Surrogate Decision Making In Nebraska

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Introduction

This booklet is designed to assist those who work with the elderly and people with disabilities in determining what options might be best in situations in which surrogate decision making might be necessary. It covers such topics as representative payeeship, protective payeeship, fiduciaries, advance directives, conservatorship, and guardianship.

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Surrogate Decision Making

Surrogate decision making is a term used to describe situations in which one makes decisions on behalf of someone else. There are several different forms of surrogate decision making ranging from informal to formal, and from not intrusive to extremely intrusive. For example, parents are the surrogate decision-makers for their children. While that may seem to be an informal relationship, it is actually a legal relationship that can be altered by the judicial system through divorce or juvenile court proceedings.

The most common types of surrogate decision making include representative payee, protective payee, Veterans Administration fiduciary, power of attorney, durable power of attorney, advance directives (living will, health-care power of attorney, code/no code orders, and medical directives), protective order, conservatorship, and guardianship (medical, temporary, limited, and full).

While the trend in surrogate decision making has been to seek the most restrictive alternative available, that is changing. Recent changes in Nebraska's guardianship and conservatorship laws require the court to prove that guardianship or conservatorship is the least restrictive alternative available before entering an order appointing a guardian or conservator.

The forms of Surrogate Decision-Making listed in this handbook are roughly listed in order of degree of restriction, from the least to the most restrictive. The least restrictive option that is appropriate should be the first choice.

Liberty and the Due Process Clause

Certain rights are guaranteed by the United States Constitution, including the right to make certain decisions. However, no right guaranteed by the United States or the Nebraska Constitution is absolute. Instead, it is necessary to balance the interest of the individual against the interest of the state. Nonetheless, to insure that the rights of the individual are not taken away arbitrarily, we have designed mechanisms called "due process." Those mechanisms vary depending upon the situation; however, they almost always involve the right to a court hearing, counsel, and appeal.

Types of Surrogate Decision Making

Community Resources

Community resources such as aging programs, social services programs and services to people with disabilities are good sources of information regarding surrogate decision making. Such programs have professionals on staff who have dealt with these types of situations on a regular basis, and should be consulted prior to filing for a guardian or conservator.

Mediation

Often guardianship and conservatorship are initiated out of frustration. The person seeking the appointment is at his/her "wits end" and does not know where to turn. In such cases, mediation may be helpful.

Mediation involves the use of a neutral third party to facilitate discussion and decision making. Often a mediator can enhance communication to the extent that legal actions are not necessary.

Mediation is available in many Nebraska locations (see Resources pages 24-26), is relatively inexpensive, and can be used by institutions and/or individuals.

Representative Payee

A representative payee is a person appointed by the Social Security Administration (SSA) to receive and manage benefits administered through the SSA. A representative payee may be considered when the beneficiary is:

1) alleged to be incompetent, or there is evidence that the beneficiary cannot manage his/her benefits;
2) disoriented, unable to communicate with others, unable to reason, or has impaired judgement;
3) physically dependent on others to cash and pay out his/her benefit checks and make decisions regarding the use of his/her payments; or
4) legally incompetent.

Any interested person can request the SSA to appoint a representative payee for a beneficiary. The SSA will consider any meaningful information that indicates there might be a need for a representative payee, including legal, medical, and other information. If there appears to be a need, the SSA will determine whether appointing a representative payee would be in the beneficiary's best interest.

The SSA will appoint a representative payee if there is documented evidence that the beneficiary cannot manage his/her benefits. Efforts should be made to teach money management skills to the beneficiary before action is taken to appoint a payee.

People seeking to have a representative payee should consult with the SSA regarding the potential need for a payee. If it appears that a payee is necessary, an application form can be completed and filed with the SSA. The SSA may conduct a face-to-face or phone interview with the potential payee or send the payee a "Award Letter" and booklet explaining the duties and responsibilities of the payee. The payee should read the booklet and ask the SSA any questions he/she might have. He/she should then file a "Certificate of Application for Benefits on Behalf of Another" with the SSA.

If anyone is dissatisfied with the decision to appoint a representative payee, the decision can be appealed through the SSA.

Payee preference is given to the following individuals:

1) legal guardian, spouse, other relative who has actual custody or who demonstrates a strong concern for the personal welfare of the beneficiary;
2) friend;
3) public or nonprofit agency or institution having actual custody, statutory guardianship, or voluntary guardianship;
4) private institutions operating for profit, having custody, and licensed under the state law; or
5) someone other than those listed above who is qualified to carry out the responsibilities of a payee and who is willing and able to serve (e.g., a community organization).

The SSA may waive this order of preference if it determines that someone else could better serve the needs of the beneficiary. The SSA looks for a qualified person who has demonstrated concern for the beneficiary's well-being by showing an active, on-going attempt to meet his/her needs, to improve his/her situation, and to plan for the future needs and best interests of the beneficiary.

Some of the payee's duties include:

- using the beneficiary's benefits for the personal interest and well being of the beneficiary;
- keeping informed of the beneficiary's needs and reporting to the SSA any event affecting eligibility for, or the amount of, benefits;
- keeping records of benefits received and how benefits are used on behalf of the beneficiary;
- registering bank accounts and investments in the beneficiary's name; and
- knowing and following the SSA's rules and regulations for representative payees.

Representative payees must file an annual accounting with the SSA, documenting the amounts he/she received and spent on behalf of the beneficiary. In most cases, the SSA will send an accounting form to the representative payee. A representative payee who does not receive such a form should contact the SSA. The SSA can review the payee's records at any time, so records must be accurate and up-to-date.

The SSA may discontinue the use of a representative payee if the beneficiary:

- is able to resume managing his/her own benefits;
- dies; or
- is no longer eligible for benefits.

The SSA may also name a different representative payee if the first representative payee resigns, is removed, or dies. A representative payee may be removed if he/she is not carrying out his/her responsibilities. Complaints regarding the actions of a representative payee may be brought by the beneficiary or other concerned people to the SSA. A payee who wishes to resign must give formal notice to the SSA at which time a new payee will be appointed, if necessary.

Protective Payee

A protective payee is an individual assigned by the Nebraska Department of Health & Human Services (HHS) to receive public assistance payments on behalf of another person. The protective payee has a supervisory and teaching role.

Public assistance (monthly cash payments and/or medical assistance from the State of Nebraska) is made available to people who have limited income and meet eligibility requirements established by HHS. If a person mismanages his/her public assistance or, for some reason, is unable to manage his/her public assistance funds due to a physical or mental impairment; HHS may appoint a protective payee. Relatives or other concerned people may notify HHS regarding the need for a protective payee.

Protective payees are only used for cash assistance programs. These include:

- Aid to Dependent Children Program (ADC),
- State Disability Program (SDP), and
- the State Supplemental Program.

The Aid to Dependent Children Program provides cash payments to children age 17 or younger who are deprived of parental support or care.

The State Disability Program provides cash payments to needy people who have a disability which has lasted, or will last, for at least six months, and who are not eligible for the federal Supplemental Security Income Program (SSI) because this disability is not expected to last twelve months or longer.

The State Supplemental Program provides cash payments to eligible people who are age 65 or older or people who are blind or disabled.

At times, people receiving public assistance may not be able to manage their money without assistance. For example:

Mr. Bayes is an elderly gentleman who lives alone in his own home. When Mr. Bayes' social worker visited him, she discovered his electricity had been shut off because he had failed to pay his bill. When the social worker asked him why he had not paid his electric bill, Mr. Bayes replied that he had forgotten for several months to pay his bills and could use some assistance. After discussing the problem, the social worker, with Mr. Bayes' agreement, appointed his granddaughter as protective payee, so his utility bills would be paid.

The need for a protective payee for people receiving either State Disability or State Supplemental benefits must be substantiated by a physician's statement or medical report. The case record must include an explanation of why a protective payee was initiated instead of a guardianship or conservatorship.

Evidence of mismanagement of benefits may include:

- the failure to plan and spread necessary expenditures over the usual assistance planning period;
- indications that the children are not properly fed or clothed and that expenditures for them are made in a way that threatens their chances for health, growth, and development;
- persistent and deliberate failure to meet obligations for rent, food, school supplies, and other essentials; or
- repeated evictions or debts causing attachments or liens to be made against current income.

A protective payee with the ADC program plays the special role of not only supervising the disbursement of assistance funds but also teaching the client money management. The ADC protective payee works in cooperation with HHS in setting up objectives for the protective payment plan and shares the responsibility of planning and evaluating the beneficiary's progress in money management skills.

In choosing a payee, the HHS worker consults with the beneficiary. Court action is not necessary to appoint a protective payee.

The following people may be appointed payee:

1. relative;
2. friend;
3. neighbor;
4. member of the clergy;
5. member of a church/community service group; or
6. other individuals who have a concern for the well being of the beneficiary.

The payee must be geographically close to the beneficiary or be able to make frequent contact. The payee must be a responsible and dependable person with the ability to relate positively to the beneficiary. The protective payee should have skills in household budgeting; experience in purchasing food, clothing, and household supplies on a limited income; and knowledge of effective household practices.

The following people may not be appointed payee:

1. an administrator of a local HHS office;
2. an HHS employee who determines eligibility for public assistance programs for the person in question;
3. a landlord, grocer or other vendor of goods and services who deals directly with the beneficiary; or
4. an operator of an alternate care facility if they are paid with State Disability or State Supplemental funds.

The duties of the protective payee include:

- receiving public assistance money on behalf of a beneficiary;
- paying for maintenance needs (e.g., rent, utilities, food, and clothing);
- keeping records of payments received and disbursements made from assistance funds;
- treating all personal information about the beneficiary and his/her family as confidential; and
- reporting any changes of the beneficiary's status or problems to HHS.

Every six months the HHS worker will review the actions and responsibilities of the protective payee for people receiving ADC benefits. ADC benefits may be paid to a protective payee for no more than two years. If the beneficiary remains unable to manage his/her benefits after a two-year period, HHS will make arrangements for the appointment of a guardian or conservator.

Payments of State Disability or State Supplemental benefits to a protective payee may continue as long as needed. HHS has the right to review the actions of the protective payee at any time.

Protective payeeships may be terminated if:

- the beneficiary is able to resume management of his/her own funds;
- the beneficiary dies;
- the beneficiary no longer meets program eligibility;
- a guardian or conservator is appointed over the beneficiary; or
- the protective payee resigns, is replaced, or dies.

A protective payee may be replaced if he/she is not carrying out his/her responsibilities. Complaints regarding the actions of a payee or the protective payment program may be brought by the client or other concerned persons to HHS.

The beneficiary may appeal the initial decision of continuance of protective payments and the choice of the protective payee to HHS. Further appeals may be made to the District Court under the Administrative Procedures Act.

Fiduciaries

A fiduciary is an individual or legal entity (such as a bank or nursing home) appointed by the Veterans Administration (VA) to manage the VA benefits for a veteran who is incompetent, or for a minor dependent of a veteran who is incompetent. The VA determines that a person is incompetent when he/she lacks the mental capacity to conduct or manage his/her own affairs, including the disbursement of funds.

The VA may pay benefits to a fiduciary when an adult beneficiary has been determined to be incompetent by the VA; an adult beneficiary has had a conservator or guardian appointed over him/her; or a beneficiary who is a minor is no longer in the custody or control of the person receiving payment for the minor, or it is determined that it would be in the minor's best interest to have a fiduciary.

There are two methods by which fiduciaries are appointed for beneficiaries. The first is through an internal procedure in the VA. To initiate this procedure, a family or other interested party submits a statement prepared by the beneficiary's doctor indicating that the beneficiary is not capable of managing his/her benefits. If the VA believes the person is incompetent, it will make a tentative rating of incompetence, and the beneficiary will be notified of his/her procedural rights. The beneficiary then has 30 days to object to the proposed rating. If the beneficiary does not object, the VA will make a final rating of "incompetence," and refer the case to the Veterans Services Officer for the region in which the beneficiary resides to arrange for the appointment of a fiduciary.

The second method is initiated upon the request of an interested party that the VA recognizes a court appointed guardian or conservator. The VA does not always recognize or pay a court appointed guardian or conservator, and may choose a separate fiduciary for VA purposes.

The VA is charged with selecting a fiduciary who will best serve the beneficiary. Frequently, the spouse or another close relative is selected as fiduciary, provided he/she is qualified to serve. All fiduciaries must be reliable, capable, and willing to perform the duties imposed by federal and state law.

The duties of a fiduciary include:

- applying the VA benefits for the needs of the beneficiary and his/her dependents;
- protecting the payments from loss or diversion; and
- accounting for the receipt and disbursement of benefit payments upon demand of the VA.

Fiduciaries may be required to furnish surety bonds. Fiduciaries appointed by state courts are subject to the duties imposed by the court and state law.

Power of Attorney

A power of attorney is a document that authorizes one to act on another's behalf. Essentially, it is a delegation from the person creating the document – the principal – to the person to whom he/she is granting the power to act – the agent. Powers of attorney can be either limited or general, depending upon the wishes of the principal. A power of attorney that is limited usually gives the agent authority to act on the principal's behalf only with regard to very specific matters. For example:

Mrs. Davis inherited a small apartment building from her husband. The building required periodic maintenance which she was not able to provide. Mrs. Davis gave a power of attorney to the apartment manager authorizing him to expend money in her name in order to properly maintain the apartment building and to keep it in good repair.

A power of attorney can also be more general, authorizing the agent to act on behalf of the principal in a wide variety of actions. For instance:

Mr. and Mrs. Smith were going to Europe for the summer. Since they had numerous stocks and bonds, they wanted to make sure someone at home could manage their investments. Thus, the Smiths assigned a power of attorney to Ms. Hancock, a close friend and business associate, to make all the necessary decisions regarding their investments. The power of attorney authorized Ms. Hancock to buy and sell stocks in Mr. and Mrs. Smith's name.

Mr. Dean inherited a business from his father. He didn't want to sell the business because it made a good profit, but he lived 200 miles away and was unable to manage it himself. He gave a power of attorney to his nephew authorizing him to run the entire operation. He was authorized to buy inventory in Mr. Dean's name and generally to spend any money necessary to keep the business running at a profit.

Regardless of whether a power of attorney is specific or general, the agent's authority to act is limited to the scope of the document itself. For example, unless a power of attorney specifically authorizes the agent to make health care decisions, he/she does not have the authority to make such decisions.

There is no special form required to give another person a power of attorney, although many lawyers may have printed forms that are used frequently. It is advisable to consult with a lawyer before giving a power of attorney to another person.

Regardless of whether the power is limited or general, the power of attorney document should contain the following information:

1) the name of the person receiving the power;
2) a specific and detailed statement explaining the powers, duties, and responsibilities that are being given to that person;
3) a statement specifying for how long the person will have the authority to act on behalf of the principal; and
4) the signature of the person giving the power of attorney.

If the power of attorney authorizes the agent to sell real estate, it must be notarized to be valid. Otherwise, there are no formal execution requirements for a power of attorney. Nonetheless, it is advisable that they be witnessed by two people and notarized.

If the document assigning the power specifies a particular length of time, the power of attorney lasts only that long, unless it is renewed in a new document. If the document does not specify how long the power will last, it will continue until the person giving the power of attorney specifically revokes it. The power of attorney is revoked when the principal notifies the agent that he/she is revoking the power. It is a good idea for the principal to file a copy of the revocation with the county clerk. For instance:

John gave his stockbroker a power of attorney to sell his stocks for him. In the document assigning the power to his broker, he did not specify how long the power was to last. He wants to revoke the power because he is planning to change brokers. To do so, he sends the broker a written notice that the power will be revoked effective on a certain date.

A power of attorney is also terminated by death, disability, or incompetence of the principal.

Ms. Jones had given Ms. Clayton a power of attorney to manage the insurance agency that she owns. The document assigning the power to Ms. Clayton did not specify how long the power was to last. However, when Ms. Jones died, the power of attorney given to Ms. Clayton was automatically terminated.

Mr. Sharkey gave his stockbroker a power of attorney to manage his stock holdings. Several years later a court ruled that Mr. Sharkey had become incompetent. Because Mr. Sharkey was declared to be incompetent, the power of attorney given to the stockbroker was automatically terminated.

What a Power of Attorney Cannot Do

Powers of Attorney can be very useful. They can allow an agent to make decisions on behalf of the principal, saving the principal from having to make every decision personally. But, all powers of attorney have limits to what the agent can do, including the following:

- Powers of attorney do not give the agent the power to make decisions against the principal's will. So, if Mr. Smith gives Ms. Jones a power of attorney, Ms. Jones can take action on behalf of Mr. Jones, but can't make a decision that Mr. Smith opposes. Mr. Smith still retains the ultimate power to make decisions.
- A power of attorney for health care does not make the principal incompetent to make decisions. If Ms. Brown gives her • brother her power of attorney for health care and several doctors agree that she can't make decisions, she still retains the right to make decisions. Only court action can take away the right to make decisions from Ms. Brown.
- No power of attorney is effective when the agent knows that the principal has died. So, a power of attorney is not a substitute for a will.
- The agent must make decisions consistent with the lifestyle of the principal. So, if Mr. Tucker has always put his money in savings bonds and time certificates, Mr. Asher should not feel free to put the money in cattle futures just because he has been granted power of attorney by Mr. Tucker.

  It is wise to talk with an attorney about what the principal wants to do and whether or not a power of attorney is appropriate *before* executing a power of attorney.

Durable Power of Attorney

A durable power of attorney is a power of attorney that lasts beyond the disability or incapacity of the principal. Otherwise, it is just like a power of attorney. It can be revoked or modified at any time as long as the principal is competent. Thus, a power of attorney would terminate if the principal is declared incompetent by a court, but a durable power of attorney would remain effective.

In order for a power of attorney to be durable in Nebraska, it must state one of two things:

1) This power of attorney shall remain effective despite my subsequent disability or incapacity, or

2) This power of attorney shall become effective upon my disability or incapacity.

By assigning a power of attorney to someone else, a principal legally authorizes another person to act on his/her behalf. The agent should be selected very carefully. Characteristics a principal should look for in an agent include competence and experience in managing the type of actions assigned to him/her, reliability, and trustworthiness.

The power of attorney can be limited (dealing with only a particular action) or very general (dealing with an entire class of actions). It may also be made durable so that it lasts beyond disability or incapacity. The power of attorney is one of the least restrictive legal actions that an individual can take to arrange for surrogate decision making.

Advance Directives

John Jones recently watched his father and mother suffer tremendously as a result of their terminal illnesses. After they died, John stated to a group of friends that he did not want to be "hooked up to any machines" if he were suffering from a terminal illness. One of his friends said, "Surely, John, you want food and water." John replied, "Not if the only way I can get it is through a tube."

While it is not a good method of making an advance directive, that was exactly what John did. He informed others of what his choices for medical treatment were, prior to the need for treatment.

It is best to make an advance directive in writing. In fact, while oral advance directives are probably enforceable under the law, they are usually unclear and incomplete; therefore they should be avoided.

The most common types of advance directives are living wills, health-care power of attorney, code/no code orders, and medical directives.

Living Wills

A living will is a written statement that describes the type of care a person wishes to receive in the event he/she is suffering from a terminal illness or is in a persistent vegetative state. It is very important to understand that living wills cannot be used for any other type of situation.

Nebraska law includes a sample living will declaration form. The form included in this guide (see page 31) allows you to personalize your living will. You can use this form. It can be cut out. To be valid, you should execute your living will as follows:

- You may sign and date the living will, or have someone else, at your request and in your presence, sign and date the document, in the presence of two witnesses who are at least 19 years of age.
- Neither of the witnesses can be someone who is related to you by blood, marriage, or adoption.
- At least one of the witnesses cannot be someone who is:
  - a health-care provider attending you on the date you sign your living will; or
  - an employee of a health-care provider attending you on the date you sign your living will.
- In the alternative, you may sign and date the living will in the presence of a notary public within the state.

The living will does not become effective until the following conditions are met:

1) you are unable to make a health-care decision; and

2) you have been examined by your attending doctor, and he or she certifies that you have been diagnosed as having a terminal condition or are in a persistent vegetative state.

You can change your mind and revoke your living will at any time, regardless of your mental or physical condition. You can revoke your living will by:

- a physical act, such as tearing, defacing, or burning the document; or
- a written document signed and dated by you or a person acting at your express direction indicating your intent to revoke your living will; or
- any other expression of your intent to revoke your living will.

Tearing or defacing (writing "VOID" across each page) your living will are preferred methods of revocation.

If your doctor has a copy of your living will or has made a notation in your medical record, the revocation does not become effective until your attending doctor knows about it.

Your doctor is required to include your living will in your medical record, and follow its directions as closely as possible, even if your relatives disagree. Your doctor may independently decide not to follow your directions because of some conflict. If your doctor cannot follow the directions in your living will, then your doctor is under a duty to assist in having you transferred to a doctor who will follow your directions. Obviously this problem can be avoided if you discuss your wishes about life-sustaining treatment with your doctor in advance or provide your doctor a copy of your living will.

Health-Care Power of Attorney

A health-care power of attorney is, quite simply, a durable power of attorney through which a principal authorizes an agent to make health care decisions on his/her behalf.

A health-care power of attorney may be used in a variety of situations and is not limited to those situations in which one is suffering from a terminal illness or is in a persistent vegetative state.

A health-care power of attorney may also be used in situations in which one is suffering from a terminal illness or is in a persistent vegetative state. In those instances, the health-care power of attorney must clearly state the wishes of the principal.

Your attorney-in-fact does not have to be a lawyer. It can be anyone who knows you well and whom you trust such as a spouse, relative, friend or spiritual advisor. The attorney-in-fact must be 19 years of age or older and be able to make decisions. Also, you should nominate an alternate attorney-in-fact, in case your first choice is unable or unwilling to make a health-care decision.

You cannot designate your attending physician as your attorney-in-fact. A health-care provider cannot be designated as your attorney-in-fact unless the health-care provider is related to you by blood, marriage, or adoption. In addition, you cannot designate an employee of a health-care provider who is attending to you at the time of execution as your attorney-in-fact unless the employee is related to you by blood, marriage, or adoption.

The person you choose should be someone who knows your values, religious beliefs and preferences about medical treatment. It is helpful if the person is in frequent contact with you and is geographically close to you. It is critical to discuss your medical treatment preferences and your wishes about life-sustaining treatments even if the attorney-in-fact you choose is someone who knows you well.

Several recent studies have shown significant discrepancies between the medical treatment chosen by the patient and that chosen by their attorney-in-fact – even when their attorney-in-fact was a spouse or treating doctor. Researchers found that the attorneys-in-fact both over- and under-estimated the patient's preferences for treatment. Only a small percentage of the patients had given specific instructions or discussed their general beliefs and wishes with their attorney-in-fact.

There are often significant differences in values, life experience and knowledge between people. It is essential that your attorney-in-fact understand your values and wishes and be willing to act upon them rather than his or her own preferences.

The attorney-in-fact has general authority to make any health-care decisions you could make unless you limit the attorney-in-fact's authority in the health-care power of attorney. If you do not include any limitations in the document, the attorney-in-fact has at least the following authority:

- the authority to grant, refuse, or withdraw consent to the provision of any health-care service, treatment, or procedure;
- the right to review your medical records;
- the right to be provided with all information necessary to make informed health-care decisions;
- the authority to select and discharge health-care professionals; and
- the authority to make decisions about admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out those decisions.

The general authority to make decisions does not include decisions about life-sustaining treatment including nutrition and hydration. Therefore, your health-care power of attorney must include specific written instructions about the use, withholding or withdrawing of life-sustaining treatment if you desire such treatment to be withheld or withdrawn. Your wishes must be clear to your attorney-in-fact, as well as to your doctor and other health-care professionals.

You must be mentally competent and an adult to execute a health-care power of attorney. Nebraska law includes a sample health-care power of attorney form that is similar to the form provided in this guide (pages 28 & 29). If you follow the steps set out below, any document in which you grant another person authority to make health-care decisions for you will be valid.

- The document must clearly state that the attorney-in-fact can make health-care decisions.

- You must sign and date the health-care power of attorney, or have someone else at your request and in your presence sign and date the document, in the presence of
- two witnesses who are at least 19 years of age or older.
- Neither of the witnesses can be someone who is:
  - related to you by blood, marriage, or adoption; or
  - the person you designate as your attorney-in-fact.
- At least one of the witnesses cannot be an administrator or employee of a health-care provider who is attending to you on the date you sign your health-care power of attorney.
- In the alternative, you may sign and date the health-care power of attorney in the presence of a notary public within the state.

If you are competent, you can cancel your health-care power of attorney at any time in any manner by which you are capable of communicating. If you want to cancel or revoke the attorney-in-fact's authority to make health-care decisions, you must notify your health-care provider while that provider is providing care to you or your attorney-in-fact orally or in writing. In either case, make sure the doctor includes the revocation in your medical records. Also, you can change or revoke a health-care power of attorney by writing a new one.

The law does not require you to update your health-care power of attorney. However, if your wishes about certain medical treatments change, you should review your health-care power of attorney. If you change your mind about a medical treatment specifically mentioned in the health-care power of attorney, then you should write a new health-care power of attorney and include the changes. If the treatment is not mentioned in your health-care power of attorney, at the very least you should tell your attorney-in-fact about your wishes. If it is a major issue, such as life-sustaining treatment, you must add it to your health-care power of attorney or it cannot be carried out.

It is good practice to review your health-care power of attorney every few years to make sure it continues to express your wishes about your medical treatment. You should also periodically review who you have named as your attorney-in-fact. For example, if you get a divorce and had named your spouse as your attorney-in-fact, the designation is automatically revoked. Thus you need to consider who else you want to name.

A health-care power of attorney becomes effective only when you are no longer capable of making your own health-care decisions. The determination of when you are no longer capable of making your own decisions is made by your attending doctor. This determination is made after an examination, and should be made a part of your medical record.

Code/No Code Orders

Code/no code orders are directions one gives regarding his/her wishes in relation to cardiopulmonary resuscitation (CPR) and other emergency medical procedures. Code/no code orders are quite common in nursing home and hospital settings. Generally, the patient is asked upon admission whether or not he/she wants emergency procedures undertaken should his/her medical situation warrant the need for such procedures. The treating physician will then note in the medical record whether the patient is a "code" or "no code" patient. If the patient is a code patient, the procedure will be done. If he/she is a no code patient, it will not be done.

Medical Directives

A medical directive is a specific list of medical procedures on which a person may check various procedures that he/she wants, does not want, or is not sure about. A medical directive is quite specific, and is often incorporated into either a living will or a health-care power of attorney.

Guardianship and Conservatorship

When one is no longer able to make a conscious choice regarding the type of surrogate decision making that is most appropriate for his/her situation, it may be necessary to pursue a conservatorship or guardianship.

Conservatorship

A conservator is an individual or corporation appointed by a court to manage the estate, property, and/or other business affairs of an individual whom the court has determined is unable to do so for him/herself.

A number of different people may request a conservator be appointed, including:

- the person to be protected;
- any person who is interested in his/her estate, property affairs, or welfare including his/her parent, guardian, or custodian; or
- any person who would be adversely affected by lack of effective management of his/her property and property affairs.

Any of these "interested" people may petition the court for the appointment of a conservator.

The petition must include the following information:

1) the interest the petitioner has in the person;
2) name, age, residence, and address of the person to be protected;
3) the name and address of his/her guardian, if any;
4) the name and address of his/her nearest relative known to the petitioner;
5) a general statement of his/her property with an estimate of the value thereof, including any compensation, insurance,
6) pension, or allowance to which he/she is entitled;
7) specific allegations regarding the necessity of the appointment of a conservator; and
8) the name and address of the proposed conservator and the basis of that person's priority for appointment, and his/her qualifications to serve.

The person filing the petition must "personally notify" the person for whom he/she is seeking a conservator and his/her spouse that he/she has filed the petition. Certain procedural requirements must be met to satisfy the personal notice requirements. Normally, personal notice means having the county sheriff serve the person with a copy of the petition and a notice of the hearing. The personal notice must be served at least fourteen days prior to the hearing on the matter.

The person filing the petition may also be required to publish notice of the petition in the local paper, but only if the identity or address of any person required to be served is not known.

If the person against whom the petition has been filed does not have an attorney, the court may appoint an attorney to represent him/her. The court may also appoint an attorney called a "guardian ad litem" to advocate for the best interest of the person. Before the hearing is held to determine if a conservator will be appointed, the court has the power to perform several important functions, including appointing a physician to examine the person against whom the petition has been filed; appointing a court visitor to investigate the situation; and managing the affairs of the person against whom the petition has been filed.

At, or after the hearing, the court will determine whether a conservator is necessary. A conservator may be appointed if:

1) the court finds that the person is unable to manage his/her property and property affairs effectively for reasons such as:
   a. mental illness/deficiency;
   b. physical illness/disability;
   c. hronic use of drugs or alcohol;
   d. lack of discretion in managing benefits received from public funds;
   e. detention by a foreign power; or
   f. disappearance; and

2) the person has property which:
   a. is necessary to provide support for the person, or those entitled to be supported by the person; or
   b. would be wasted unless properly managed.

The law includes a list of people or organizations that may be appointed as conservator. When choosing, the court will look at the following people as having priority for appointment:

1) a person nominated most recently by:
   a. the protected person in a power of attorney or durable power of attorney; or
   b. a person nominated by an agent under a power of attorney if he/she has been given that authority in the power of attorney or a durable power of attorney;

2) a conservator or guardian of property appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

3) an individual or corporation nominated by the protected person if he/she is agefourteen or older, and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

4) the spouse of the protected person;

5) an adult child of the protected person;

6) a parent of the protected person or a person nominated by the will of a deceased parent;

7) any relative of the protected person with whom he/she has resided for more than six months prior to the filing of the petition; and

8) a person nominated by the person who is caring for him/her or paying benefits to him/her.

When selecting a conservator, the court must select the most qualified person willing to serve. An individual having less or no priority may be appointed if the court feels the person's needs would best be met by having this individual as conservator. If the person has no relatives or friends willing or able to become conservator, the law allows the court to appoint any competent individual as conservator.

The court may require that the conservator furnish a bond to insure that he/she faithfully performs the duties of the conservatorship. The amount of the bond will be determined by the court and should relate to the value of the assets in the estate.

The law specifically states that several groups of individuals cannot be appointed as conservators, including: an owner; part owner; manager; administrator; or employee of any of the following in which the person resides:

1) nursing home;
2) room and board home;
3) residential care facility;
4) domiciliary facility; or
5) institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirmed, or aged.

Within 90 days of being appointed, the conservator must complete a training approved by the State Court Administrator unless the training is waived by the court. If he/she does not complete the training, he/she must show cause to the court why he/she should not be removed.

Once appointed, the conservator holds title to all of the property of the person for whom he/she is serving as conservator. He/she will be issued letters of conservatorship which specify his/her duties. In addition to other duties, the conservator is required to:

1) prepare and file with the court a complete inventory of the person's property;
2) keep accurate records of the administration of the property;
3) account to the court for the administration of the property when required to do so; and
4) be prepared to submit any and all property to a physical inspection at any time.

When administering the affairs of the person for whom he/she has been appointed, a conservator must consider any estate plan that was in place prior to the conservatorship and consider any recommendations made by a guardian regarding the person's standard of support.

The conservator is given broad discretion in the management of the person's property.

The conservator may take several actions without the approval of the court; however, it is best for the conservator to obtain the approval of the court before taking any major action such as selling property. For a complete list of possible actions that may be taken without court action, see Section 30-2653 of the Nebraska Revised Statutes.

The duties and responsibilities of the conservator may be terminated either by the court or by the death of the person for whom the conservator was appointed. The court may terminate the conservatorship by dismissing one conservator and appointing a successor or closing the conservatorship. Any interested party may petition the court for a change in the conservatorship.

If the person for whom the conservator was appointed dies, the conservator must deliver his/her will to the court. Until the court appoints a personal representative of the will, the conservator maintains control of the estate. If no personal representative has been appointed after forty days, the conservator may apply to the court to exercise the powers of a personal representative over the estate. If there is no objection from any other person, and after notice and a hearing, the court will grant the conservator's application to exercise the powers of a personal representative. Once the application is granted, the conservator will proceed to distribute the estate assets accordingly.

Conservatorship is one of the most restrictive measures that can be taken in regard to a person's personal life. As a result, it should be approached with great care, and other less restrictive alternatives should be considered first.

Guardianship

Guardianship provides for the care of someone who is not able to care for him/herself. The court may appoint a guardian if there is clear and convincing evidence that the person is incapacitated and that he/she requires continuing care or supervision.

Nebraska law allows for, and favors, the appointment of a limited guardian. This is a guardian who looks after a limited number of the person's personal needs. A limited guardianship is less restrictive than a full guardianship.

A guardian may be appointed under direction of a spouse or parent through a will, or by a petition to the county court. An individual appointed by the will of the person's spouse or parent is called a testamentary guardian. A testamentary guardian serves in the same capacity as a court-appointed guardian. In order for a testamentary guardianship to become effective, the person nominated in the will must file an acceptance of the guardianship in the court where the will is probated. Upon his/her acceptance, he/she must give written notice of his/her acceptance to the spouse or child and the

person responsible for his/her care, or to his/her nearest adult relative. A minor age 14 or older may object to the appointment of the person chosen by his/her parents by filing a motion with the court.

Any interested party may petition the county court requesting the appointment of a guardian for another. The petition must contain specific allegations about the functional limitations of the person; why the guardianship is necessary; a statement that less restrictive alternatives have been tried and failed; and the name and qualifications of the person wanting to serve as guardian.

When a petition is filed asking for the appointment of a guardian, the court will set a hearing date. It may also appoint an attorney to represent the person against whom the petition has been filed. The court may also appoint an attorney called a "guardian ad litem" to advocate for the best interest of the person. Finally, the court may also appoint a physician to examine the person and a court visitor to investigate the situation.

The party filing the petition must personally notify the person against whom the guardianship is sought and his/her spouse. Personal notice is usually served by the county sheriff. In addition, the petitioner must notify the person's conservator, if any, and the person's adult children or one of his/her closest living relatives if there is no spouse. Such notice is usually done by mail. The petitioner may also need to publish notice in a local paper if he/she does not know the names and addresses of interested parties.

The person against whom the guardianship is sought must be notified by the petitioner that he/she has the following rights:

1) to request the appointment of an attorney;
2) to present evidence in his/her own behalf;
3) to compel attendance of witnesses;
4) to cross-examine witnesses, including the court-appointed physician;
5) to appeal any final order; and
6) to request a hearing closed to the public.

After the hearing, the court may appoint a guardian, if the court is satisfied, by clear and convincing evidence, that the person for whom the guardian is sought is incapacitated, and the appointment of a guardian is the least restrictive means of providing continuing care and supervision.

The law provides that any competent individual or institution may be appointed as a guardian over another person. There are, however, certain people to whom the court must give priority:

1) an individual nominated most recently by either of the following methods:
   a. by the person in a power of attorney or a durable power of attorney;
   b. by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the person;

2) the spouse of the person for whom a guardian is sought;
3) the adult children of the person for whom a guardian is sought;
4) the parent of the person or someone named in the will of a deceased parent;
5) any relative with whom the person has been living for more than six months; or
6) a person nominated by the person for whom a guardian is sought.

The court may disregard the order of priorities if it is in the best interest of the person for whom a guardian is sought.

The court may also require the guardian to post a bond. The amount of the bond will be set by the court and is normally based on the value of the estate of the person for whom the guardian is appointed.

Within 90 days of his/her appointment, a guardian must complete training approved by the State Court Administrator unless the training is waived by the court. If the guardian does not complete the training, he/she must show cause to the court why he/she should not be removed.

Generally, a guardian has the duty and responsibility to adequately take care of the person's well being and personal needs. For example, the guardian may have the following responsibilities:

1) to establish a new legal residence for the person;
2) to arrange for the person's medical care;
3) to protect the person's personal effects;
4) to give necessary consents, approval, or releases on the person's behalf;
5) to arrange for training, education, or other habilitating services appropriate for the person;
6) to apply for private or governmental benefits to which the person may be entitled;
7) to bring actions against any individual whose duty it is to support the person, if the person does not have a conservator;
8) to enter into contract agreements for the person, if the person does not have a conservator;
9) to receive money/tangible property delivered to the person, and apply the money to the person's expenses, if no conservator has been appointed; or
10) any other relevant area.

If the guardian chooses to move the person, he/she is encouraged to find the least restrictive placement available. To the extent it is feasible, the guardian should consult with professionals regarding the effects of such a move.

The guardian is required to file a report with the court annually or at the request of the court. This report should include a discussion of the condition of the person and his/her estate.

If an emergency exists, the court may appoint a temporary guardian without notice or hearing. The concept of the temporary guardian is to provide protection for the person in an emergency situation pending a hearing at which a full guardian can be appointed or until the emergency has ended. The person over whom a temporary guardian has been appointed has a right to a hearing to determine whether the temporary guardianship is necessary or continues to be necessary. Temporary guardianships can last no longer than six months.

A guardian may resign, but must have the permission of the court to do so. Normally, the court will not allow a guardian to resign unless there is a successor ready to serve as guardian.

Guardianship is the most restrictive measure that can be taken in relation to an individual's personal life. Therefore, it should be approached with great care. Other least restrictive measures should be examined first.

Resources

For general questions and legal assistance regarding surrogate decision making contact the local **Area Agency on Aging** nearest you, and ask for the legal services provider. The addresses are:

Aging Office of Western Nebraska
Bluffs Business Center
1517 Broadway, Suite 122
Scottsbluff, NE 6361
(308) 635-0851, (800) 682-5140

Blue Rivers Area Agency on Aging
Gage County Courthouse, Room 24
Beatrice, NE 68310
(402) 223-1352, (800) 659-3978

Eastern Nebraska Office on Aging
4223 Center Street
Omaha, NE 68105
(402) 444-6444

Lincoln Area Agency on Aging
Lincoln Information for the Elderly (LIFE)
1001 O Street, Suite 101
Lincoln, NE 68508-3610
(402) 441-7070, (800) 247-0938

Northeast Nebraska Area Agency on Aging
P.O. Box 1447
119 Norfolk Ave.
Norfolk, NE 68702
(402) 370-3454, (800) 672-8368

South Central Nebraska Area Agency on Aging
Suttle Plaza, 4623 2nd Avenue
P.O. Box 3009
Kearney, NE 68847-3009
(308) 234-1851, (800) 658-4320

West Central Nebraska Area Agency on Aging
120 West 2nd Street
North Platte, NE 69101
(308) 535-8195, (800) 662-2961

For questions regarding representative payees, contact the **Social Security Administration,** 1-800-772-1213, or your local Social Security office at:

2630 Eastside Blvd.
Beatrice, NE 68310
(402) 223-2309

115 N. Webb Road
P.O. Box 2138
Grand Island, NE 68802
(308) 385-6440

Room 191
100 Centennial Mall N.
Lincoln, NE 68508
(402) 437-5401

Suite A, First Floor
208 N. 5th
Norfolk, NE 68702
(402) 371-1595

300 E. 3rd Street, Room 204
P.O. Box 1127
North Platte, NE 69103
(308) 532-9502
7100 W. Center Rd., Ste. 200
Omaha, NE 68106
(402) 399-8963

1937 Avenue A
Scottsbluff, NE 69361
(308) 635-2158

For questions regarding protective payees, contact the nearest service area office of the **Nebraska Department of Health & Human Services.**

Western Service Area
1600 10th Street
P.O. Box 540
Gering, NE 69341
Phone: (308) 436-6579

Central Service Area
209 N. 5th Street
P.O. Box 339
Norfolk, NE 68702
Phone: (402) 370-3120

Eastern Service Area
Gold's Building
1050 "N" Street
Lincoln, NE 68508
Phone: (402) 471-5334

If you are aware of a person who has been placed in a situation that endangers his/her life or health; who is being cruelly confined or punished; who has been deprived of necessary food, clothing, shelter; or is being taken advantage of financially, you can anonymously report the abuse to the **Nebraska Department of Health & Human Service's Adult Protective Services Program,** 1-800-652-1999.

For questions regarding fiduciaries, contact the **Department of Veterans Affairs** at 1-800-827-1000.(402) 399-8963

Instructions

Health-Care Power of Attorney Form

How to use this form:

- Read this guide carefully.
- Read the instructions on these pages.
- Neatly print or type all information except where a signature is required.

Paragraph 1

Neatly print or type your name and the name, address and telephone number of your attorney-in-fact and successor attorney-in-fact.

Paragraphs 2, 3, and 4

These sections are where you must indicate what specific instructions you have, if any, about future health care.

If you fill in "none" or "no limitations," remember that your attorney-in-fact will have authority to make all lawful health-care decisions except those involving the withholding or withdrawal of life-sustaining treatment. If you want to have life-sustaining treatment withheld or withdrawn, you must indicate your wish in Paragraph 3. If you want to have artificial nutrition and hydration withheld or withdrawn, you must indicate your wish in Paragraph 4.

Paragraph 3

Some examples of life-sustaining treatment are:

- mechanical respirators which aid or replace normal breathing
- cardiopulmonary resuscitation (CPR)
- kidney dialysis
- antibiotic therapy to treat or prevent infections
- major surgery

If there are specific types of life-sustaining treatment you want or don't want, you may describe your wishes as follows:

"If I am in a persistent vegetative state, I do not want to be put on a respirator"

or

"If I am in a terminal condition, I do not want life-sustaining treatment."

For more samples of wording you can use, see the Appendix.

Paragraph 2

You can make your preferences known about specific treatment decisions, such as:

- amputations
- blood transfusions
- chemotherapy
- transplants
- organ donation
- exploratory procedures and surgeries

See the Appendix for sample wording you can use.

Paragraph 4

If you wish to have artificial nutrition and hydration withheld or withdrawn, you must indicate that wish in this paragraph. You may describe your wishes as follows:
"If I am in a terminal condition, I want artificial nutrition and hydration withheld and if started, I want it withdrawn."

Before signing this document, make sure of the following:

- review all of the information carefully
- make sure that you have clearly expressed your wishes
- if you make any errors in filling out the form, correct them in ink and put your initials and date next to the correction
- make sure you have had detailed discussions with your attorney-in-fact
- and your doctor
- the document can be signed either in the presence of two witnesses or in the presence of a notary public.

IF YOU DO NOT UNDERSTAND OR HAVE QUESTIONS ABOUT THE USE OF THIS FORM, CONTACT A LAWYER, HEALTH-CARE PROVIDER, OR SOCIAL WORKER

Nebraska
Power of Attorney for Health Care

1. I appoint _____, whose address is _____ and whose telephone number is _____ as my attorney-in-fact for health care. I appoint _____, whose address is _____, and whose telephone number is _____, as my successor attorney-in-fact for health care. I authorize my attorney-in-fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

2. I direct that my attorney-in-fact comply with the following instructions or limitations: _____
_____
_____
_____

3. I direct that my attorney-in-fact comply with the following instructions on life-sustaining treatment: (optional) _____
_____
_____

4. I direct that my attorney-in-fact comply with the following instructions on artificially administered nutrition and hydration: (optional) _____
_____
_____

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY-IN-FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

_____
(Signature of person making designation) (date)

Declaration of Witnesses

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, and that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

_____ _____
(Signature of Witness/Date) (Printed Name of Witness)

_____ _____
(Signature of Witness/Date) (Printed Name of Witness)

OR

State of Nebraska)
) ss,
County of _____)

On this _____ day of _____ 20 ____, before me, _____ a notary public in and for _____ County, personally came _____, personally known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney-in-fact or successor attorney-in-fact designated by this power of attorney for health care.

Witness my hand and notarial seal at _____ in such county the day and year last above written.

_____
Notary Public

Instructions

Living Will Declaration

How to Use This Form

- Read this guide carefully.
- Read the instructions on this page**.**
- Neatly print or type all information except where a signature is required.
- The blank spaces are available for you to personalize your living will.

For example, you may wish to limit the definition of life-sustaining treatment which generally includes:

- mechanical respirators which aid or replace normal breathing
- cardiopulmonary resuscitation (CPR)
- kidney dialysis
- artificial nutrition and hydration (food and water) provided through feeding tubes

- major surgery

If you wish to have artificial nutrition and hydration withheld or withdrawn, you must indicate it in this paragraph.

If there are limitations or guidelines you want followed you may describe your wishes as follows:
"The term life-sustaining treatment shall include artificial nutrition and hydration."

or

"The term life-sustaining treatment shall not include artificial nutrition and hydration."
For more sample wording you can use, see the Appendix.

IF YOU DO NOT UNDERSTAND OR HAVE QUESTIONS ABOUT THE USE OF THIS FORM, CONTACT A LAWYER, HEALTH-CARE PROVIDER, OR SOCIAL WORKER.

Nebraska Living Will Declaration

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Other directions: _____
_____
_____
_____

Signed this _____ day of _____

Signature _____

Address _____
_____

The declarant voluntarily signed this writing in my presence.

Witness _____

Address _____
_____

Witness _____

Address _____
_____

Or

The declarant voluntarily signed this writing in my presence.

_____
Notary Public

PRACTICAL TIPS

What practical steps can I take to be sure that my advance directive is followed?

Even with an advance directive, there is no guarantee that your wishes will be followed. Medical technology continues to change and the law can be uncertain about your rights under various circumstances. The treatment issues that may occur may differ from the situations you anticipated in your advance directive.

However, you can increase the chances that your wishes will be followed by taking the following steps.

- Talk with your doctor, both before and after you execute an advance directive.
- Discuss your values and philosophy, as well as specific treatment preferences with your attorney-in-fact. Also, discuss how to handle anyone who might object to the choices you have made.
- Make sure that the document is available when needed.
- Discuss the fact that you have executed the document with your family, friends or spiritual advisor – anyone who is likely to be involved if you become incapacitated.
- If you enter a hospital or nursing home, you should be given a copy of its policy about advance directives. If you do not receive this information, ask for a written copy of its policies and procedures. Check the policy to make sure the facility will honor your advance directive.
- Review your advance directive every year or two in order to decide if anything in your life has changed that would require you to change your advance directive.

How can I be sure that the document will be available when I need it?

You should make copies of your advance directive. At the minimum you should have two copies for yourself, a copy for each of your doctors, and one for your attorney-in-fact, if you have chosen one.

You should keep your copies in a safe, accessible location where someone who knows you can find them in an emergency. It is a good idea to tell friends and family where the document is located. If you are frail and live alone and do not wish to have cardiopulmonary resuscitation (CPR), you may also wish to tell a neighbor where you have put your copies, because paramedics and rescue squads routinely use this treatment if your heart or breathing has stopped.

Give a copy to your family doctor and any specialists you see regularly. The copy for your doctor should be made a part of your medical record.

If you enter a hospital or nursing home, request that a copy be included in your medical record and your wishes noted on your chart.

Plan for how a copy of your advance directive can be obtained if you are injured or become ill while you are away from home.

Talk with your family and friends.

Often it is difficult to begin the conversation because others are reluctant to discuss serious illness or medical decisions and may try to put off the discussion. It may be helpful to start by saying something like, "This is important to me and I would really like you to listen."

You may find it useful to discuss specific situations that have happened to someone you know as a way of illustrating your concerns and wishes.

Talk to your attorney-in-fact.

You should speak with your attorney-in-fact both before and after you complete the advance directive. Make sure your attorney-in-fact understands your specific wishes as well as your general philosophy and beliefs. You should also be sure that your attorney-in-fact will be able to and comfortable about carrying out your wishes.

After you have signed your advance directive, you may wish to talk about how your attorney-in-fact will be notified if you suddenly become incapacitated. Do your other friends, family or doctors know who your attorney-in-fact is?

Appendix: Sample Clauses for Advanced Directives

Below are some sample clauses you can use in an advanced directive. These examples can be adapted to your particular needs and wishes.

SAMPLE CLAUSES FOR A POWER OF ATTORNEY FOR HEALTH CARE

a. ***General Clauses Regarding the Use of Life-Sustaining Treatment***

- If I am ever diagnosed as having an incurable or irreversible condition from which death will occur within a short period of time, I do not want any life-sustaining treatment. I include artificial nutrition and hydration in my definition of life-sustaining treatment.
- If I am ever diagnosed as having an incurable or irreversible mental or physical condition and it has been determined that there is no reasonable expectation of recovery, I do not want any life-sustaining treatment. I want to be permitted to die naturally. I include artificial nutrition and hydration in my definition of life-sustaining treatment.
- I do not want my life to be artificially prolonged, unless there is some hope that both my mental and physical health will be restored. I do not want life-sustaining treatment provided or continued if the burdens of the treatment outweigh the benefits. In making this determination, I want my attorney-in-fact to consider the quality of my life if it is extended by these treatments.
- I want to live as long as possible, therefore I want any and all medical treatment (including life-sustaining treatment) that will extend my life and postpone my death.

b. ***Use of Life-Sustaining Treatment in Terminal Condition***

- If I am ever diagnosed as having a terminal condition, I do not want the following types of life-sustaining treatment: mechanical ventilators or respirators; cardiopulmonary resuscitation; kidney dialysis; antibiotic therapy; and artificial nutrition and hydration.
- If I am ever diagnosed as having a terminal condition, I do not want life-sustaining treatment. I do not want artificial nutrition and hydration included among the life-sustaining treatments that may be withheld or withdrawn.

c. ***Use of Life-Sustaining Treatment in Persistent Vegetative State or Irreversible Coma***

- If I am in a coma that my doctor has reasonably concluded to be irreversible, I direct that life sustaining treatment be withheld or withdrawn. I specifically include artificial nutrition and hydration in my definition of life-sustaining treatment.
- If I am in a persistent vegetative state for more than 60 days after my doctor has diagnosed the
- condition, I direct that life-sustaining treatment be withheld or withdrawn. I intend to include artificial nutrition and
- hydration in my definition of life-sustaining treatment.
- If I am ever diagnosed as being in a persistent vegetative state or irreversible coma, and

my death will not occur within a relatively short time if I am administered life-sustaining treatment, then I want any and all medical treatment (including artificial nutrition and hydration) that will extend my life and postpone my death.

d. ***Use of Life-Sustaining Treatment When Conscious with Brain Damage***

- If I have brain damage or a brain disease that makes me unable to recognize people or speak and there is no hope that my condition will improve, I do not want life-sustaining treatment. I intend to include artificial nutrition and hydration in my definition of life-sustaining treatment.

e. ***Blood Transfusions***

- If my doctor determines that I need a blood transfusion or blood products, it is my choice, based on my religious beliefs and regardless of my condition, that such treatment absolutely not be provided, even if the lack of treatment ultimately will lead to my death.

f. ***Chemotherapy and Radiation***

- If I am diagnosed as having incurable cancer and there is no hope that my condition will improve, and further chemotherapy and radiation serve only to prolong my life for a short time I direct that all chemotherapy and radiation be withheld or discontinued, unless and only if it serves to provide me with comfort care or to alleviate pain.

g. ***Desire to Remain at Home***

- If at all possible, and the costs are not unduly
- burdensome, I declare that I want to die at home (or at least remain at home as long as possible) with appropriate medical, nursing, social, and emotional support and any medical equipment or treatment needed to keep me comfortable.
- I authorize my attorney-in-fact to take whatever steps are necessary or advisable to enable me to remain in my home as long as it is reasonable under the circumstances. Specifically, I do not want to be hospitalized or placed in a nursing home as long as it is reasonable to maintain me in my home.

h. ***General Authority for Attorney-in-fact***

- My attorney-in-fact shall determine if life-sustaining treatment, services and procedures (including artificial nutrition and hydration) shall be withheld or withdrawn. I do not want
- treatment to be provided or continued if the burdens outweigh the expected benefits. My attorney-in-fact shall consider the quality of my life with the treatment,
- the relief from suffering, and the preservation or restoration of my abilities to function physically and mentally.
- My attorney-in-fact is authorized to request or consent to the writing of a “No Code” or “Do Not Resuscitate” order by any doctor.

Sample Clauses for A Living Will

a. ***Definitions***

- The term life-sustaining procedures shall not include mechanical ventilators or respirators.
- If I am in a persistent vegetative state from which, to a reasonable degree of medical certainty, there can be no recovery, then life-sustaining treatment may be withheld or withdrawn only if I have been in this state for at least six (6) months.

b. ***General Clause Prohibiting Use of Life-Sustaining Procedures***

- I do not want my life to be artificially prolonged, unless there is some hope that both my mental and physical health may be restored. In addition, I do not want life-sustaining treatment, services or procedures (including artificial nutrition and hydration) to be provided or continued, if the burdens of these outweigh the expected benefits.

The Nebraska Department of Health & Human Services
Division of Aging & Disability Services
provides services without regard to race, color,
religion, sex, national origin, marital status, disability or age.

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