

MAKING YOUR OWN HEALTH CARE DECISIONS WHEN YOU CAN'T

Like most people, you probably would want to exercise control over decisions about your health care even when you are physically or mentally unable to do so. You can accomplish that with the combination of a living will and a durable power of attorney for health care.

Despite the fact that the vast majority of American adults recognize the importance of these two “advanced medical directives,” only 20 to 30 percent of American adults have them, according to the National Council on Aging. Unfortunately, every few years, a case captures national attention as to why such documents are critical for adults of all ages. The latest has been the rancorous fight over whether to end life support for a 40-year-old Florida woman who’s been in a vegetative state for 14 years.

A living will is a person’s written expression of what life-sustaining medical treatment they wish to have or not have should they become terminally ill or on life support and are not able to physically or mentally express that decision to their medical providers. Ideally, the living will should cover such issues as resuscitation, life support technologies, use of artificial nourishment, medication and pain management, and organ donation.

All 50 states allow for living wills, though the laws differ on what language can be used. You can buy “off the shelf” living will documents, and some employers are even offering them as employee benefits. But usually it’s best to hire an attorney to draft or at least review the document so it is tailored to your desires and conforms to your state’s laws. The last thing you want is something open to misinterpretation or challenge.

With a properly drafted living will in hand, make a copy and discuss it with your primary physician. Also give a copy and thoroughly discuss it with the person you appoint as your agent for your accompanying durable power of attorney for health care. While hospitals and nursing homes often will accept copies, it’s still best to keep the original in a place your agent can get to easily – for example, don’t put it in a safe deposit box unless the person has

access to the box. It's also wise to discuss the living will with all those close to you, so that the person who ends up making medical decisions on your behalf won't be battling siblings or other relatives.

And don't wait until you're older to draw up a living will. The Florida woman whose situation has sparked a years-long legal and political battle between her husband and her parents was only 26 years old when she became incapacitated.

The second key advanced directive, and one that's often overlooked, is the durable power of attorney for medical care, sometimes called a health care proxy. With this document, you appoint a person to act as your agent (the proxy) to make medical decisions on your behalf in the event you are incapacitated.

This document is broader than just for living will situations. For example, it might be used for someone in a medically induced coma, who needs an unanticipated procedure in the middle of surgery, or for treatment of an Alzheimer's patient. While you can be as explicit and as limiting as you like in such a document, it usually is better to arm the agent with broad powers so he or she can handle unforeseen situations.

As with the living will, an attorney should draft this document. You also may be able to have the living will and the health care proxy drafted into a single document, saving you some money.

The medical community has become much more accepting of living wills and durable powers of attorney for health care. But if the medical provider refuses to accede to the agent's instructions and those expressed in the living will, the agent has the legal right to appeal within the health care institution or change providers.

Ultimately, the keys are to complete these documents in advance, be sure they are drafted or reviewed by an attorney, and discuss them thoroughly with those closest to you. Also, be sure to review existing documents to be sure they are up to date with law changes. Only then can you be reasonably assured your wishes will be carried out under such difficult circumstances.

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