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Advanced Health Care Directives in Nebraska: Health Care Power of Attorney and Living Wills

By J. David Aiken

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This information is intended for educational purposes only; it must not be taken as legal advice. If you have legal questions about your advanced directives, contact an attorney.

During this period of coronavirus pandemic, some Nebraskans may be concerned about how medical decisions will be made for them if they are unable to communicate their wishes to their health care providers themselves. In these circumstances, health care providers will normally consult with the patient's family members who may be available (spouse, then adult children—consensus, then parents, etc.) If no family members are present, the health care providers will use their best medical judgment in making health care decisions for the patient.

Some Nebraskans may wish to relieve their family members of the responsibility of making health care decisions for the patient during a time of high emotional stress, and when family members may not agree on the best course of medical care. This can be accomplished by preparing and properly signing legal documents referred to as advanced health care directives. Two advanced directive options for dealing with this situation in Nebraska are (1) a health care power of attorney and (2) living wills. This publication introduces these two topics, suggests how to pursue these options, and indicates where you may obtain additional information, including online forms for both options.

What is a *power of attorney*? A power of attorney (POA) is a legal document in which the *principal* delegates specified decision-making authority to the *agent*. POAs are often used to authorize agents to conduct elements of the principal's business affairs or financial affairs.

What is a *health care POA*? A *health care POA* is a legal document appointing another person — the agent — to make health care decisions for you — the principal — when you are unable to make those decisions yourself. The health care POA may also include health care instructions for the agent. For example, the Health Care POA may indicate under what conditions the principal does and does not wish to receive certain medical treatments. But this is not required—the principal may also simply designate who their health care agent is without getting into details regarding medical treatments and expected health outcomes.

What is a living will? A living will is a legal document indicating your preferences for life-sustaining treatment and end-of-life care if you are in a terminal condition, a persistent vegetative state, or a persistent unconsciousness from which you are unlikely to recover.

How do I select my health care agent? You want to select someone who understands and will follow your wishes regarding your health care, and who will be able to handle possible pushback from your family members who disagree with those wishes. Your health care agent should be readily available if you become incapacitated to make your own health care decisions. Family members or friends often serve as health care agents.

What types of decisions can the Health Care POA agent make for me? That is entirely up to you. Common issues dealt with in health care POAs include: (1) who the health care agent can, should, and/or should not consult with on your health care; (2) whether you wish to have your life sustained as long as possible by any medical means; (3) whether life sustaining treatment should be given only if you will be able to care for yourself or will be able to live without incapacitating pain; (4) whether you wish to receive treatment only to make you as comfortable as possible; (5) if your case is terminal, whether you would prefer to die at home, in hospice, or elsewhere; (6) whether to initiate a do-not-resuscitate order; (7) whether to authorize use of a breathing machine and/or feeding tube; and (8) whether you wish to be an organ and/or tissue donor. Your own documents do not need to address any of these topics or may address these and additional topics. It is your choice.

What is a do-not-resuscitate (DNR) order? CPR is routinely attempted if a patient suddenly becomes unresponsive. It involves forceful chest compression and electrical stimulations of the heart, if needed. Generally, the patient is asked upon admission to a hospitable or care facility whether he or she would want CPR should their medical condition warrant it in the future. The patient should discuss whether a DNR order would be appropriate with their physician. If the physician signs a DNR order and puts the order in the patient's chart or medical records, then CPR will not be performed. *If there is no DNR order, health care providers will begin CPR in an emergency.*

Can I change my mind after I have signed a Health Care POA? Yes, but be sure to notify your doctor, health care provider, and health care agent, particularly if you are receiving medical care.

How can I get a Health Care POA form? Links to the Nebraska Supreme Court health Care POA forms and brief instructions on completing and executing the form are at the end of this publication. There, you will also find a link to a Nebraska Department of Health & Human Services publication, *Surrogate Decision Making Guide*. This publication has helpful information regarding services available to senior citizens, including Nebraska health care POA and living will forms. Check with your physician and local hospital. They may have health care POA forms and will usually have living will forms for you. The Nebraska Medicine Advance Directives brochure is extremely helpful, especially regarding how your preferences for treatment options and expected health outcomes can be incorporated into your health care POA. Their advanced directive form (combining a health care POA and a living will in a single form) is very helpful. You may also work with an attorney to develop customized advanced directives documents that more clearly and precisely express your desires.

How do I determine what to include in my advanced directives documents? It may be best to get the form or forms you are interested in and go through them with your doctor. Your doctor will be able to explain what the medical choices are, and what the effects of selecting certain options would mean for your future health care. If you want something that is more detailed than the typically very simple, basic online forms regarding your medical care options, consult your attorney.

After you have developed your advanced directives documents, you may wish to discuss them with your family so that they understand what your wishes are and why you made the specific health care choices you did. Some or all of your family may not agree with your choices but, after they have expressed their opinions, the final decision is up to you.

When you have finalized your advanced directives document or documents, you must sign them in front of two adult witnesses or else before a public notary. Not everyone can be a witness, so details are important here. Give a copy to your physician so it will be part of your medical records, to your local hospital and to your health care agent. You can take a copy with you if you travel away from home. It is a good idea to review your health care POA documents with your physician and/or attorney annually.

Who cannot legally serve as a witness for your signing your health care POA? Your (1) spouse, (2) parent, (3) child, (4) grandchild, (5) sibling, (6) presumptive heir, (7) someone (relative or non-relative) for whom it is known at the time when the POA is signed that they stand to inherit under your will; (8) your attending physician; (9) the named health care POA agent; and (10) an employee of the company that has issued you a life or health insurance policy. No more than one witness can be an administrator or employee of a health care provider currently caring for or treating you.

Who cannot legally serve as a witness for your signing your living will? An employee of the company that has issued you a life or health insurance policy. No more than one witness can be an administrator or employee of a health care provider currently caring for or treating the principal.

Additional Resources

Nebraska Department of Health & Human Services, *Surrogate Decision Making Guide*.
<http://dhhs.ne.gov/Pages/Aging-Ombudsman.aspx> then scroll down the screen and near the bottom, “click on Surrogate Decision Making Guide”. Includes health care POA and living will forms.

Nebraska Supreme Court POA forms and instructions – for both general and health care POAs:
<https://supremecourt.nebraska.gov/self-help/medical/power-attorney-medical>

Nebraska Medicine, Advanced Directives. <https://www.nebraskamed.com/patients/rights-responsibilities/advance-directive-living-will> then click on “advanced directives brochure” which is very helpful. You can also print simple living will and health care POA forms from this page.

Joe Hawbaker, Health Care Powers of Attorney & Living Wills: Advance Health Care Directives. <https://farmerandrancher.org/articles/> and click on “*health care powers of attorney & living wills advance health care directives*”. There are many other helpful documents by Mr. Hawbaker, an Omaha attorney, on this web page pertaining to estate planning for Nebraska farm and ranch families.

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