



Health Care Directives

Health Care Directive: What is it?

A Health Care Directive (HCD) is a legal tool that expresses medical preferences and values, and/or appoints a health care decision maker, ensuring that an individual (the principal) receives their desired health care even if they are unable to participate in decision making. It can easily be revoked or updated if the person's preferences for an agent or health care instructions change.

Why is it important?

Health care decisions are among the most personal and significant kinds of decisions we face. In the event of a health care crisis, people without an HCD may face challenges in receiving their desired care:

- Providers and families may have to guess the person's wishes.
- Health care providers might turn to family members that the person may not prefer to make the decisions, or they might require family members to seek guardianship before proceeding.

With an HCD, the person's preferences are clearly communicated:

- Appointing an agent communicates who the person wants to be their decision maker(s).
- Often described as a gift to family members, HCDs can reduce pain and stress for family members who are faced with making decisions for a non-communicative person.
- Health care instructions ensure the person's wishes are known and followed to the degree possible by health care professionals.
- Appointing a health care agent can reduce family conflict by already making it clear who the incapacitated person wants to make decisions for them.

Minnesota law requires an HCD to:

- Be in writing
- Be dated
- State the name of the person completing it who has capacity to understand
- Either name an agent or contain health care instructions (or both)
- Be witnessed or notarized

How does it work?

Any person over 18, who has the ability to understand the meaning of what they are signing, can benefit from completing an HCD. People with cognitive, intellectual, or psychiatric challenges may be able to appoint an agent, even if they don't have the ability to understand complex health care instructions. Others can help the person complete the document.

The authority of the document is usually triggered when the attending physician, physician assistant, or advanced practice registered nurse states the person is incapacitated to make a particular health care decision. The document can also state a different choice of who will trigger the authority, such as a spiritual leader, which may be important in some cultures or religions. If the person regains the ability to make decisions as determined by the health care professionals, the health care agent's role ends. At any time, the person can ask the agent to continue to help with decision-making.

Relationship to Guardianship

HCDs are legal alternatives to guardianship; therefore, guardianship should rarely be needed if there is a valid health care directive in place.

If a petition for guardianship is filed, the Court must consider the named health care agent as having the highest level of priority for appointment and should not appoint someone else as guardian without proof that the health care agent is unable to act in the person's best interests.

Did You Know?

- An HCD takes the place of a Living Will. Minnesota still recognizes Living Wills completed before 8/1998; however, an HCD is a more comprehensive and widely used document.
- A default power of the HCD allows the agent the authority to make decisions about where the person will live and receive care and support when those choices relate to health care needs.
- A health care agent has authority to review the person's medical records and have the same rights related to sharing private medical data as the person.
- A person can ask their health care agent to act, even if the person is still capacitated.
- The most current HCD is considered the valid one.
- Health care instructions are commonly thought of as choices to limit life-sustaining interventions in favor of comfort care, but instructions can also express preferences for receiving all available medical interventions, no matter how intensive.
- HCDs can be tailored to address a person's unique values, wishes, cultural perspectives and requirements, and more.

Additional Guidance and Resources

Resources to help individuals express their health care wishes, including suggested language, are available at www.honoringchoices.org.

Please note: some languages, such as those spoken by Hmong or Somali elders, have traditionally been oral languages, so elders may not know how to read or write in their spoken language. Also, while people may complete directives in their own language, it is advised that they be translated to English to ensure English speaking providers can understand their preferences.

For Further Assistance

For additional information or consultation, please contact the following VOA resources:

Center for Excellence in
Supported Decision Making

☎ **Guardianship Information Line:** 952-945-4174
(toll-free 844-333-1748)

✉ **Email:** cesdm@voamn.org

🌐 **Website:** www.voamnwi.org/cesdm