

# ADVANCE DIRECTIVES INFORMATION

## FROM THE OFFICE OF THE ATTORNEY GENERAL

### Living Wills and Idaho's Natural Death Act

We plan for many important events in life. We plan for retirement, a wedding, vacations, and for a child's education. Sadly, the health choices that are made at the end of life are seldom planned and many times they are made for us. Decisions are put off and desires are not expressed because it is difficult to contemplate or discuss death.

There are many things to plan for at the end of life. Transfer of property and the wellbeing of a spouse or child are all issues to be considered and planned for. However, the topic discussed here involves end of life health care issues, the importance of living wills, and advance directives. The principle way to ensure that your desires are fulfilled if you are no longer able to communicate your wishes is through a Living Will.

Idaho law provides for individuals to ensure that their wishes about their healthcare are carried out in the event they become incapacitated and are not able to speak for themselves. Generally, there are two kinds of Advance Directives. The first is called a Living Will, and the second is called a Durable Power of Attorney for Health Care. During the 2005 Idaho Legislative session, a modification was made to the Natural Death and Medical Consent Act. Consequently, in Idaho, it is now possible to complete one (1) form for both a Living Will and a Durable Power of Attorney for Healthcare.

A Living Will sets forth your instructions for dealing with life-sustaining medical procedures in the event you are unable to decide for yourself. A Living Will directs your family and medical staff on whether to continue, withhold, or withdraw life-sustaining systems, such as tube feeding for hydration (water) and nutrition (food), if you are incapable of expressing this yourself due to an incurable and terminal condition or persistent vegetative state.

A Durable Power of Attorney for Health Care allows you to appoint a person to make all decisions regarding your health care, including choices regarding health care providers and medical treatment, if you are not able to make them yourself for any reason.

You should not execute an Advanced Directive without having first thought about end of life issues, considered your personal values, and discussed your end of life wishes with your family, physicians, attorney, and clergy.

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#### **When does a Living Will take effect?**

Your Living Will takes effect when a medical doctor certifies that you have a terminal and incurable illness or you are permanently unconscious or in a persistent vegetative state.

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#### **When does a Durable Power of Attorney take effect?**

Although both a living will and Durable Power of Attorney are available on the same form, they have separate legal significance. The Durable Power of Attorney takes effect when you are no longer able to communicate with your healthcare provider.

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#### **If my living will says to withhold medical treatment, will medical personnel, such as paramedics, withhold treatment based on a living will alone?**

No. As noted in the answer to the first question, a living will is not self-activating. It takes effect only when one doctor has certified that you have a terminal condition and that death is imminent. When conditions are met, a Do Not Resuscitate ("DNR") Order is issued by your physician. In Idaho, DNR Orders are often included in Physician Orders for Scope of Treatment ("POST"). The POST form can be obtained only through a physician. It is completed and signed by a patient or his/her representative and the patient's physician and acts as the physician's standing orders. Paramedics will comply with the instructions provided on a POST form but will not generally follow directives in a living will.

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#### **Am I eligible to have a Living Will?**

Anyone over the age of 18, that is of sound mind, and acting of his or her own free will, can complete a Living Will.

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**What is the difference between a Living Will and an ordinary will?**

A Living Will only specifies healthcare wishes. An ordinary Will deals with the disposition of property upon your death.

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**What life support choices do I have within my Living Will?**

There are three different choices you can make in regards to life-sustaining measures:

**Option 1** - It is your desire to have doctors do everything in their power to keep you alive.

**Option 2** - The only life-sustaining measures you desire to have is artificial tube feeding for nutrition (food) and hydration (water).

**Option 3** - You wish to have all artificial life-sustaining treatment withheld, including nutrition and hydration.

No matter which of these three options you choose, **you will always be provided all necessary pain medication and comfort medication.**

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**What if I am pregnant when I become incapacitated?**

Life sustaining measures will continue regardless of any directive to the contrary until the pregnancy is complete.

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**What if I change my mind about my options?**

If at any time while you are of sound mind and acting of your own free will, you can make a new Living Will. At any time you may revoke or terminate an existing Living Will without creating a new one.

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**Who can I appoint to be my Health Care Agent?**

The choice of an individual to serve as your Health Care Agent is a very important one. **You should discuss your wishes at length with the individual you plan on appointing.** Make sure the person you plan to appoint is comfortable with the directives in your living will and is willing and able to carry out your wishes. It is also recommended that you discuss your options and wishes with your family, physicians, attorney, and clergy. **None** of the following people may be designated as your agent:

1. your doctor or other treating health care provider;
  2. a non-relative employee of a hospital, your doctor, or other treating health care provider;
  3. an operator of a nursing home, assisted living facility, or community care facility; or
  4. a non-relative employee of a nursing home, assisted living facility, or community care facility.
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**When do my Health Care Agent's responsibilities and authority begin?**

The only time your agent will be able to make decisions is when you are unable to make your own decisions.

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**Must a living will be witnessed or notarized to be valid?**

No. As a result of changes to Idaho law made by the 2005 legislature, it is no longer necessary to have either a witness to your execution of a Living Will, nor to have your signature notarized. Having your signature on your Living Will witnessed or notarized is a good idea, and is certainly permissible, but is not necessary.

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**Do I need a lawyer to draft a living will for me?**

No. The assistance of a lawyer in drafting any legal document is always a good idea, but is not necessary. A Living Will is a document of great importance and significant ramifications. Discuss your wishes and what you want included in your living will with your family, trusted friends, your physician, your clergy, and your lawyer.

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**What if I already had a living will before the new legislation?**

So long as the living will was in compliance with the existing law at the time it was executed or if it substantially conforms to the new law then it is valid. It is recommended that you review your living will and confirm that it substantially meets the requirements of the new law.

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**What if I have a living will that was created in a state other than Idaho?**

If the living will created in a state other than Idaho conforms substantially to Idaho's living will statutes then it will be recognized as valid.

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**If I do not have a living will, and am unable to communicate, can a family member still make health care decisions on my behalf?**

Yes. Idaho Code § 39-4504 provides a list, in order of authorization, that allows for an individual to deny, or consent to care, for a second individual who has been rendered unable to communicate. The issue is always made more complex in the absence of a Living Will or other written directive from you.

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**What if the executor of my living will is somehow incapacitated and unable to communicate my desires?**

The law provides that your living will may list alternates should the primary executor be unable to communicate your desires. If, for some reason, none of the executors listed in your living will are able to communicate your desires then the authorization will pass on to the next available individual as listed in Idaho Code § 39-4504.