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# Living Wills/ Health Care Powers of Attorney

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Most people believe, if they stop to think about it, that we should have the right to control our own medical treatment, especially when we are seriously ill. However, most people do not want to think about end-of-life decisions, either for themselves or for their loved ones. On the other hand, many have witnessed someone who seemed to have experienced unnecessary suffering because no one had any documentation of his or her wishes. It is important that every person in Pennsylvania over the age of 18 have some form of advance directive so that if a medical situation arises in which the process of dying is being needlessly prolonged, his or her advocate will follow his or her previously stated wishes as to end-of-life medical care.

## **What is a Living Will (Also Known as an Advance Directive)?**

In Pennsylvania, a living will is a set of written instructions expressing your wishes related to medical treatment in the event of an end-stage medical condition or permanent unconsciousness. What do you want to have happen if you are no longer able to express your wishes in meaningful way or to understand what is being stated? What, if any, action by the medical community has been determined as merely prolonging the process of your dying, since there is no way to cure you? We Americans are living longer and healthier lives, but medical conditions still intervene, or accidents occur that result in death. Well-meaning intervention due to advances in medical care can result in suffering that could have been prevented or curtailed. With a living will, you can inform your agent or agents as to what you want to happen regarding the initiation, continuation, withholding, or withdrawal of life-sustaining treatment if your medical condition warrants such action. If you have not expressed your wishes in writing and in advance, your life may be prolonged because no one knew what your wishes were and therefore cannot honor them.

## Consumer Legal Information



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## **Who May Make a Living Will?**

Any individual who is able to understand the purpose of the document and is at least 18 years of age (or who has graduated from high school or is married) may and should sign a living will. Two adults must witness the signing; notarization is not necessary but may be desirable.

## **When Is a Living Will Used?**

Your living will becomes effective and can be used only after your attending physician makes a diagnosis that you are unable to comprehend the situation **and** are either in a terminal condition or in a permanent state of unconsciousness. The diagnosis should be confirmed by a second physician.

## **Must a Physician Comply?**

If a physician cannot comply with the terms of the living will, he or she must make every effort to assist in transferring the responsibility to another physician or health care provider who will comply. Be sure to provide copies of your living will to all of your physicians and named agents.

## **Will My Insurance Be Affected?**

Under the law, a living will cannot affect any life insurance policy or health care insurance coverage. You cannot be required to write a living will, although health care facilities are required to offer you the option if you do not have one on admission. You cannot be required to write a living will to buy or keep insurance, and it cannot affect your insurance rates.

## **What If I Am Pregnant?**

Life-sustaining treatment, including nutrition and hydration, must be given to a pregnant woman despite the presence of a living will, unless the attending physician and obstetrician find that such treatment will not ensure a live birth, is physically harmful to the pregnant woman or will cause pain that cannot be alleviated by medication.

## **How Can Someone Else Make Decisions for Me?**

Although the actual document is extremely important, these types of decisions should be made after self-reflection and discussions with your agent or agents. Carefully choose agents who will agree to honor your wishes, not their own. It is part of a process — one that should be taken seriously — since we cannot know what the future holds for us. As long as we are able to make our own decisions, we should be permitted to do so. But the value of guidance for our family members and other trusted persons, which should include your primary physician, as well as meaningful discussions with them, cannot be over-estimated. This guidance is best communicated in a written document.

## **What is a Health Care Power of Attorney?**

In addition to a living will (or it might be included in the same document), Pennsylvanians can execute a health care power of attorney. A living will only addresses specific end-of-life situations. However, there are many medically related scenarios where a person might not be able to direct his or her own medical care and for which he or she might wish to name an advocate. This named advocate can make decisions for you that you would if you could. The Health Insurance Portability and Accountability Act of 1996, known as HIPAA, can block even spouses and other family members from discussing your condition with medical personnel and insurance companies. A health care power of attorney can give trusted agents access to medical personnel, insurance companies and insurance records when you need that assistance. This type of document also allows trusted agents to make decisions related to your medical care when you cannot meaningfully communicate, and a delay could have adverse results.

## **Can I Change or Revoke My Documents?**

Most people would still want the ability to make their own medical decisions, but sometimes that proves impossible. It is far better to have someone who has been part of your process of reflection and discussion make decisions rather than have judges and courts, or family members that are not as trustworthy, be involved. You can change or revoke your documents at any time, in writing or by telling the health care providers that are treating you. It is best to notify your agents under your health care power of attorney in writing of a change of agent and to destroy all original documents.

## **How Can I Start the Process?**

Sample forms are available for living wills but it is far better to consult an attorney who will help you through the process of drafting these documents.

## **What Should I Do With my Signed Documents?**

Copies of the signed and witnessed living will and health care power of attorney should be given to your physicians, agents, family and health care institutions upon admission.

## **How Can I Locate an Attorney?**

Call the Pennsylvania Bar Association Lawyer Referral Service toll free at 800-692-7375. Most counties have this same service at the local level. Check your Yellow Pages under “attorneys” for more details.