

## What other types of activities can I establish in a health care directive?

You can designate such things as organ donation, advanced funeral directive, nominate a personal representative of your estate, and authorize a health care agent to have access to your medical records.

## Once I create a health care directive, what should I do with it?

You should be sure to provide a copy of your health care directive to your medical care providers and to any agent that you may identify. Your agent should keep the health care directive in a place that is easy to access in the event it becomes necessary to rely upon it in an emergency. Make sure you discuss your health care wishes with your agent so they can be well informed at the time it becomes necessary to act. Try to give your health care providers clear medical terminology to eliminate ambiguities about procedures that you do or do not want. Phrases like “unplug me” are not appropriate because the hospital may not know whether it refers to withdrawing life support or withdrawing a feeding tube, or some other treatment. You should make sure that your health care directive complies with the requirements of any other state where you spend substantial amounts of time. It may be necessary to have two separate health care directives.

This pamphlet contains general information and not legal advice. It is based on Minnesota law in effect at the time of writing. An O'Brien & Wolf lawyer can advise you about how the law applies to your specific situation.

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# Health Care Directives

  
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## **What are health care directives and powers of attorney?**

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A health care directive is a document which you create to provide specific instructions to your family and medical care providers about what you want done in regard to your health care if you are not able to make a decision regarding your health care on your own.

A power of attorney delegates authority to someone else to handle business decisions without resorting to a court-appointed guardianship or conservatorship.

## **Why should someone have a health care directive?**

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Critical health care decisions must sometimes be made at a time when there is not an opportunity for your family to come to a joint decision about how your health care should be administered. A health care directive only takes effect when you have the inability to understand the significant benefits, risks and alternatives to a proposed health care and to make and communicate a decision to your health care providers. The health care directive form can either give specific instructions to your health care providers, or appoint someone to make decisions on your behalf.

## **What are the most important aspects of a health care directive?**

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Since the development of medical miracles such as CPR and other life saving techniques, medical care professionals can undertake many procedures to keep you alive. You can give specific instructions to both your medical care providers and your agents on which life sustaining measures you would like to have used. Today, there is no requirement that your

condition be terminal for a health care directive to be effective. Someone who is in a coma may not be terminal. A health care directive used to be ineffective until a patient's condition became terminal. That is no longer the case.

Your healthcare agent has power to establish your abode. Under the health care laws that exist today, your agent can be given the power to establish where you should go to the extent it relates to your health care needs. Presumably, this provides your agent with the power to select your nursing home or in-home care options and avoid having a conservatorship created for those decisions.

## **When is a health care directive effective?**

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A health care directive is effective when your attending physician determines that you lack decision-making capacity or as otherwise provided. You can also designate in your health care directive that you grant authority to your agent to make health care decisions even if you retain some decision-making capacity. The statute recognizes that some people wish to delegate this power and focus their energy on their own recovery, rather than make specific treatment decisions.

## **Are health care directives from other states valid?**

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In Minnesota, health care forms signed in other states are effective in Minnesota if they are valid in the state they were signed.

## **What are the formalities to create the document?**

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Consult with your attorney to properly create this form. While you can change it later, if it becomes necessary to rely on the health care directive and you are not able to communicate your wishes, it will be too late to have you do it on your own.

## **Can I undo a health care directive once it is created?**

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A health care directive may be revoked by a physical act, written revocation, or oral revocation to two different people, or by a subsequent health care directive. The initiation of proceedings for marriage dissolution or annulment, or terminations of a registered domestic partnership revoke an appointment of the principal spouse or partner as agent. Where the client is competent and the revocation is written, a copy of the revocation should be supplied to the same physicians who were presented with the health care directive.

## **Can I appoint joint agents or successors to make health care decisions on my behalf?**

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Minnesota law specifically authorizes joint agents. The health care directive can either allow them to act independently or require them to act together. In addition, Minnesota law allows for the appointment of successor agents. You should have at least two agents in succession or joint individual capacity to make decisions. If you happen to be in a car accident and your agent is away on vacation, there is another person who can be easily contacted to make decisions on your behalf.