

Advanced Health Care Directives: End-of-Life Decision Making

Modern medicine can now keep a person alive in situations that, in years past, would have resulted in the individual's death. Frequently, a patient in such a condition is unable to communicate his or her wishes with regard to the type of medical care to be provided. In the absence of any other guidance, the attending physician will typically use all available means to keep the individual alive, even when death is certain, with no hope of recovery.

However, many individuals feel that once death is inevitable, life should not be artificially prolonged through the use of such technology. The decision to start or withdraw such life-sustaining support, although always difficult, can be made easier with advanced planning.

The term "advanced health care directives" is commonly used to describe two key documents (sometimes combined into one) designed to address these end-of-life decisions: living will and durable power of attorney for health care.

Individual state law governs the use of these documents, and such legislation can vary widely. Individuals who live in more than one state may need to execute a living will and a durable power of attorney for health care for each state.

Living Will

A living will, also known as a "directive to physicians," is a written statement of the individual's health care wishes should he or she become seriously ill and unable to communicate. The document is designed to provide guidance to someone else appointed to make health care decisions for the individual, or to the attending physician if there is no health care agent. A living will might include:

- Directions as to pain medication
- Directions as to when to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care, including cardiopulmonary resuscitation.

Because it is impossible to foresee the future, the living will should be written in the broadest possible manner, to cover a wide range of situations.

Durable Power of Attorney for Health Care

In a durable power of attorney for health care, sometimes known as a “health care proxy,” an individual (the principal) appoints another person (the agent) to make health care decisions if the principal is incapable of doing so.¹ A durable power of attorney may employ a “springing” power, which means that the power “springs” into life when the principal becomes incapacitated.² Additional powers granted to the agent could include:

- Access to medical records
- Authority to transfer the principal to another facility or to another state
- Ability to authorize a “Do Not Resuscitate” (DNR) order
- Postmortem powers to dispose of the remains, to authorize an autopsy, or to donate all or part of the principal’s body for transplant, education, or research purposes.

Other Points

- **Talk about the issues:** The individual should spend time talking with family, friends, clergy, and physician about his or her wishes in end-of-life decisions.
- **Make the documents available:** If a living will and/or a durable power of attorney exist, be sure that those involved know where to locate the documents.
- **Revocation:** An individual can generally revoke a living will or durable power of attorney at any time.

¹ Many states have provisions in their laws for the appointment of a surrogate such as a spouse, domestic partner, or other close family member to make health care decisions for the principal, in situations where no durable power of attorney for health care exists.

² Under the Health Insurance Portability and Accountability Act (HIPAA), a physician is prohibited from discussing a patient’s medical condition without the patient’s consent. Thus, if an individual become incapacitated, the person named as agent under the durable power of attorney for health care may not have access to the principal’s health-care information. Without this information, the agent would be unable to legally establish that the principal had become incapacitated, and would not be able to trigger any “springing” power. A HIPAA authorization can be used to give the agent access to the principal’s health-care information.

Additional Resources

Non-profit organizations provide support and education on end-of-life issues:

- **American Academy of Hospice and Palliative Medicine:** www.aahpm.org
- **Caring Connections:** www.nhpco.org/patients-and-caregivers/
- **National Hospice and Palliative Care Organization:** www.nhpco.org

Content in this material is for general information only and not intended to provide specific advice or recommendations for any individual. It is recommended that you consult your estate attorney before making any changes to your estate plan.