

Frequently Asked Questions

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Legal and Practical Considerations

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care,” and a “health care directive?”

A “living will” usually means a document in which a person states only his or her health care wishes. A “durable power of attorney for health care” usually means a document in which a person appoints someone to make health care decisions on his or her behalf. “Advance directive” usually means a living will, a durable power of attorney for health care, or a combination of the two. “Health care directive” is what North Dakota state law calls any advance directive. A “health care agent” is what state law calls the person appointed through a health care directive to make health care decisions for another.

Why would I want a health care directive?

A health care directive can help make sure that your health care wishes are followed when you cannot speak for yourself. In addition, a health care directive can help your family and friends during what may be a difficult time.

What happens if I don’t have a health care directive?

In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law determines who makes health care decisions for you. The law authorizes persons in the following categories, in the order listed, to make decisions: your health care agent unless a court specifically authorizes a guardian to make decisions for you, your court-appointed guardian or custodian, your spouse, any of your children, your parents, your adult brothers and sisters, your grandparents, your adult grandchildren, and an adult friend or close relative. No one in a lower category may make the decision if someone in a higher category has refused to consent.

Do I need to use a special form?

No. North Dakota law has an optional health care directive form, but many other forms exist that meet the state’s legal requirements. In fact, you do not have to use a pre-printed form.

Any written statement that meets these requirements is valid in North Dakota:

1. States the name of the person to whom it applies;
2. Includes a health care directive, the appointment of an agent, or both;
3. Is signed and dated by the person to whom it applies or by another person authorized to sign on behalf of the person to whom it applies;
4. Is executed by a person with the capacity to understand, make, and communicate decisions; and
5. Contains verification of the required signature, either by a notary public or by qualified witnesses.

If you are Catholic, the North Dakota Catholic Conference suggests that you use the [Catholic Health Care Directive](#) form.

Do I need an attorney? What will this cost?

No. It is not necessary to have an attorney provide or fill out the form. However, you should contact an attorney if you have legal questions regarding advance care planning. Health care directive forms are available at no cost from a number of sources, including the North Dakota Catholic Conference.

Should I appoint a health care agent or just write down my wishes?

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The North Dakota Catholic Conference recommends that your health care directive include the appointment of a health care agent.

Written instructions alone are only as good as your ability to accurately predict every possible future medical condition and every future medical treatment option. This is an almost impossible task. In addition, without a health care agent, the person interpreting those instructions might be someone who does not truly know what you wanted.

By appointing a health care agent, you can make sure that someone who cares about you will apply your wishes and personal beliefs to the health care choices at hand – just as you would do. Even if you appoint a health care agent, you can still give written health care instructions to direct, guide, and even limit the actions of your agent.

Who can be my health care agent?

In North Dakota, your agent must be 18 years of age or older and must accept the appointment in writing. Talk beforehand to the person you wish to appoint. Find out if the person is willing to accept the responsibility. Tell the person about your wishes and preferences for care. Be sure the person is willing and able to follow your wishes.

What is a "health care decision"?

This term refers to your decision to consent to, refuse to consent to, withdraw your consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition. This includes the selection and discharge of health-care providers and institutions; the approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care.

When does a health care directive become effective?

Normally, a health care directive is effective when 1) you have executed a health care directive; 2) your agent has accepted the position as agent in writing; and 3) your doctor has certified, in writing, that you lack the capacity to make health care decisions. You lack capacity to make health care decisions when you do not have the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of proposed health care, or reasonable alternatives to that health care. However, if you authorized someone to make decisions for you even if you still have the capacity to make and communicate your wishes, directive becomes operative under the conditions which you set (rather than only when you become incapacitated.)

What is the difference between the older Catholic Health Care Directive (copyright 2005) and the new Catholic Health Care Directive?

Not much. The differences are mostly cosmetic and reflect an attempt to be more user-friendly. You can still use the 2005 version.

On health care directive forms, who is the "principal," "declarant," and "agent?"

You, the person executing a health care directive, are the "principal." When verifying your identity before a witness or notary public, you are also the "declarant." The person you appoint as your health care agent is the "agent."



[Click here for more information.](#)

Is there anything wrong with the form put out by the state?

There is nothing "wrong" with the statutory form. However, the questions tend to be open-ended and, in our experience, can lead to vague answers. The form is also very long compared to the Catholic Health Care Directive. The Catholic Health Care Directive also addresses spiritual matters that a person might forget about if he or she used the statutory form.

What should I do with my health care directive?

Provide a copy of your health care directive to your doctor and any other health care providers such as your hospital, nursing facility, hospice, or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members, your priest, and your attorney, if you have one.

I already have an advance directive. Do I need to do a new one? What if I want a new one?

Valid advance directives completed under the old law (before August 1, 2005) will still be honored. Validly executing a new health care directive automatically revokes any older advance directive. Inform everyone who might have a copy of that old document that it is no longer valid and that you have a new health care directive.

I already have a living will. Do I need to do a new one?

No. Valid advance directives completed before the new law went into effect (August 1, 2005) will still be honored. However, if your old advance directive is just a living will (contains only instructions), you should consider completing a new advance directive.

Living wills completed prior to August 1, 2005 are legally binding only if you lack capacity and face imminent death. In other words, they would not apply in most circumstances.

Also, you should consider appointing a health care agent. Take this opportunity to complete a new health care directive that appoints a health care agent.

I work for a health care facility and provide advance directives to patients as part of my job. Do I need to give them the statutory form?

No. North Dakota's statutory form is an optional form, even for those distributing them in North Dakota health care facilities.

Will an advance directive that I completed in another state be accepted in North Dakota?

Yes, so long as it complies with the laws of that state and is not contrary to certain North Dakota laws, such as the law against assisted suicide.

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Will a health care directive that I completed in North Dakota be accepted in another state?

Most states have reciprocity statutes that give recognition to advance directives completed in other states. Even if a health care directive completed in North Dakota does not meet some of the technical requirements of another state's law, the directive should still be followed since it expresses the your wishes.

Can an individual in Minnesota use the Catholic Health Care Directive?

Under Minnesota's current law, the Catholic Health Care Directive would meet Minnesota's requirements for a valid advance directive. Minnesota does not require the use of any particular form.

Whenever I am admitted to the hospital they ask me if I have a living will. Why do they do this? Do I have to have one?

Federal law requires health care providers to ask that question. Called the "Patient Self-Determination Act," the requires health care providers to educate their patients and the community on issues related to advance directives. It also requires hospitals, nursing facilities, hospices, home health agencies, and health maintenance organizations certified by Medicare and Medicaid to furnish written information so that patients have the opportunity to express their wishes regarding the use or refusal of medical care, including life-prolonging treatment, nutrition, and hydration. The federal law takes no stand on what decisions persons should make.

It does not require a person to have an advance directive.

Why does the hospital always ask if I have a "living will?"

Federal law requires health care providers to ask you if have an advance directive. By habit, they often use the term "living will." You are not required to have any advance directive and you do not have to use the form they provide.

Can someone make decisions for me even if I still have capacity to make them myself?

On or after August 1, 2007, your health care directive can authorize a health care agent to make decisions for you even if you still have the capacity to make and communicate your wishes. In such a case, the directive becomes operative under the conditions which you set (rather than only when you become incapacitated.)

Can I still make my own health care decisions after I have signed a health care directive?

Yes. You will be able to make your own health care decisions as long as you are capable of doing so. Unless you expressly authorized your agent to speak even when you have capacity, your Agent's authority starts only when your doctor certifies in writing that you do not have the capacity to make health care decisions.

I want to have a health care agent, but do I have to give her all that authority?

No. You can include in your health care directive limitations on what your health care agent can do.

How much authority does my doctor have in making a decision or in interpreting my directive?

Actually, none. The only exception is if the health care directive specifically directs the agent or

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decision-maker to rely on the physician's decision or interpretation. The Catholic Health Care Directive does not contain any such direction or medical terms for which an agent would need to defer to the physician. Words like "burdensome," "benefit," and "imminent" should be interpreted by the agent according to their best understanding of what those words mean within Catholic teaching.

What if a health care agent refuses to give consent for a procedure that was clearly wanted by the patient, according to the patient's health care directive?

This situation is not uncommon, though it may exist only temporarily, such as when the agent is a loved one who has not yet come to terms with what must be done. Most health care facilities have a process for dealing with such situations, such as a social worker, an ethics committee, or a conflict resolution process.

If the matter cannot be resolved, the agent has probably relinquished his or her right to be a health care agent. The requires that a health care agent make a health care decision in accordance with the patient's wishes and religious or moral beliefs, as stated orally, or as contained in the health care directive. If the person designated as a health care agent refuses to do that, that person is not legally acting as an agent.

The health care provider would have to turn to an alternate agent or the list of persons authorized by statute to give consent to health care procedures. (See "[What happens if I don't have a health care directive?](#)") Under that statute, a person lower on the list cannot give consent for something that a person higher on the list refused consent. However, that provision probably only applies to cases where the person higher on the list had a legitimate right to refuse consent. An agent who refuses to follow the law for agents is not acting legitimately.

Ethical and Religious Questions

What fundamental principles should guide a Catholic, and indeed any person, who is thinking about health care decisions?

Human life is a precious gift from God. This truth should inform all health care decisions. Every person has a duty to preserve his or her life and to use it for God's glory.

We have the right to direct our own care and the responsibility to act according to the principles of Catholic moral teaching. Each person has a right to clear and accurate information about a proposed course of treatment and its consequences, so that the person can make an informed decision about whether to receive or not receive the proposed treatment.

Suicide, euthanasia, and acts that intentionally and directly would cause death by deed or omission, are never morally acceptable.

Death is a beginning, not an end. Death, being conquered by Christ, need not be resisted by any and every means and a person may refuse medical treatment that is extraordinary. A treatment is extraordinary when it offers little or no hope of benefit or cannot be provided without undue burden, expense, or pain.

There should be a strong presumption in favor of providing a person with nutrition (food) and hydration (water), even if medically assisted. Providing nutrition and hydration should be considered ordinary care since it serves a life-preserving purpose and the means of supplying food and water are relatively simple and - barring complications - generally without pain. Exceptional

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situations may exist in which this is not the case, such as when a person is no longer able to assimilate nourishment, or when death is so imminent that withholding or withdrawing food and water will not be the actual cause of death. In no case should food or water be removed with the intent to cause death.

We have the right to comfort and to seek relief from pain. Although our faith teaches that we can find meaning in suffering, no one is obligated to experience pain. A person has a right to pain relief and comfort care, even if the method or treatment indirectly and unintentionally shortens life. However, it is not right to deprive the dying person of consciousness without a serious reason.

Is this all there is to know about making ethical health care decisions?

Is this all there is to know about making ethical health care decisions?

No. These statements are only some basic principles. Some situations, such as pregnancy or organ donation, involve other principles. Understanding and applying these principles to specific cases can be difficult. At times, your bishop or the Pope may provide clarification on the Church's teaching and guidance for specific situations.

[Go here for additional resources.](#)

Are Catholics morally obligated to have an advance directive?

No. However, a health care directive, especially one that appoints a health care agent, is one way to make sure that your care and treatment is consistent with the Catholic faith and your wishes.

My friend is not Catholic, but likes the Catholic Health Care Directive. Can she cross out the parts that would not apply to her?

Yes, she can. However, it might be a good idea to initial the changes. She can also contact the North Dakota Catholic Conference and we will send you a version of the form that retains the ethical principles in the Catholic Health Directive, but does not contain specific references to the Catholic faith. [You can download the form here.](#)

How can I make sure that decisions made on my behalf are consistent with my Catholic beliefs?

State in your health care directive your desire to have all health care decisions made in a manner consistent with Catholic teaching. The Catholic Health Care Directive does this.

Appoint a health care agent who shares your beliefs or, at least, sincerely intends to respect your wishes.

If your health care agent is not familiar with Catholic teaching on these matters, give your agent the name of a priest or lay leader who can provide guidance. You can include the name and contact information of that person in the health care directive. You may also want to give this information to your health care provider.

How can I make sure my spiritual needs are met?

When you enter a hospital or nursing home, state that you are a Catholic and want to have a priest or lay minister care for your spiritual needs. Also state if you want to see a particular priest. Unless you have done this, certain privacy rules may prevent the hospital or nursing home from informing a priest about your presence or allowing him to visit.

If you cannot communicate your wishes when being admitted, your health care directive and health care agent can do this for you.

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Include spiritual requests in your health care directive. The Catholic Health Care Directive, for example, includes a request for the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum, if you are terminally ill. "Viaticum" literally means "food for the journey." Death is not the end. Rather, it is only a "passing over" from this world to the Father. In preparation for this journey, the Church offers Eucharist as viaticum, i.e., Christ's body and blood as food for the journey.

Is organ donation morally acceptable? Can I include a donation in my health care directive?

Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. You should, however, give explicit consent. The Catholic Health Care Directive includes an optional section where you can give that consent.

I have been asked to be a person's health care agent, but he would like done acts that I feel are morally wrong? What are my options?

No one is obligated to violate their conscience. Moreover, it is never morally acceptable to cooperate in a wrongful act, even at the direction of another. Your feelings should be shared with the person before you accept the responsibilities of a health care agent. If the two of you cannot resolve the matter, you may need to decline the offer to act as the person's health care agent. If the realization that what the person would want done comes after the appointment and after the person became incapacitated, there are certain provisions in the law for withdrawing as the health care agent. If an alternative agent does not exist, the statute will determine who will make health care decisions for the person. (See "[What happens if I don't have a health care directive?](#)")
