

### **What are powers of attorney and why are they needed?**

There are two (2) types of powers of attorney. There is the durable (financial) power of attorney which is when someone is appointed to take care of your finances during your lifetime when you are unable. Then, there is the healthcare power of attorney in which you appoint someone to take care of you when you are unable to make your own medical decisions. Many people also obtain a Living Will when executing powers of attorney. The [Secretary of State](#) provides additional information about the healthcare power of attorney and living will, including statutory forms, on their website.

### **Supported Decision Making in North Carolina using Powers of Attorney**

If your loved one is experiencing symptoms of dementia or has been diagnosed with dementia, you may be asking when should you obtain powers of attorney? The answer is now! You, as the caretaker, cannot obtain these forms on behalf of your loved one. Once someone lacks capacity, that individual may not be able to obtain a power of attorney. For a durable (financial) power of attorney, a person must be 18 years of age and able to express who they want to grant authority to manage their financial affairs. (G.S. § 32C-1-102(11)) The person must also be able to sign or direct someone to sign their name and the document must be notarized. (G.S. § 32C-1-105) For a healthcare power of attorney, any person who can make and communicate health care decisions and is at least 18 years of age can make a healthcare power of attorney. (G.S. § 32A-17) It is best to complete both, the durable (financial) and healthcare power of attorney, in most cases. If a durable or healthcare power of attorney cannot be obtained, a guardianship, which is costly and time-consuming may need to be obtained. Additionally, guardianships require court oversight and approval. This is why the time to obtain these documents is now providing your loved one still has capacity.

### **What are the pros and cons of powers of attorney?**

A power of attorney permits you to determine who should be in charge of your finances and medical decisions if you cannot make those decisions for yourself. In most cases, if a person has a valid durable (financial) power of attorney and valid healthcare power of attorney, there is no need to obtain a guardianship. However, when you appoint someone to be in charge of your finances and medical decisions, you should determine which individuals are best suited for these positions as potential exploitation of your finances and neglect of the person can occur.

### **When does a power of attorney take effect?**

A power of attorney takes effect when you sign the document or when you are deemed incompetent. It is wise to discuss with your medical provider or attorney, if you have one, when it is best suited for your power of attorney to take effect. If your power(s) of attorney take effect when you are deemed incompetent, it is often stated that two (2) physicians, your attending physician and another physician, should make the determination you are unable to make decisions for yourself and they place their opinions in your medical record before the power(s) of attorney take effect.