

HEALTH CARE DIRECTIVE

What is a Health Care Directive?

A Healthcare Directive allows you to express your wishes concerning health care, including life support issues, and who you wish to make decisions for you in the event you become physically or mentally unable to make those decisions.

In Minnesota, a Healthcare Directive:

- ❑ must be written
- ❑ by someone who is at least 18 years of age and of sound mind, and
- ❑ must be signed and either witnessed by two people or notarized

In the Healthcare Directive, you are the "Principal" when that word is used. The person you select or appoint is known as the "Health Care Agent".

What does a Health Care Directive do?

In 1989, Minnesota law authorized a Health Care Declaration or Living Will, which allowed an individual to express wishes concerning life support when terminally ill.

In 1993, the Minnesota legislature enacted a law which authorized the Durable Power of Attorney for Health Care, also referred to as a Health Care Power of Attorney, which allowed you to name an individual to make health care decisions for you if you were unable to make those decisions, even if you were not terminally ill.

In order to combine the 1989 law with the 1993 law and provide for additional health care issues, the 1998 Minnesota legislature amended the law to create one tool, the Health Care Directive, which combines the important elements of the Living Will and Durable Power of Attorney for Health Care. The legislature also limited the applicability of Living Wills to those executed prior to August 1, 1998, thus effectively eliminating the use of Living Wills not incorporated in a Health Care Directive, after that date.

The new law, effective August 1, 1998, authorizes the use of a Health Care Directive which can include health care instructions as well as the appointment of a Health Care Agent to make decisions for the Principal. Some additional powers added to the suggested form include the following:

- ❑ Expands the definition of "health care" to include the establishment of a person's abode and personal security safeguards to the extent such matters relate to the health care needs of the Principal.
- ❑ Allows appointment of joint Health Care Agents.
- ❑ Permits the Principal to designate whom he or she wishes to act as the Guardian or Conservator if one is needed someday.
- ❑ Permits the Principal to choose or decline organ donation.
- ❑ Permits the Principal to designate a preference for burial or cremation upon death.

The new law eliminates any required form and provides a "suggested form" which is set out in the statute. The form we use at Cope & Peterson, Ltd. closely resembles the suggested form.

When does a Health Care Directive go into effect?

A Health Care Directive is effective immediately upon signing it; however health care professionals will not turn to the Health Care Agent for decisions unless you are incapacitated. Under the new law however, the Principal may authorize the Health Care Agent to make decisions for the Principal even though the Principal retains decision making capacity, if this is what the Principal wants done.

What happens if I do not have a Health Care Directive?

If a Health Care Directive is not executed, a medical facility may require a guardianship for purposes of making medical decisions. Additionally, most medical facilities will take all necessary steps to prolong life, even if a person is terminally ill or otherwise unable to recover. Although family members will be consulted, no person will have authority to make decisions for you or have written guidance from you about your wishes.

How long is a Health Care Directive valid?

A Living Will or a Durable Power of Attorney for Health Care signed prior to August 1, 1998 remains valid if it complies with the law in effect on the date it was signed or contains the six things required for a valid Health Care Directive under the new law. These elements are that the directive; (1) be in writing, (2) be dated, (3) state the Principal's name, (4) be executed (signed) by the Principal with capacity to do so, (5) that execution be verified by a notary public or two witnesses, and (6) include either a health care instruction or a health care power of attorney or both.

The law surrounding the use of a Health Care Directive is changing as society changes its view of what should happen in situations of incapacity and situations of terminal illness. You should continue to pay close attention to these developments. At Cope & Peterson, Ltd., we suggest a review of your Health Care Directive and your estate plan every 3 to 5 years, unless your circumstances suggest an earlier review. You need to initiate this review.

This pamphlet contains general information and not legal advice. It is based on Minnesota law in effect at the time of writing and is always subject to change.