



Volunteers of America®
Minnesota

ESTATE & ELDER LAW SERVICES

1900 Central Ave NE, Suite 106
Minneapolis, MN 55418
612-676-6300

Monica Lewis, Attorney at Law
Lori D. Skibbie, Attorney at Law

**FREQUENTLY ASKED QUESTIONS
ABOUT
HEALTH CARE DIRECTIVES**

Frequently Asked Questions About Health Care Directives

Do I need a lawyer to help me complete a health care directive?

Having the assistance of a lawyer is NOT REQUIRED for completing the Minnesota Health Care Directive. Because it is a legal document, some individuals may wish to involve an attorney in the process of completing the form. Some people ask medical professionals for assistance in filling out the form.

Do I need a health care directive if I already have a living will?

A living will written before August 1, 1998 will continue to be valid unless revoked or destroyed by the principal. A principal may revoke a living will in a health care directive by stating in the new directive that any older form(s) are to be revoked. The principal can revoke the older living will by destroying it.

An important difference between a living will and the health care directive is the time when a substitute decision-maker starts to act. With a living will, the agent (called a "proxy") is able to make decisions for the principal only when the principal is terminally ill. The health care directive allows the agent to begin making decisions when the principal is unable to make or communicate those decisions, even if not terminally ill.

Do I need to use the Minnesota Health Care Directive form?

No. Minnesota law requires that a health care directive must:

- be in writing and be dated
- state the name of the person completing it
- be signed
- be notarized or witnessed by two persons
- contain health care instructions or a health care power of attorney, or both

The Minnesota Health Care Directive form is one type of acceptable form. It is designed to provide guidance in covering many common health care decisions faced by older adults. The form also contains space for an individual to write instructions regarding his or her own specific health care concerns. Not all questions on the form need to be answered.

What if I am unable to write or to sign my name on a health care directive form?

Any person can fill in the form for you. If you are unable to sign yourself, you may authorize another person to sign on your behalf. You must acknowledge this other person's signature with a notary public or with two witnesses.

If I complete a health care directive, can I change it later?

You can change your instructions or your health care agent at any time by completing a new health care directive. On the new health care directive, you can state that any previous directives are no longer valid. You can also cancel the old health care directive at any time by destroying all copies. Finally, you can verbally express your intent to revoke in whole or in part in the presence of two witnesses who do not have to be present at the same time.

It is a good idea to review your health care directive periodically. If you have named an agent, you can review the directive along with your agent to make sure the agent is still able and willing to carry out your instructions and make decisions for you. Any time you have a significant change in your health status, your health care directive should be reviewed to make sure important issues are addressed.

Am I required to have a health care directive in order to receive health care?

It is illegal for any health care provider or insurance company to require that a person have or complete a health care directive before receiving services. Health care providers are required to ask about any existing health care directives and to offer information if the person receiving care is interested.

If I name a health care agent, can my agent donate my organs?

A health care agent is not automatically given the power to donate organs. If you want your agent to be able to make this decision, you must state that the agent has this power. The Minnesota Health Care Directive form has a section to make this statement, if you choose.

Can a health care agent make decisions about burial or cremation?

Like organ donation, decisions about burial, cremation, or other body disposition are given to an agent only by a direct statement by the person completing the health care directive. The Minnesota Health Care Directive form has a section for making this decision, if you choose.

Will a Minnesota Health Care Directive be valid in another state?

Each state has laws regarding what constitutes a valid health care directive, health care power of attorney, or living will. Most states will honor a health care directive from another state if it is legal in the original state. If you are traveling in another state, it is a good idea to get information about that state's laws requiring out-of-state health care directives and to bring your Minnesota health care directive with you. If you move to or spend a good deal of time in another state, you might want to complete a health care directive in that state as well.