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## Instances where Power of Attorney can be called into question

A Power of Attorney is a document or documents in which the individual (principal) appoints an Agent, or Attorney-in-fact, to handle his or her finances and/or healthcare decisions. They are powerful documents in which you are permitting an agent to “step into your shoes,” and handle your finances or healthcare decisions just as if you would. Therefore it is extremely important that the principal give careful consideration to his or her choice of Agent. However, despite the risks associated with potential misuse of the document, which can be mitigated by careful Agent choice, they remain vital documents to have in place, so that if you become incapacitated, someone you trust is able to handle your important decisions. If no document is in place, and you become incapacitated, it will be necessary to have a guardian appointed, a less than optimal solution.

A Power of Attorney is not always recognized by federal governmental agencies, however. Adult children often become frustrated when dealing with agencies such as the Social Security Administration, the Veterans' Administration, and Medicare when they are trying to access information, or when trying to assist the parent or other relative with matters related to public benefits. The quick answer given to most Agents when they are trying to help a relative with matters connected with any of the above agencies is that a Power of Attorney which is developed under State law has no relevance when dealing with the federal government. This is a simplistic answer, and is not totally accurate.

**Medicare** Medicare is medical insurance, and Medicare agencies will accept a Power of Attorney document which provides that the Agent is authorized to act for the principal in matters of insurance and benefit plans. For instance, Elder Law Answers ([www.elderlawanswers.com](http://www.elderlawanswers.com)) recently reported that after consultation with the Center for Medicare and Medicaid Services (CMS) that CMS will recognize state laws authorizing an Agent under a Power of Attorney to enroll or disenroll a beneficiary in a Part D Medicare plan, if the document gives the proper authority to the Agent. Medical Assistance recognizes Power of Attorney documents for the most part.

**Social Security Administration.** Social Security requires the use of their specific Power of Attorney document called “*Representative Payee.*” According to *Social Security Administration Facts*, Treasury Department regulations do not permit an Agent under a Power of Attorney document to negotiate Social Security or SSI checks. They feel that there is a high probability that a third party, such as an Agent under a Power of Attorney, will take the money meant for the beneficiary. More control over this is obtained by the Representative Payee designation. Social Security prefers that checks be directly deposited in the beneficiary's account, however, which obviates the need for the Representative Payee designation in most cases.

**Veterans Administration.** The VA also has a specific Power of Attorney document. This is form 21-22a which appoints an individual as a claimant's representative. In certain circumstances, due to a recent change in the law, an individual may represent a VA claimant using a Power of Attorney document which is already in place.

There are other circumstances where a valid Power of Attorney document is questioned. Generally, these matters can be resolved with a letter from an attorney stating that the Power of Attorney has not been revoked, and remains in full force and effect.