

A LEGAL GUIDE ON LIVING WILLS

The information below describes your legal rights concerning health care decisions and living wills. It explains your legal right to make decisions about your own health care under New Jersey law, and it tells you how to plan ahead for your health care if you become unable to decide for yourself because of an illness or accident.

1. Why should I consider writing a living will?

A serious injury, illness or a mental incapacity may make it impossible for you to make any health care decisions for yourself. In these real life situations, those responsible for your care will be forced to make these decisions for you. A living will is simply a legal document that which provides information for your treatment preferences to those caring for you, helping to insure that your wishes are respected even when you can't make decisions yourself. A clearly written living will help prevent disagreements among those close to you. Moreover, a living will can reduce some of the burdens of decision making which are often experienced by family members, friends and health care providers.

2. What happens if I'm unable to decide about my health care?

If you should become unable to make treatment decisions because of an illness or an accident, then those caring for you will need to know about your values and wishes in making decisions on your behalf. Therefore, it is critically important to have a living will in this day and age. If you don't have a living will then you could be forced to live as a vegetable for many years.

3. Where should I keep my living will?

In addition to the client keeping a copy of the living will, copies should be distributed to the health care representative and the alternate. Moreover, a copy should be given to your personal physician. Family members, friends, or anyone else who is likely to be involved in your health care treatments should also be given a copy.

4. Will the terms of my living will be followed?

Yes. Everyone responsible for your care must respect and comply with the directives and wishes that you have specified in your living will. However, if your doctor, nurse or other professional has a sincere objection to respecting your wishes to refuse life-sustaining treatment, then he or she may have your care transferred to another professional who will carry them out.

5. Does New Jersey recognize living wills as legally binding documents?

Absolutely. In 1990, the Supreme Court of the United States confirmed that a person's rights to make choices about medical care are protected by the Bill of Rights. Under New Jersey law a living will are clearly legal and binding legal documents. Moreover, hospitals and physicians must also honor your living will.

6. What happens if I regain the ability to make my own health care decisions?

If you should regain the ability to make your own health care decisions, then you will have the legal authority to make any decisions regarding your health care and treatment. Thereafter, the person who holds holding your medical power of attorney will not be able to make these decisions for you.

7. What if I don't have a living will?

If you should become unable to make treatment decisions and if you do not have a living will, then your close family member(s) will talk to your doctor and make these decisions on your behalf. However, if your family members or physicians disagree about your medical care, then it may be necessary for a court to intervene and to appoint someone as your legal guardian. This also may be legally required if you do not have a family member to make decisions on your behalf. That is why it is very important to put your wishes in writing to make it clear who should decide for you, and to help your family and doctor know intentions.

8. Will I still be treated if I don't have a living will?

Yes. You will still receive medical treatment even if you do not have a living will. Your health insurance company also can't deny coverage based on whether or not you have a living will.

9. How are living wills executed?

A competent adult may execute a living will at any time. The living will must be signed by the declarant and witnessed by either two adult witnesses or a notary public or lawyer. The witnesses must also attest to the sound mind of the declarant, and that the living will was executed free of duress or undue influence. The health care representative or the agent as listed in the living will is ineligible to act as a witness. In New Jersey the agent is also referred to as a health care representative. New Jersey recognizes living wills executed in other states as long as they comply with the laws of New Jersey.

10. How can I make any changes to a living will?

A living will can be modified at any time, as long as the declarant (the person who makes the living will) still has the ability to make sound decisions. If there are any changes to the living will, they should also be witnessed and dated.

11. How can I revoke my living will?

A living will may be revoked at any time. A revocation takes effect upon oral or written notification to a health care representative, doctor, nurse, or any other health care professional or other reliable witness. Any act which evidences a desire to revoke the instrument will also be seen as a valid act for purposes of revocation. The execution of subsequent instruments will also act to revoke any previous such documents.

12. Who should I name as my health care representative?

The person you choose to be your health care representative has the legal right to accept or refuse medical treatment (including life-sustaining measures) on your behalf and to assure that your wishes concerning your medical treatment are carried out. You should choose a person who knows you well and who is familiar with your feelings about different types of medical treatment and the conditions under which you would choose to accept or refuse either a specific treatment or all treatments.

A health care representative must also understand that it is his or her responsibility to implement your wishes even if your representative or others might disagree with them. Therefore, it is important to select someone in whose judgment you have confidence in.

13. What else do I need to know about choosing a health care representative in New Jersey?

When you choose your health care representative, the most important criteria are trustworthiness and dependability. You might also want to choose someone you think will be good at asserting your health care wishes if others argue against them. The health care representative must be able to be persistent or calm under pressure.

While you need not name someone who lives in New Jersey, the person you name should at least be willing and able to travel to your bedside if necessary. Your health care representative will begin to make health care decisions for you when you lack the capacity to do so.

14. When does my living will take effect?

Your living will takes effect when you no longer have the ability to make certain decisions about your health care. This judgment is normally made by your attending physician, and by any additional physicians who may be required by law to examine you. If there is any doubt about your ability to make such decisions, your doctor will consult with another doctor with training and experience in this area. Together they will decide if you are unable to make your own health care decisions.

15. What happens if I should regain the ability to make my own decisions?

If you should regain your ability to make decisions, then you will resume making your own decisions directly. Your living will is in effect as long as you are unable to make your own decisions.

16. Should I discuss my wishes with my health care representative and others?

Absolutely! Your health care representative is the person who speaks for you when you can't speak for yourself. It is very important that he or she has a clear sense of your feelings, attitudes and health care preferences. You should also discuss your wishes with your physician, family members, and family friends who will be involved in caring for you.

17. Does my health care representative have the authority to make all health care decisions for me?

It is up to you to say what your health care representative can and cannot decide. You may wish to give him or her broad authority to make all treatment decisions including decisions to forego life-sustaining measures. On the other hand, you may wish to restrict the authority to specific treatments or circumstances. Your representative has to respect these limitations.

18. Is my doctor obligated to talk to my health care representative?

Yes. Your health care representative has the legal authority to make medical decisions on your behalf, in consultations with your doctor. Your doctor is legally obligated to consult with your chosen representative and to respect his or her decision as if it were your own decision.

19. Is my health care representative the only person who can speak for me, or can other family members or friends participate

in making treatment decisions?

It is generally advisable for your health care representative to consult with family members or others in making decisions, and if you wish you can direct that he or she should do so. It should be understood by everyone, however, that your health care representative is the only person with the legal authority to make decisions about your health care even if others disagree.

20. If I want to give specific instructions about my medical care, what should I say?

If you have any special concerns about particular treatments you should clearly express them in your living will. If you feel that there are medical conditions which would lead you to decide to forego all medical treatment, and accept an earlier death, this should be clearly indicated in your directive.

21. Are there particular medical treatments that I should specifically mention in my living will?

It is a good idea to indicate your specific preferences concerning two specific kinds of life-sustaining measures: artificially provided fluids and nutrition and cardiopulmonary resuscitation. Stating your preferences clearly concerning these two treatments will be of considerable help in avoiding uncertainty, disagreements or confusions about your wishes.

22. Can I request that all measures be taken to sustain my life?

Yes. You should make this choice clear in your living will. It is important to emphasize that a living will can be used to request medical treatments as well as to refuse unwanted ones.

23. Does my doctor have to carry out my wishes as stated in my living will?

If your medical treatment preferences are made clear then your doctor is legally obligated to implement your wishes, unless doing this would violate his or her conscience or accepted medical practice. If your doctor is unwilling to honor your wishes he or she must assist in transferring you to the care of another doctor.

24. Can I revoke my living will at any time?

Yes. You can revoke your living will at any time, regardless of your physical or mental condition. This can be done in writing, orally, or by any action which indicates that you no longer want the living will to be valid.

25. Who should have copies of my living will?

A copy should be given to the person that you have named as your health care representative, as well as to your family, your doctor and others who are important to you. If you enter a hospital, nursing home, or a hospice then a copy of your living will should be provided so that it can be made part of your medical records.

26. Can I be required to have a living will as a condition of my insurance coverage?

No. You can't be required to complete a living will as a condition for obtaining a life or health insurance policy. Also, having or not having an advance directive has no effect on your current health or life insurance coverage, or health benefits.

27. Can I use my living will to make an organ donation upon my death?

Yes. Your living will should state your wishes regarding organ donation. For further information regarding organ donations you should contact either an organ procurement agency or your local hospital.

28. Will another state honor my living will?

It is likely that your living will document will be honored in another state, but this is not guaranteed.

29. What if already have a living will?

While you may want to review your existing living and make sure it reflects your wishes.

30. Do I need an attorney or doctor to write one?

As with any important document especially one of this nature, getting experienced professional legal advice is always recommended. The average cost to prepare a living will is only \$100. Therefore, you should not be cheap and try to use a cheap internet form. Moreover, the living will forms that are typically handed out by hospitals and doctors are often woefully inadequate.