

What Is Planning for Health Care Decision Making?

Planning for health care decision making includes two key components:

1. The preparation of a written Advance Directive, more commonly referred to as a Living Will, and Durable Health Care Power of Attorney or Health Care Proxy.
2. Appointing someone to be your trusted agent to speak for you when you cannot speak for yourself regarding health care decisions.

What are Advance Directives or Living Wills?

Advance Directives or Living Wills are legal documents that help express your wishes about medical decisions. The documents help clarify your health care desires to family members and medical professionals when you are unable to communicate them due to a serious illness or injury. Advance Directives may consist of one or more documents. Laws about these critical documents vary from state to state. In some states, there are statutory forms that individuals can print, fill out and sign before witnesses. In other states, both statutory forms and customized Advance Directive documents are allowed. In all states, individuals may add more specific and personalized clauses to their Advance Directives.

It is important for you to appoint a trusted agent to speak for you when you are unable to speak for yourself with respect to medical decisions. Once a trusted agent is appointed, it is vital that you discuss your desires with your agent, your loved ones and your doctor. The discussions will serve to further clarify your specific wishes and priorities as they relate to health care decision making.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

While NAELA Elder Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors in America including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney.

More information on NAELA and a directory of NAELA members in your area can be found at www.NAELA.org.

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National Academy of
Elder Law Attorneys, Inc.

*Leading the Way in
Special Needs and Elder Law™*

Special Needs & Elder Law Series

The Need

Medical science has improved greatly and can often keep you alive in situations that previously would have caused death. Innovations that keep people alive longer include artificial food and water through tubes inserted into the body, reviving the heart, and maintaining breathing through a heart/lung machine even when the brain is no longer able to command the heart and lungs to work.

The ability to remain alive can be associated with diminished ability to make your own health care decisions. Health care decisions often include the need for medical treatment, determining the appropriate residential setting, and applying for public and private benefits that will pay for the cost of care. When you are determined to be at the end of life without hope of recovery, being kept alive by machines or other artificial means can result in a reduced quality of life for you and your loved ones.

The courts can be asked to appoint a guardian to make health care decisions for you if you are unable to make your own decisions. But court intervention can be expensive, time-consuming and emotionally difficult for you and your family. The need for guardianship to make health care decisions can often be avoided with an Advance Directive that names a surrogate health care decision maker who can act during temporary or permanent periods when you cannot make your own decisions.



What You Need to Know

An Advance Directive may be called a "Durable Health Care Power of Attorney," a "Health Care Proxy," or a "Health Care Surrogate Designation," depending on the law of the state in which you reside. These health care planning documents should reflect your own views and wishes related to your care, and they can be very specific in the instructions that you leave. The document can also be more general, leaving it to the health care agent to make decisions in keeping with your known wishes. Importantly, the health care agent is generally required to make decisions in keeping with your known wishes. You can change your agent and the instructions that you give as long as you retain the mental capacity to understand the change you are making.

You may also want to sign a Living Will, sometimes referred to as a Health Care Declaration. This type of document should state your preferences for health care if you have a terminal illness or are in a permanent vegetative state. This type of legal document can list your wishes for pain management at the end of life, can instruct doctors and other health care staff on the type of treatments you do or do not want, and can provide for spiritual, emotional and comfort items that you would like to be present at the end of life.

Where To Go For Help

These legal documents are highly personal and should be discussed with an attorney very knowledgeable in this area in order to meet your individual needs. While there are pre-printed forms available, these mass-produced forms will not have considered your personal needs and may not really meet your goals for how your individual care should be handled. Elder Law attorneys are well versed in health care decision making issues and numerous medical treatment options so they are the perfect experts to provide assistance in preparing Advance Directive documents.

When meeting with an Elder Law attorney, you will be counseled about the choices available to you under the laws of your state, you will receive advice and guidance about who can or should be named as your health care agent or alternate, and you will receive instruction on the proper legal requirements for the health care planning document. Personal guidance and the opportunity to discuss options will allow you to create documents tailored to your needs and should give you and your family peace of mind.

Elder Law Attorneys are able to advise you about issues to consider to ensure that your true wishes for medical treatment decisions will be followed. These issues can include religious preferences, disposition of remains, autopsy or preferences about specific medical procedures and circumstances. Elder Law attorneys are able to customize documents to address your specific personal circumstances and state-specific issues that may need to be addressed.

Privacy laws may make it difficult for designated agents to gain access to medical records or to function as health care decision-makers. Elder Law attorneys can draft documents to avoid these problems.

Working regularly with older clients, their families and people with disabilities, the Elder Law attorney addresses issues related to personal control of health care decision making and end-of-life issues. Additionally, the Elder Law attorney has working knowledge of possible scenarios facing clients in planning for quality of life in health care, estate planning, and overall well-being. Elder Law attorneys are uniquely experienced to provide clients with an integrated plan to meet immediate, future and special needs.