



FROM COUNSEL

A Preventive Law Service of The Office of The Judge Advocate General
Keeping You Informed On Personal Legal Affairs

Advance Medical Directives

Soldiers, retirees, and dependents who are authorized legal assistance can have advance medical directives, wills, and powers of attorney prepared at no charge by scheduling an appointment at their servicing Legal Assistance office.

Many people dread losing control at the end of their lives, but they avoid the relatively simple planning that assures that their health care wishes will be followed. Preparing for possible end-of-life issues is not difficult, and is routinely part of estate planning. At the same time you and your lawyer prepare a will or trust to distribute your property, you can execute documents that direct how you'll be cared for if you're no longer able to make decisions about your life and death.

Some states have family consent laws permitting other family members to make some health-care decisions on your behalf. But in most states, no one, not even your spouse, has the legal right to make any kind of decision on your behalf. This can mean having to go to court to obtain a guardianship or conservatorship, which can be expensive, time-consuming, and still not accomplish your wishes. As a result, most states permit the use of legal documents that will help ensure your wishes be carried out when you're incapable of making such important decisions. In terms of health care decisions, this planning is accomplished through a written Advance Medical Directive (AMD). An AMD is only valid if made while you are competent - not when you've entered an advanced state of, say, Alzheimer's disease. As state laws about how these documents must be witnessed and created vary greatly, it is a good idea to get your lawyer's help to assure they meet the requirements of your state and are in accord with your overall estate plan. As an individual eligible for military legal assistance, a legal assistance attorney can prepare an AMD for you which complies with the applicable state law.

Making Treatment Decisions

Under Federal law, a person is entitled to "informed consent" with respect to any medical treatment and has the right to accept or refuse medical care. No one else, not even a family member, has the right to make these kinds of decisions unless you've been adjudged incompetent or are unable to make such decisions because, for example, you're in a coma or it's an emergency situation. No one can force an unwilling adult to accept medical treatment, even if it means saving his or her life. Where difficulties arise is when your wishes or intentions aren't clear. That's where the next two planning tools come in.

Advance Medical Directive (or *Living Will*): A living will is a written declaration in which you state in advance your wishes about the use of life-prolonging medical care if you become terminally ill and unable to communicate. A living will typically authorizes withholding or turning off life-sustaining treatment if your condition is irreversible. Living wills typically come into play when you are incapable of making and communicating medical decisions. Usually, you'll be in a state that if you don't receive life-sustaining treatment (such as intravenous feeding), you'll die. If your living will is properly prepared and clearly states your wishes, the hospital or doctor should abide by it, and will in turn be immune from criminal or civil liability for withholding treatment. Some people worry that by making a living will, they are authorizing abandonment by the medical system, but a living will can state whatever your wishes are regarding treatment, so even if you prefer to receive all possible treatment, it's a good idea to state those wishes in a living will.

Health-Care Powers of Attorney (HCPA): A HCPA is a special power of attorney that deals with health-care planning. In it you appoint someone to make health-care decisions for you, including, if you wish, the decision to refuse intravenous feeding or turn off a respirator if you become incapable of making that decision. The HCPA can also be used to make decisions about things like nursing homes and surgeries.

Obviously, such important decisions should be discussed in advance with your agent, who should be a spouse, child, or close friend. You should try to talk about various contingencies that might arise and what he or she should do in each case.

You can revise or revoke the HCPA (or the living will) at any time, including during a terminal illness, as long as you are competent and follow the procedures set out in your state's law. When you change or revoke either document, notify the people you gave copies to, preferably in writing.

If I Have a Living Will, Do I Still Need a Health-Care Power of Attorney?

Yes. Remember that a HCPA appoints an agent to act for you, but a living will does not. Also, a HCPA applies to all medical decisions (unless you specify otherwise), but most living wills typically apply only to a few decisions near the end of your life, and are often limited to use if you have a "terminal illness."

Comprehensive Directives: It's a good idea to prepare the HCPA and living will at the same time, and make sure they're compatible with each other and the rest of your estate plan. It's often possible to execute them together in a single health-care advance directive that can also enable you to state in advance whether you want to donate organs at death and also nominate a guardian of your person should one be required. Planning for the day when you might not be able to decide for yourself should be regarded as an essential component of any estate plan.

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