

Estate Planning

Health care directives play important role in estate planning.

Every state 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 and 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.

Following are ways that an individual can make his or her desires known to family, medical professionals, and others regarding his or her medical care and those who are authorized to receive confidential information and make decisions on the individual's behalf.

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 Health Insurance Portability and Accountability Act Authorization, which may be a separate document or included in a Health Care Power of Attorney, is also advisable.



A HIPAA authorization 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, medical personnel may be reluctant to release confidential information and discuss, other than in general terms, the patient's situation with family members or others who should be informed.

Summary

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. Although such forms are available online or through certain health care organizations, an individual should seek the advice of professional counsel as to the precise language to be included and the proper method of executing any such documents, so that they can be tailored to his or her particular situation.