

Estate & Elder Law Services
Volunteers of America - Minnesota
1900 Central Avenue NE, Suite 106
Minneapolis, MN 55418
(612) 676-6300

Monica Lewis, Attorney
Lori D. Skibbie, Attorney

HEALTH CARE DIRECTIVE FACT SHEET

A Health Care Directive is a legal document in which a person may state one's views and desires regarding health care. It also allows the person (the principal) to name someone (the agent) to make health care decisions in the event one is unable to communicate health care decisions to health care providers oneself. In a Health Care Directive the principal can give views and values about general health care and specific treatments, describe health care goals and medical treatment preferences, and state religious and spiritual beliefs, preferences regarding health care when terminally ill and wishes regarding organ donation and body disposition. It is generally more important to name an agent than it is to describe health care desires, provided the time has been taken to thoroughly discuss values and beliefs regarding health care with the agent(s).

What is required to create a valid Health Care Directive?

1. The Health Care Directive must be in writing and be dated.
2. It must state the name of the person completing it.
3. It must be signed by the principal and either notarized *or* witnessed by two people. The witnesses must be 18 or older, cannot be named in the document as the health care agents and only one of the witnesses can be a health care provider or an employee of a health care provider.
4. The Health Care Directive must name a health care agent or contain health care instructions or both.
5. The principal must have the capacity to sign the Directive. There is no clear-cut definition of capacity. If at the time of execution the principal understands the concepts behind naming the agent and/or describing desires regarding health care, capacity is present.
6. There is *no* required format or form as long as the above requirements are met.
7. An attorney is *not* necessary in order to complete a Health Care Directive.

Who should be my health care agent?

The principal should name agent(s) who understand his/her wishes and will comply with them. It is desirable but not necessary to have agent(s) who are geographically close to the principal. If more than one agent is chosen, then the principal must indicate whether the agents may act independently of one another or whether the agents must act together. When multiple agents are named to act together, it can be a problem if there is disagreement among the agents or if some of the agents are unavailable.

What powers does the agent(s) have?

- Automatic powers: the power to make all health care decisions, including those pertaining to keeping the principal alive, if the principal is unable to make or communicate decisions; the power to choose health care providers; the power to choose where the principal will live and receive health care and support related to health care; and the power to review and obtain medical records and release records to others.
- Automatic powers can be limited by the principal in writing on the Health Care Directive.
- Optional powers include: organ donation; disposition of the body after death; making health care decisions even if the principal is still able to decide or communicate; and decisions regarding mental health treatment including electroconvulsive therapy and antipsychotic medication.

(over)

Common questions.

- *What are the limitations of a Health Care Directive?* Health care providers are not required to follow directions in a Health Care Directive that are outside the scope of reasonable medical practice or that are illegal (e.g., assisted suicide). A Health Care Directive will not be followed in a home or community emergency situation. If an emergency call is made to 911, ambulance personnel will initiate resuscitation.
- *What do I do with my completed Health Care Directive?* Copies of the directive should be given to the doctor, hospital, health care providers, health care agents, family members and friends. The more people who are aware of your wishes, the more likely it is that the wishes will be carried out. The directive should be kept in an accessible place (e.g., NOT in a bank safe deposit box) making it easy to retrieve and use. You can also indicate on a driver's license that a Health Care Directive has been prepared. By law, a copy is as good as an original.
- *What happens if I don't make a Health Care Directive?* The Court may have to appoint a guardian to make decisions for someone who cannot make or communicate health care decisions. This can be an expensive and time-consuming process and may result in the appointment of someone you may not have chosen for that role.
- *Must I have an attorney prepare my Health Care Directive?* No. Health care workers and social workers may be able to assist in completing a Health Care Directive.
- *How do I change or revoke my Health Care Directive?* The directive can be changed or revoked by executing another directive, by destroying the directive or directing another to destroy it or by signing and dating a statement expressing the intent to revoke or change the directive. It can also be revoked or changed by verbally expressing the intent to revoke or change the directive in the presence of two witnesses who do not have to be present at the same time.
- *What if my health care provider will not follow my directions?* This is very uncommon, but if it happens, you can change providers. Remember, the provider cannot be asked to give treatment that is outside of reasonable medical practice or illegal, and cannot be asked to give treatment that will not help the client or that the provider cannot provide.
- *Can I be required to make a Health Care Directive?* No, but hospitals are required by law to ask you if you have a directive.
- *What if I travel a lot?* Each state's laws are different. You should carry a copy of the Minnesota directive because at minimum it expresses your wishes, which is better than nothing. If you spend a lot of time in another state, you should have a directive complying with the laws of the other state.
- *Does my Health Care Directive cover financial matters?* No. The Health Care Directive is not a will, trust or power of attorney.
- *Other than from my attorney, where can I get a Health Care Directive?* Health care providers often have forms available. Forms are also available on the Internet from the Minnesota Board on Aging, <http://www.mnaging.org>. Click on "Advisor," then from the list on the left click on "Legal," then scroll down to "Planning for incapacity?" then click on The Minnesota Health Care Directive. Or call the Minnesota Board on Aging's Senior LinkAge Line at 1-800-333-2433. The Minnesota Department of Health also has information at <http://www.health.state.mn.us/divs/fpc/profinfo/advdir.htm>
- *Is my old Living Will still valid?* Yes, your old Living Will is still valid if it was prepared before August 1, 1998, but a new Health Care Directive is more comprehensive and useful.

CONTACT OUR OFFICE AT 612-676-6300 FOR A FREE HEALTH CARE DIRECTIVE FORM

Fact sheet prepared 6/4/2013