many patients then need rehabilitation to learn how to swallow and eat normally again. Totally excluding the use of gastric tubes could therefore have fatal consequences. The same thing applies for deciding not to take powerful pain killers like morphine, for fear of becoming dependent on them. Inserting such wishes into a directive could, in practice, mean that doctors are not able to help these patients when they require pain medicine.

The formal conditions for drawing up an advance healthcare directive are simple, as it can be written on a computer, by hand or by a person of trust. It is only important to include the date, the place and the signature of the person making the directive.

In the ideal scenario, the recipient of the directive should state precisely in which situations the document should apply, i.e. for the final stage of a terminal illness or in the event that the patient is no longer capable of eating naturally due to reaching the last stage of Alzheimer's. One should then be able to explain which life-prolonging measures should not be taken in the given situation and if no attempt at resuscitation should be made. A conclusive passage on communication (who should be informed, release from confidentiality with regard to persons of trust etc.) is then just as helpful as having a concept of dying (such as being at home, where possible, or having a religious leader present).

Medical treatment methods are constantly evolving. Therefore, you should regularly review your advance healthcare directive and adapt it if necessary. In case of doubt, the doctor always decides in favour of life. Since you do not have an overview of all areas (especially as a layperson), experts recommend additionally formulating an essay of about two pages on your values. What is your attitude towards life, do you have Christian values, what is your attitude towards hospice, etc.? In case of doubt, the attending physician could deduce what you would have chosen.

The healthcare proxy

Using a healthcare proxy for the management of one's assets is a decision that must be taken very carefully. There have been plenty of instances when this responsibility has been abused or has led to inheritance disputes – such as when an heir reads a will and believes the assets to be much less than expected. Suspicions then quickly fall on the agent of the proxy. It is difficult to prove anything in such

cases as the agent can argue that the primary person really wanted to have cash, which explains the frequent use of cash machines.

Another peril is that a healthcare proxy only really applies if it is absolute and unconditional, and therefore does not contain any restrictions such as the formulation, "... if I am not of sound mind". The agent would then be in an almost hopeless position when dealing with banks, landlords or insurance companies because how could they know for sure that this condition had materialised? Conversely, an unconditional healthcare proxy also means that the agent immediately has access to the primary person's finances and, in theory, can withdraw money from their account straight away. For this reason, experts advise a written agreement in the proxy's internal relationship with the agent in order to specify precisely which rules should apply when the need arises. Should the available assets be used to finance an expensive care home? Or does the primary person wish to continue living as economically as possible in order to bequeath more money to children or grandchildren? Should money still be donated to certain institutions or associations?

It is also possible to appoint several agents of the proxy, although this should be done with a rank order (agent, substitute agent), in order to prevent the parties from hindering each other in the event of disputes. It also makes sense to split the proxies among the children according to their specialities, with one child assuming responsibility for medical issues, for example, and another for financial matters.

Formally, it is sufficient for the proxy to be made in writing – either by hand or typed up on the computer. Besides the signature, location and date, the agent's name and date of birth must also be stated in full, together with their address and phone number, if possible. The agent requires the original copy. This need not be notarially certified or notarized.

There are, however, two special eventualities that must be taken into consideration. Many banks do not recognise a healthcare proxy that has not been notarized and insist on an in-house form instead which, in the event of the primary person suffering from a serious form of dementia, cannot be filled in retrospectively. What at first appears to be pure deception makes much more sense at closer inspection. The bank does not wish to be held liable if the proxy proves to be open to a legal challenge. This can be bitterly disappointing for the agent, who then has to wait until the court rules on the care process, meaning that payments due to the landlord or care home are barely possible. It makes sense, therefore, to check whether the given bank mandates are up to date.

The other eventuality concerns property. Whoever wishes to sell property in their capacity as agent of the proxy, such as authorise the sale of the family home in order to fund a place in a care home, must have a notarized healthcare proxy. If this is missing, the court will decide whether and at what price the house may be sold. In many cases, a valuation is first demanded. This poses a serious problem to people under pressure to sell in order to finance the primary person's place in a care home.

Legal representation

The term incapacitation persists in German usage, although this procedure was abolished as early as 1992. The new procedural name of care is more than just a new wording. It signals that a person who can no longer manage his or her own affairs because of illness or care should be able to live as self-determined a life as possible. The representative must therefore base their actions on the will and the interests of the person they represent.

People who use a healthcare proxy and appoint someone to act as the agent of the proxy are only given legal representation in very few, above-mentioned, exceptions. For the most part, one sentence in the proxy is enough for the court to recognise the agent of the proxy as the person's representative too.

A legal representative is much more important for people who do not have anyone in their family or circle of friends whom they can trust 100%. In this case, legal representation may be the much better choice. A legal representative must regularly report to the court on matters regarding the patient's bank account and savings books, for example.

Storage/safekeeping

Even the best piece of writing is no good if it cannot be found when required. This is particularly true for the advance healthcare directive. The consumer advice centre recommends keeping a small card in your wallet that refers to this directive and mentions the person of trust and the place of storage. People about to undergo a risky operation should give the doctor a copy of the directive in advance.

With regard to the healthcare proxy, people should give the agent several original copies (simply print a few copies out and sign them). This will make their work easier if they need to send original copies to cancel things like insurance policies or subscriptions. Make sure to insist on all copies being returned if the proxy is to be revoked. It is possible to register the proxy with the Federal Chamber of Notaries for a fee of €13 (online registration), as 3 million Germans have already done. However, this only registers who has appointed whom as a proxy and for what purposes; the proxy itself is not registered. Courts can access this register online. Legal representations can also be registered at the Federal Chamber of Notaries.

The website of the Federal Ministry of Justice and Consumer Protection always provides up-to-date information and forms (www.bmjv.de).

In addition, the consumer advice centre offers good reference books on this subject (www.verbraucherzentrale.de).