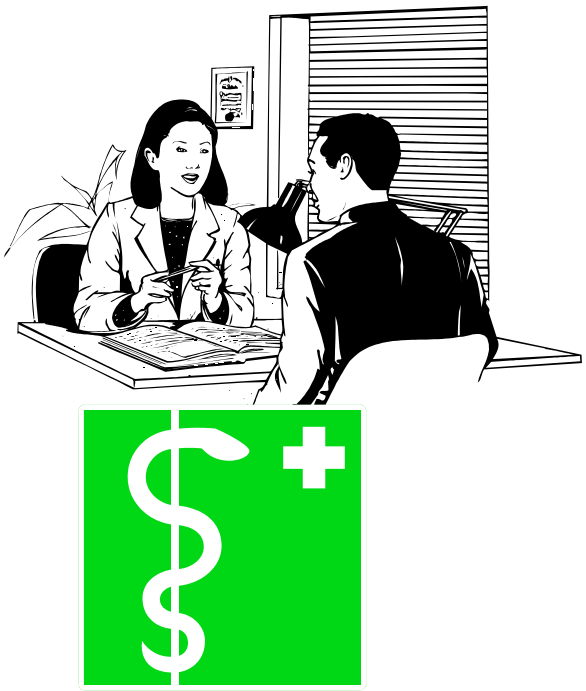
Living Will and Durable Power of Attorney For Health Care



Living Will and Durable Power of Attorney For Health Care

Advance Health Care Directives

What is an advance health care directive?

Advance health care directives are written instructions people used to give directions about the type of care they want or don't want, should they be unable to make health care decisions for themselves. Advance health care directives are commonly found in two forms: **1)** a living will, and **2)** a durable power of attorney for health care or medical durable power of attorney. However, an advance health care directive may take other forms or be called other things. Regardless, these documents are being used with increasing regularity because of the growing concern over how medical decisions are made when people are unable to make such decisions for themselves.

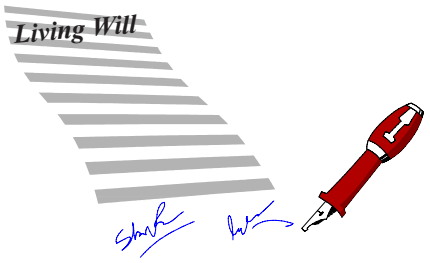
The Nebraska Rights of the Terminally Ill Act recognizes that adults (19 years of age or older) have the fundamental right to control decisions related to their own medical care. This law provides Nebraska adults with the right to give written instructions to their physicians about the use of life-sustaining measures if their condition is terminal.

In 1992, Nebraska adopted legislation allowing individuals to appoint a third party to make medical decisions for them when they are incapable of doing so themselves. This is known as a durable power of attorney for health care or medical durable power of attorney for health care or medical durable power of attorney. Unlike living wills, the durable power of attorney for health care is not limited to instances where a person is terminally ill. This document may be used to address everyday health care decisions for an incapacitated person.

Living Will

What is living will?

A living will is not a "will" in the traditional sense of the term. A "living will" is the term used for the legal document that provides instructions to your physician, care provider, and family regarding whether or not you wish to have life -sustaining medical treatment withdrawn or withheld in the event a terminal condition or persistent vegetative stage exists and you are unable to decide for yourself. It is a statement concerning your wishes about the use of medical technology to sustain life artificially when there is no possibility of recovery.



What are the requirements for a living will?

1. You must be 19 of age, or married, or have been married.
2. The living will must in writing, either typewritten or handwritten.
3. Your living will must be signed by you or signed by someone else — other then one of the witnesses mentioned below, if you are physically unable to sign your name - but only at your express direction and in your presence.
4. Your living will must be witnessed by two adults or a notary public. No more than one witness shall be an administrator or employee of a health care provider who is caring for you, and no witness shall be an employee of a life or health insurance provider for you. The restrictions upon who may witness the signing shall not apply to a notary public.

When will a living will take effect?

A living will takes effect only when all of the following conditions have been met:

1. When it is communicated to the attending physician.
2. When the declarant is determined by the attending physician to be in a terminal condition or a persistent vegetative stage.
3. When the declarant is determined by the attending physician to be unable to make decisions regarding administration of life-sustaining treatment.
4. When the attending physician has notified a reasonably available member of the declarant's immediate family or the declarant's guardian of the diagnosis and the intent to invoke the patient's declaration.

Other facts about the Rights of the Terminally Ill Act.

1. An attending physician or other health care provider who is unwilling to comply with the Rights of the Terminally Ill Act must take reasonable steps as promptly and as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.
2. In the absence of knowledge to the contrary, a physician or other health care provider may assume a declaration complies with the Rights of the Terminally Ill Act and is valid.
   A declaration executed in another state in compliance with the law of the state or of Nebraska shall be valid. An instrument

executed anywhere before July 15, 1992, which substantially complies with the Rights of the Terminally Ill Act shall be effective.

3. "Persistent vegetative state" is defined as a medical condition that, to a reasonable degree of medical certainly as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement.
4. "Terminal condition" is defined as an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.
5. The Rights of the Terminally Ill Act does not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration.

Should I have a living will?

The decision whether to create a living will is an individual decision for each person based upon his or her values and beliefs about medical care. It is important to communicate your wishes and desires to your family, friends, physician, attorney, and others who might enter into this decision-making process for you.

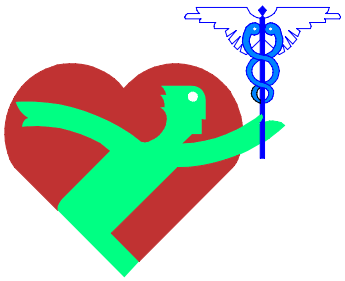
Durable Power of Attorney For Health Care

What is a durable power of attorney for health care or medical durable power of attorney?

A durable power of attorney for healthcare is a document by which you name another person, known as your "attorney-in-fact" or "agent," to make health care decisions for you if you are unable to make them. This agent is required to make decisions according to directions you provide in the document. If your wishes are not known, your agent shall make decisions in your best interest.

What are the requirements of a durable power of attorney for health care?

1. You must be 19 years of age, or married, or have been married.
2. The durable power of attorney for health care must be in writing, either typewritten or handwritten.
3. Your document must be signed by you, or if you are unable to physically sign this document, signed by someone else other than one of the witnesses mentioned below — but only at your express direction and in you presence.
4. The document must designate an attorney-in-fact to make health care decisions for you when you are unable to do so, and may designate another competent adult as a successor attorney-in-fact when the original attorney-in-fact is unable to perform his or her duties.
5. The document must specifically authorize the attorney-in-fact to make health care decisions for the principal in the event the principal is incapable. If the principal wants the attorney-in-fact to be able to consent to withholding or with drawing of life-sustaining procedures or artificially administered nutrition and hydration, the document must specifically authorize these actions.



6. The document must have a date of execution and be witnessed and signed by at least two adults or a notary public who is not the same as attorney-in-fact.
7. The principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee, attending physician, employee of a life or health insurance provider for the principal, or attorney-in-fact cannot serve as a witness. No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal. The attending physician, an employee of the attending physician who is unrelated to the principal, the owner, operator or employee of a health care provider in or of which the principal is a patient or resident who is unrelated to the principal, and a person who is serving as attorney-in-fact for 10 or more principals is not allowed to serve as attorney-in-fact.

When will a durable power of attorney for health care become effective?

The durable power of attorney for health care must be made a part of the principal's medical record with the attending physician. It becomes affective when the principal is determined to be incapable of making health care decisions. It will continue in effect until it is revoked, until the principal dies, or until the principal is again capable of making health care decisions.

A determination that a principal is incapable of making health care decisions must be made in writing by the attending physician by documenting the cause and nature of incapacity. Notice of such a determination must be given by the attending physician to the principal if the principal is able to comprehend the notice, to the attorney-in-fact and to the health care provider. Upon notification, the attorney-in-fact must notify the next of kin, unless the principal has directed otherwise in the document.

The attorney-in-fact shall not have authority to make any decision when the principal is known to be pregnant that will result in the death of the principal's unborn child and it is probable that the unborn child will develop to the point of live birth with continued application of health care.

How does a living will differ from a durable power of attorney for health care?

A living will is a self-declaration to the attending physician, health care provider and family that certain life-sustaining procedures should or should not be withheld or withdrawn if you are in a terminal condition and unable to decide for yourself.

A medical durable power of attorney or durable power of attorney for health care directs another person as your attorney-in-fact or agent to make health care decisions for you if you are unable to make them. The agent or attorney-in-fact is not restricted to making decisions about terminally ill patients or decisions about life-sustaining procedures.

Should a person have both a living will and durable power of attorney for health care?

The decision to have one or more advance health care directives is a personal decision. To decide what form of an advance health care directive should be created requires a knowledge of what each document does for you and whether you have someone who has consented to act as your attorney-in-fact. In addition, it is possible to have a living will declaration within your durable power of attorney for health care document. It is recommended you consult with your attorney to develop an advance health care directive best suited to your needs and desires.

Who should be named as my attorney-in-fact?

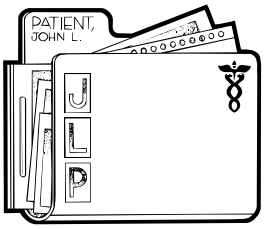
Should you decide to execute a durable power of attorney for health care document, the individual you nominate to make health care decisions for you is your "attorney-in-fact." The attorney-in-fact should be a competent adult who fully understands you wishes and desires and is willing to accept the responsibility to make such decisions.

Nebraska law also allows the designation of another adult as a successor attorney-in-fact when the original attorney-in-fact is unavailable, unwilling or unable to serve. Usually a spouse or family member is nominated to serve in this capacity because they are familiar with the principal's desires and beliefs.

Who should be consulted when preparing an advance health care directive?

It is recommended you consult with your attorney, your physician and your family about your advance health care directive document. While it is not necessary to consult with an attorney to create a legally binding document, it is often helpful because of possible changes in the law.

Who should receive a copy of my advance health care medical directive?



Copies of you living will and/or durable power of attorney for health care should be given to your attorney-in-fact, family members, physician, attorney, other regular health care providers, and trusted friends. You might also note where the original document is located and keep a list of who has copies. You may want to keep a card in your wallet that states you have executed these documents and give the name and phone number of your attorney-in-fact.

Can an advance health care directive be changed or cancelled?

The declarant of a living will may revoke the declaration at any time and in any manner without regard to the declarant's mental or physical condition. The revocation shall be effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation and shall be made a part of the person's medical record.

A durable power of attorney for health care may be revoked orally or in writing at any time by a person who is competent.

Regardless of the form(s) of advance health care directive used, it is recommended to review it periodically with your attorney and family to ensure it expresses your wishes and complies with state law.

Can health care decisions be made on my behalf without a living will or durable power of attorney for health care?

If your have not executed an advance health care directive and are unable to make decisions, as a practical matter, others will make health care decisions for you in consultation with your physician. If time and circumstances allow, a guardian may be appointed or may be required to be appointed in the event conflicting desires are expressed. The advantage of creating an advance health care directive is that you have a greater assurance your specific wishes will be carried out and might avoid a family conflict.

Who should prepare my advance health care directive?

Since December 1, 1991, the Patient Self-Determination Act passed by Congress requires health care facilities such as hospital and nursing home receiving federal funds to inform patients of their rights under their states' law to formulate medical advance health care directives such as the ones discussed in this brochure. Some medical facilities have created informative publications and forms. However, since the directive should be prepared in advance of illness or incapacitation, events we do not control, it is recommended your attorney draft it as part of your comprehensive estate plan.

Although an advance health care directive may easily be drafted to fulfill the statutory requirements, one should consider state laws that are constantly changing and the unique belief system, including personal and religious values, held by each person. Because each of us is unique in our beliefs, an advance health care directive should be drafted to reflect those desires and wishes prior to failing health. Deciding today about your health care in the future is the purpose of the advance health care directive.

This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.

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