



Medical Directives

Concept

Every state now has legislation authorizing the use of some form of advance health-care directive—a power of attorney, a living will, or both. For those who have not executed an advance directive, some states have "surrogate decision-making" statutes allowing family members and others to make health-care decisions for individuals who lack decision-making capacity.

Description & Operation

Currently, a patient's right to refuse extraordinary life-sustaining treatment where he or she is terminally ill is largely respected. In some situations, however, physicians are particularly reluctant to withhold life-sustaining treatment without a court order—often a time consuming, costly, and emotionally draining situation for the patient and the family. The situation can become even worse when the patient is unconscious, comatose, or otherwise incompetent to participate in medical treatment decisions.

- ◆ **Living Will.** A living will serves as a mechanism by which an individual's preferences about medical treatment may be ascertained when the patient has lost the capacity to make such decisions, informed or otherwise. It is executed at a time when the patient is competent to make such decisions, and should always supersede a health care power of attorney. A living will offers evidence to the family, the physician, and the court that the patient contemplated the situation when competent, gave serious thought to the consequences, and made a decision concerning what should be done.

Living wills usually state that no extraordinary life-sustaining medical procedures are to be used when it is medically determined that there is no hope for the patient's recovery. Because it is often impossible for an individual to anticipate the wide variety of medical decisions that may arise in the future, it is difficult to execute a treatment directive that will cover all treatment decisions.

- ◆ **Health Care Power of Attorney.** A health care power of attorney allows an appointed individual to make all medical and related treatment decisions on the patient's behalf in the event the patient is unconscious, comatose, or otherwise incompetent to do so.

- ◆ **HIPAA Authorization.** A HIPAA (Health Insurance Portability and Accountability Act) Authorization is also advisable. It allows medical providers to release a person's protected medical information to another person. The Health Care Power of Attorney (or a freestanding document) should authorize the release of such information to the agent. Without a HIPAA Authorization, the medical personnel may not even be able to discuss the patient's situation with the medical professionals.

To ensure that a patient's wishes are carried out, advance health care directives should contain clear, unambiguous language specifically stating the individual's desires. Of course, one should seek the advice of professional counsel as to the precise language to be included and the proper method of executing any such documents.