MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2308

2007 SENATE JUDICIARY

SB 2308

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2308**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 1805

Committee Clerk Signature Mona L Solberg

Minutes: Relating to provision of health care directive.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Judy Lee, Dist. #13 Introduced the bill (meter 0.1) I was approached by a local attorney to present this bill.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

Christopher Dobson, ND Catholic Conference (meter 1:42) Referred to a letter sent to Mr. Levi. The subject has come up when an elderly person who is in the process of dieing and is tired of making decisions. In the healthcare current directive the trigger for assistance is at the stage of incapacitation. Is this law needed? The debate is if this could currently be by the "informed consent procedure" My concern is if one gives up the decision making rights at what point can they be give it back. For example if a person is sick and gives away there rights, finds out they are dying of cancer. Do they have the right to know they are dying.

Sen. Nething spoke of situations where the person does not have any family taking care of them and the dilemma of non-family members helping.

Sen. Fiebiger spoke of the concerns of a person "having a bad day" and giving the rights away-then wanting the rights back. How do you in force? Currently the physicians focus is on the patient and what they want, how would this affect that. What if you have siblings who are rivaling? Would that be a concern for your ethics committee? It did not come up but the current "undue influence" portion should cover this in the current statute

How wide spread is this problem? No one in my healthcare directive has asked for this.

Bruce Levi, Executive Director Medical Council, (meter 9:45) This bill was presented to me by William Guy of Fargo, NDMA board of Ethics. Gave the legislative history of the bill and how we emulated MN law. Sen. Nething asked what the pitfalls to this legislation would be (meter 13:20 Initially it could cause confusion and as an advance directive medially it give the physician one more layer to deal with. He continued with the questions. Does the Doctor make the decision to trigger this? No it is addressed in the health care directive. Discussion of when and who makes what decisions. (meter 16:18) The agent must first accept an appointment.

Sen. Fiebiger stated (meter 19:30) With all types of family dynamics, how easy is it for a family member to manipulate this bill? This would fall under "undue influence" and another family member could use this portion to address a conflict.

Sen. Neslon requested a copy of the Health Care Directive

The committee discussed a person still having the capacity to make a decision, why have another individual make the decision and not the medical doctor. (meter 22:00)

Sen. Nething requested Mr. Dobson to work on an amendment to clarify tree changes (meter 24:00)

Sen. Nething sited a case of a 98 year old woman back how whom his wife and some neighbors watch over due to her not having any living relatives left alive. He spoke of her diabetes and how at times the disease causes her to be confused and disorientated till her levels are corrected. She may be able to think clearly one day and be completely out of it the next. The also spoke of how this might make a confusing situation more complicated. This bill is not for the person surrounded by family members who are already involved in the decision making process, it is for the person with out any family who is being taken care of by the community and friends.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2308**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2934

Committee Clerk Signature

Minutes: Relating to provision of health care directive.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee had requested a review of the Health Care Directives and **Christopher Dobson**, ND Catholic Diocese brought in copies Att. #1 and the "short form" Att. #2 and Att. #3 and spoke of an amendment for clarification Att. #5

Bruce Levi, ND Medical Assoc. (Meter 4:34) provided additional information Att. #4 Spoke of the "trigger" mechanism in the bill. He stated that they crafted law after MN Law and spoke of the "revoking" of director. Additional Testimony: **Bill Guy**, Attorney , Vogal Law Firm, Fargo requested the bill from Sen. Judy Lee but was unable to make the first hearing on the bill. – Att. #6.

Sen. Nething asked for an example (meter 8:15) How this bill would come into play for an elderly person under today's law and how this would change that.

Sen. Lyson stated his confusion (meter 11:04) Have we got a problem? What is it? This is a continuation of the work that was done last session. These are the directives that make the bill more complicated and he reviewed the process of the bill again.

Sen. Nething stated that no one has to do this, it is a choice to do for clarity.

Sen. Olafson stated (meter 13:00) that this bill allows people the option to turn the "decision process" over to there agent. They discussed the "trigger" and the amendments.

Sen. Fiebiger referred to the MN statute. Does the amendment part of the bill mirror MN law? Yes, all except the "revocation" language.

Mr. Levi reviewed the amendment with the bill (meter 16:05)

Sen. Nething stated that part of the bill would pertain to a case where there are no children to help the elderly. Discussed the oppositions to the bill should be helped with the clarification of the amendments.

Senator David Nething, Chairman closed the hearing.

Sen. Olafson made the motion to Do Pass Amendment – Att. #5 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Olafson made the motion to Do Pass as Amended and **Sen. Nelson** seconded the motion. All members were in favor except **for Sen. Lyson** and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

Date: 2-6-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2308

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amend - Att #5 (2-6)

Motion Made By Sen. Olafson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Nething			Sen. Fiebiger		
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2308

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Sen. Olafson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson		✓	Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 5 No 1

Absent 0

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2308 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "or when the principal retains the capacity to make" with ", unless otherwise specified in the"

Page 1, line 13, replace "decisions" with "directive"

Page 2, line 3, remove "for a principal in the case of lack of capacity to make health"

Page 2, line 4, remove "care decisions"

Page 2, line 9, after "4." insert "Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in the same manner as a health care directive may be revoked under section 23-06.5-07.

5."

Page 2, line 12, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

2007 HOUSE HUMAN SERVICES

SB 2308

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2308

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5060

Committee Clerk Signature Judy Bischoch

Minutes:

Chairman Price: We will open the hearing on SB 2308.

Senator Judy Lee, District 13 West Fargo: The bill is related to health care directives. This addresses a redundant form that has been required for folks going into long term care or hospitals. One does not necessarily have to be incompetent to be in a setting like that. There is extra paper work involved for parties involved in the health care facilities and long term care facilities. Don't see any danger to people in deleting the additional requirements that is covered in 2212 so that the kinds of directives that are established might carry through without that sort of house keeping stamp of approval on it that is required at this time with the additional paper work. In 2308 also talks about health care directives, we used to call them living wills and powers of attorney for health care. They are combined into one form now. Our goal would be to encourage people to sign health directives, it is also important for young people to do this. There are times someone may be seriously ill and is competent and capable but struggling with making with making decisions on behalf of themselves. That is what 2308 talks about. They could designate someone to make those decisions for them in that situation.

John Petrick, reading the testimony of William Guy III: See attached testimony.

Bruce Levi, ND Medical Association: See attached testimony. We talked about SB 2212 in 2005 there was the combining of the living will and the power of attorney for health care, and putting the option form into one health care directive. The bill you have is a topic as was mentioned is part of the law in Minnesota. It is really a part of the law from a uniform act that was developed in 1993. The bill would allow a person who is executed in health care directive if you fill out one of those forms, and appoint an agent. If in your situation you would want your agent to immediately be able to make health care decisions for you, even though you still have the capacity to make decisions. I will hand out acceptance of appointment section. See attached.

Christopher Dodson, with ND Catholic Conference: We are neutral on this bill if you are going to pass something like this with the changes made in the Senate,

Rep. Potter: Being neutral must be some positives and some negatives. What are the negatives?

Mr. Dodson: Some of the negatives are unknown. How it works, and the idea of a advanced directive was initially that you could speak for yourself. Why would you relinquish? I can understand someone may be tired of making decisions. We wanted the bill as clear as possible.

Rep. Porter: In the way the bill is written it is fairly easy to dismiss someone under this new provision. If they are making decisions that you don't want, that you have given them the authority to make. It would be very easy to dismiss them in this process.

Mr. Dodson: I think the bill you have in front of you provides at least a clear way of dismissal. The questions some people is why is this necessary, and this be done under out existing consent parameters.

Chairman Price: Anyone else to testify on SB 2308? If not we will close the hearing on SB 2308.

Chairman Price: Committee we will take out SB 2308 and act on it.

Representative Hatlestad moves a motion for a do pass, seconded by **Representative Schneider**.

Representative Weisz: I have some concerns giving someone who is capable, but doesn't want to deal with it.

Representative Uglem: I had a mother in law in the hospital a year ago, and she would be capable of making the decision and in an hour later she could not.

Representative Hofstad: What happens when there is a conflict with the rest of the siblings?

Representative Porter: This is part of the reason we do this in the first place, while of sound mind, to avoid those conflicts.

Representative Weisz: Could not hear him.

Chairman Price: If they have authorized this person and authorized them to take over prior to incapacity. Wouldn't they basically have to revoke the original directive totally and create a new one?

Mr. Levi: Under the bill the remedy there is not to revoke the entire care directive it is to revoke the authorization for the principal to take authorization in the same manner. You would revoke your previous appointment.

The vote was taken with 11 yeas, 0 nays, and 1 absent. **Representative Schneider** will carry the bill to the floor.

Date: 3/14
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES S.B 2308 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep. Hatlestad Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman	✓		Kari L Conrad	✓	
Vonnie Pietsch – Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen			Louise Potter	✓	
Patrick R. Hatlestad	✓		Jasper Schneider	✓	
Curt Hofstad	✓				
Todd Porter	✓				
Gerry Uglem	✓				
Robin Weisz	✓				

Total (Yes) 11 No 0

Absent 1

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308, as engrossed: Human Services Committee (Rep. Price, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2308 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2308

CHAPTER 23-06.5
HEALTH CARE DIRECTIVES

AH #1
2/6

23-06.5-01. Statement of purpose. Every competent adult has the right and responsibility to make the decisions relating to the adult's own health care, including the decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to enable adults to retain control over their own health care during periods of incapacity through health directives and the designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

23-06.5-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a health care directive for the individual granting the power.

2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.

4. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:

   a. Selection and discharge of health care providers and institutions;

   b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;

   c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and

   d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.

5. "Health care directive" means a written instrument that complies with this chapter and includes one or more health care instructions, a power of attorney for health care, or both.

6. "Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.

7. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.

8. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.

9. "Principal" means an adult who has executed a health care directive.

23-06.5-03. Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions. Subject to the provisions of this chapter and any express limitations set forth by the principal in the health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.

2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:

   a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or

   b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.

3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.

4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.

5. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

23-06.5-04. Restrictions on who can act as agent. A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;

2. A nonrelative of the principal who is an employee of the principal's health care provider;

3. The principal's long-term care services provider; or

4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

23-06.5-05. Health care directive requirements - Execution and witnesses.

1. To be legally sufficient in this state, a health care directive must:

   a. Be in writing;

   b. Be dated;

   c. State the principal's name;

d. Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;

e. Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and

f. Include a health care instruction or a power of attorney for health care, or both.

2. A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign, the directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

23-06.5-05.1. Suggested health care directive form. A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;

2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;

3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;

4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;

5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;

6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; and

7. Health care instructions regarding artificially administered nutrition or hydration.

23-06.5-06. Acceptance of appointment - Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates authority for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapacitated. Until the principal becomes incapacitated, the agent may withdraw by giving notice to the principal. After the principal becomes incapacitated,

the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

23-06.5-07. Revocation.

1. A health care directive is revoked:

   a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or

   b. By execution by the principal of a subsequent health care directive.

2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a health care directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation.

3. Unless otherwise provided in the health care directive, if the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

23-06.5-08. Inspection and disclosure of medical information. Subject to any limitations set forth in the health care directive by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

2. Execute any releases or other documents which may be required in order to obtain such medical information; and

3. Consent to the disclosure of such medical information.

23-06.5-09. Duties of provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's health care directive, are bound to follow the health care decisions of the principal's designated agent or a health care instruction to the extent they are consistent with this chapter and the health care directive.

2. A principal's health care or long-term care services provider may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.

3. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.

4. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care, or alleviation of pain.

5. Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record

by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.

6. In the absence of a direction to the contrary contained in a health care directive prepared under this chapter, nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to the principal. Nutrition or hydration, or both, must be withdrawn, withheld, or administered, if the principal for whom the administration of nutrition or hydration is considered, has directed in a health care directive the principal's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health care directive prepared under this chapter does not indicate the principal's direction with respect to nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the principal or would be physically harmful or would cause unreasonable physical pain to the principal.

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a health care directive.

2. The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.

3. The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.

23-06.5-11. Reciprocity. This chapter does not limit the enforceability of a health care directive or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a health care directive or person authorized to provide informed consent pursuant to section 23-12-13 may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the provisions of this chapter or section 23-12-13.

2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal

liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of a health care directive, the directives of the patient's agent, or other provisions of this chapter or section 23-12-13.

3. A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the agent to withhold or withdraw that health care, or a health care provider who withholds health care that the provider has determined to be contrary to reasonable medical standards, despite a health care decision of the agent to provide the health care, may not be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct if that health care provider promptly took all reasonable steps to:

   a. Notify the agent of the health care provider's unwillingness to comply;

   b. Document the notification in the principal's medical record; and

   c. Arrange to transfer care of the principal to another health care provider willing to comply with the decision of the agent.

23-06.5-13. Presumptions and application.

1. Unless a court of competent jurisdiction determines otherwise, the appointment of an agent in a health care directive executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

2. To the extent that health care directives conflict, the instrument executed later in time controls.

3. The principal is presumed to have the capacity to execute a health care directive and to revoke a health care directive, absent clear and convincing evidence to the contrary.

4. A health care provider or agent may presume that a health care directive is legally sufficient absent actual knowledge to the contrary. A health care directive is presumed to be properly executed, absent clear and convincing evidence to the contrary.

5. An agent and a health care provider acting pursuant to the direction of an agent are presumed to be acting in good faith, absent clear and convincing evidence to the contrary.

6. A health care directive is presumed to remain in effect until the principal modifies or revokes it, absent clear and convincing evidence to the contrary.

7. This chapter does not create a presumption concerning the intention of an individual who has not executed a health care directive and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a health care directive.

8. A copy of a health care directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and must be given the same effect as an original.

9. Death resulting from the withholding or withdrawal of health care pursuant to a health care directive in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

10. The making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured principal, notwithstanding any term to the contrary.

11. A person may not prohibit or require the execution of a health care directive as a condition for being insured for, or receiving, health care services.

12. This chapter does not affect the right of a patient to make decisions regarding use of health care, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of health care.

13. Health care directives prepared under this chapter which direct the withholding of health care do not apply to emergency treatment performed in a prehospital situation.

23-06.5-14. Liability for health care costs. Liability for the cost of health care provided pursuant to the agent's decision is the same as if the health care were provided pursuant to the principal's decision.

23-06.5-15. Validity of previously executed durable powers of attorney or other directives. A health care directive executed before August 1, 2005, which complies with the law in effect at the time it was executed, including former chapter 23-06.4, must be given effect pursuant to this chapter. This chapter does not affect the validity or enforceability of a durable power of attorney for health care executed before August 1, 2005.

23-06.5-16. Use of statutory form. The statutory health care directive form described in section 23-06.5-17 may be used and is an optional form, but not a required form, by which a person may execute a health care directive pursuant to this chapter. Another form may be used if it complies with this chapter.

23-06.5-17. Optional health care directive form. The following is an optional form of a health care directive and is not a required form:

HEALTH CARE DIRECTIVE

I_____ , understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT
THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS
FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE
HEALTH CARE DECISIONS FOR MYSELF
(I know I can change my agent or alternate agent at any time
and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint_____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS
FOR MYSELF
(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

_____

_____

_____

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

____(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

____(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

_____

_____

_____

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE
(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

_____

_____

_____

My fears about my health care:

_____

_____

_____

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE
(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

[ ] Any needed organs and tissue.

[ ] Only the following organs and tissue:_____

PART IV: MAKING THE DOCUMENT LEGAL

PRIOR DESIGNATIONS REVOKED. I revoke any prior health care directive.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on_____ at
(date)

_____
(city)

_____
(state)

_____
(you sign here)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

_____

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].

I certify that the information in (1) through (3) is true and correct.

_____

(Signature of Witness One)

_____

(Address)

Witness Two:

(1) In my presence on_____(date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].

I certify that the information in (1) through (3) is true and correct.

_____

(Signature of Witness Two)

_____

(Address)

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's physician.

_____
(Signature of agent/date)

_____
(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this _____ day of _____, 20 _____. _____
(Signature of Principal)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY. (Only necessary if person is a resident of long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a resident of _____ (name and city of facility). I am (check one of the following):

[ ] A recognized member of the clergy.

[ ] An attorney licensed to practice in North Dakota.

[ ] A person designated by the district court for the county in which the above-named facility is located.

[ ] A person designated by the North Dakota department of human services.

Dated on _____, 20___. _____(Signature)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL. (Only necessary if person is a patient in a hospital or is being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to _____ (name of principal) who signed this document and who is a patient or is being admitted as a patient of _____ (name and city of hospital). I am (check one of the following):

[ ] An attorney licensed to practice in North Dakota.

[ ] A person designated by the hospital to explain the health care directive.

Dated on _____, 20___. _____ (Signature)

23-06.5-18. Penalties.

1. A person who, without authorization of the principal, willfully alters or forges a health care directive or willfully conceals or destroys a revocation with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures which hastens the death of the principal is guilty of a class C felony.

2. A person who, without authorization of the principal, willfully alters, forges, conceals, or destroys a health care directive or willfully alters or forges a revocation of a health care directive is guilty of a class A misdemeanor.

3. The penalties provided in this section do not preclude application of any other penalties provided by law.

AH #2
2/4

23-12-13. Persons authorized to provide informed consent to health care for incapacitated persons - Priority.

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
b. The appointed guardian or custodian of the patient, if any;
c. The patient's spouse who has maintained significant contacts with the incapacitated person;
d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

2. A physician seeking informed consent for proposed health care for a minor patient or a patient who is an incapacitated person and is unable to consent must make reasonable efforts to locate and secure authorization for the health care from a competent person in the first or succeeding class identified in subsection 1. If the physician is unable to locate such person, authorization may be given by any person in the next class in the order of descending priority. A person identified in subsection 1 may not provide informed consent to health care if a person of higher priority has refused to give such authorization.

3. Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

4. No person authorized to provide informed consent pursuant to this section may provide consent for sterilization, abortion, or psychosurgery or for admission to a state mental health facility for a period of more than forty-five days without a mental health proceeding or other court order.

5. If a patient who is determined by a physician to be an incapacitated person, or a person interested in the patient's welfare, objects to a determination of incapacity made pursuant to this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.

AA #3

A Guide to Health Care Directives

A Resource for North Dakota Catholics from the North Dakota Catholic Conference

Recent events and a changes in North Dakota's law have generated increased interest in advance directives – legal documents that give instructions for future health care decisions. To assist Catholics of the state who wish to have an advance directive, the North Dakota Catholic Conference has prepared A Catholic Health Care Directive that meets the state's legal requirements and reflects Church's teaching and the recommendations of church, health care, and community leaders. This Guide answers some basic questions about the law, Church teaching, and completing a health care directive.

What is an advance directive? What is a "living will," a "durable power of attorney for health 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 to be followed when the person is no longer able to make or communicate decisions.

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 if the person is no longer able to make or communicate decisions.

"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 now calls any advance directive. The new law went into effect August 1, 2005.

Why would I want a health care directive?

By completing a health care directive you can help make sure that your wishes for health care decisions are followed when you are not able to communicate those wishes on your own behalf. In addition, an advance directive could greatly 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 will determine who may make 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.

When making a health care decision, the authorized person must determine that you would have consented to such health care if you were able to do so. If the person is unable to make this determination, he or she may only consent to the proposed health care if it is in your best interests.

Do I need to use a special form?

No. North Dakota law has an *optional* health care directive form, but there are many other different forms available that meet legal requirements in North Dakota. In fact, it is not necessary to use a pre-printed form at all.

Any written statement that meets these requirements can serve as a legal health care directive in North Dakota:

- States the name of the person to whom it applies;
- Includes a health care directive, the appointment of an agent, or both;
- 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;
- Is executed by the person with the capacity to understand, make, and communicate decisions; and
- 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 consider the *Catholic Health Care Directive* form. If the form is not attached to this document, you can get one by calling the conference at 1-888-419-1237 or by downloading it at *ndcatholic.org*

Do I need an attorney? Will this cost me anything?

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. Advance directive forms are available from a number of sources for no charge, including the North Dakota Catholic Conference.

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 under the old law are legally binding only if you lack capacity *and* face imminent death. Under the new law, your wishes will be followed even if you are not facing imminent death.

Also, if you have any advance directive, it should include the appointment of a health care agent. Take this opportunity to complete a new health care directive that appoints a health care agent.

I already have an advance directive, but want a new one. What do I do?

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.

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

Although Catholics are not morally obligated to have any type of advance directive, the North Dakota Catholic Conference recommends that, if you have any advance directive, it should 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. In addition, without a health care agent, the person interpreting those instructions may 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 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 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.

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

1. *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.

2. *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.

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

4. *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 and cannot be provided without undue burden, expense, or pain.

5. *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 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.

6. *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?

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.

For additional resources and information on making ethical health care decisions, contact:

Fargo Diocese Respect Life Office
(701-356-7910)
web site: www.fargodiocese.org

Bismarck Diocese Pastoral Center
(701-222-3035)

North Dakota Catholic Conference
(1-888-419-1237; 701-223-2519)
web site: ndcatholic.org

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* from the North Dakota Catholic Conference 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.

Are Catholics morally obligated to have an advance directive?

No. However, an advance 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.

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.

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 allow him to visit.

If you cannot communicate your wishes when being admitted, your health care directive and health care agent should be able to do this for you.

Include spiritual requests in your health care directive. The *Catholic Health Care Directive* from the North Dakota Catholic Conference, for example, includes a request for the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum, if you are terminally ill.

What is "viaticum?"

Literally, "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.

For additional copies of this *Guide* or the *Catholic Health Care Directive*, contact the North Dakota Catholic Conference toll-free at 1-888-419-1237
or
Visit the conference web site at: ndcatholic.org. The web site includes copies to download and resources for additional information on health care directives, ethical decision-making, and end-of-life care.

The North Dakota Catholic Conference
103 South Third Street, Suite 10
Bismarck, ND 58501
701-223-2519 + 1-888-419-1237+ E-mail: ndcatholic@btinet.net +Web site: ndcatholic.org

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A Catholic Health Care Directive

y Health Care Agent

I, _____,
trust and appoint
_____ as my health care agent. As my health care agent, this person can make health care decisions for me if I am unable to make and communicate health care decisions for myself. If my health care agent is not reasonably available, I trust and appoint
_____ as my health care agent instead.

Health Care Agent Information
Name:_____
Address:_____
Phone:_____
Relationship to You:
_____

Alternate Health Care Agent Infor
Name:_____
Address:_____
Phone: _____
Relationship to You:
_____

My Wishes

This is what I want my health care agent - or if I have no health care agent, whoever will make de regarding my care - to do if I am unable to make and communicate health care decisions for myse what I state here is general in nature since I cannot anticipate all the possible circumstances of a If I have not given specific instructions, then my agent must decide consistent with my wishes and

As a Catholic, I believe that God created me for eternal life in union with Him. I understand that precious gift from God and that this truth should inform all decisions with regards to my health ca uty to preserve my life and to use it for God's glory. Suicide, euthanasia, and acts that intentiona irectly would cause my death by deed or omission, are never morally acceptable. However, I alsc death, being conquered by Christ, need not be resisted by any and every means and that I may refi medical treatment that is excessively burdensome or would only prolong my imminent death. Th me should avoid doing anything that is contrary to the moral teaching of the Catholic Church.

❖ Medical treatments may be foregone or withdrawn if they do not offer a reasonable hope of l or are excessively burdensome.

❖ There should be a presumption in favor of providing me with nutrition and hydration, includ assisted nutrition and hydration, if they are of benefit to me.

❖ In accord with the teachings of my Church, I have no moral objection to the use of medicatic procedures necessary for my comfort even if they may indirectly and unintentionally shorten my l

❖ If my death is imminent, I direct that there be forgone or withdrawn treatment that will only precarious and burdensome prolongation of my life, unless those responsible for my care judge at there are special and significant reasons why I should continue to receive such treatment.

❖ If I fall terminally ill, I ask that I be told of this so that I might prepare myself for death, and efforts be made that I be attended by a Catholic priest and receive the Sacraments of Reconciliatio and Eucharist as viaticum.

elieving none of the following directives conflicts with the teachings of my Catholic faith or the sted above, I add the following directives: *(You do not need to complete this section. If you do, y extra sheet, if needed.)*

Making an Anatomical Gift (Optional)
So long as it is consistent with Catholic moral teaching, I would like to be an organ donor at the time of my death. I wish to donate the following (initial one statement):
[ ] Any needed organs and tissue.
[ ] Only the following organs and tissue:

This health care directive will not be valid unless it is notarized or signed by two qualified witnesses who are present when you sign or acknowledge your signature. If you have attached any additional pages to this form, you must date and sign each of the additional pages at the same time you date and sign this health care directive.
If notarized: The person notarizing this document may be an employee of a health care or long-term care provider providing your care. If witnessed: At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care.

None of the following may be used as a notary or witness:
1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Acceptance of Appointment by I Care Agent
I accept this appointment and agre as a health care agent. I understan duty to act in good faith, consisten desires expressed in this documen this document gives me authority health care decisions for the princi when he or she is unable to make communicate his or her own decis understand that the principal may this appointment at any time, in ar If I choose to withdraw during the principal is competent, I must noti principal of my decision. If I choo withdraw when the principal is no competent, I must notify the princi physician.

_____
(Signature of agent) (date)

_____
(Signature of alternate agent) (date

Option 1: Notary Public
In my presence on _____ (date), _____ (name of declarant) ack the declarant's signature on this document or acknowledged that the declarant directed the person document to sign on the declarant's behalf.

_____
(Signature of Notary Public) My commission expires _____, 20___.

Option 2: Two Witnesses

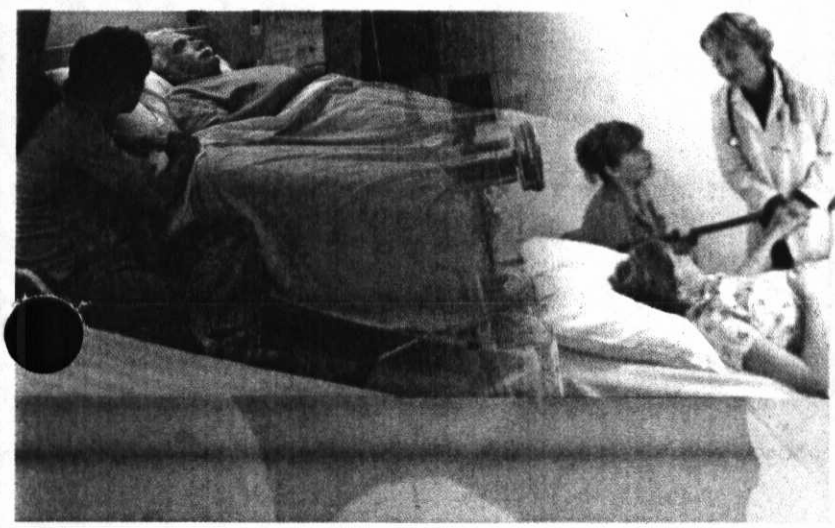
Witness One:
(1) In my presence on _____ (date), _____ (name of d acknowledged the declarant's signature on this document or acknowledged that the declarant dire person signing this document to sign on the declarant's behalf.
(2) I am at least eighteen years of age.
(3) If I am a health care provider or an employee of a health care provider giving direct care to th must initial this box:[ ].

I certify that the information in (1) through (3) is true and correct.

_____ _____

AHP #4
2/6

Who will speak for you if You can't speak for yourself?



MATTERS OF LIFE & DEATH

Several years ago, North Dakotans launched an effort called "Matters of Life & Death" to encourage everyone to talk about our wishes for health care when unable to make or communicate decisions for ourselves. Since that time, the Terri Schiavo story has taught us how important it is for everyone – whatever their age – to make their wishes known in advance.

There were no winners in the long and tragic legal battle involving Terri Schiavo. But her case can impact each of us for the better by spurring us into action to avoid similar scenarios in our own families.

Talking about our wishes for health care if we are unable to do so for ourselves is not just for older people or someone who is near death. Terri Schiavo was a young woman in seemingly good health. And, you may not be near the end of your life when you need someone to speak for you. Critical accidents or severe strokes, as examples, may diminish your ability to make or communicate decisions, even temporarily. Do your wishes in these situations differ from what your wishes might be if you were near death? Will a loved one or a health care agent you appoint be able to express your personal wishes?

Regardless of your age or health status, take the time now *to think about and decide what kind of care you want in the event you are unable to make decisions for yourself. Don't be afraid to talk frankly with your spouse, family, clergy and doctor about your preferences. Remember, <u>not</u> talking can result in difficult challenges for those left to make decisions on your behalf.*

Consider naming a health care agent – a person you name and trust who will make decisions for you if you cannot. Take time to fill out a health care directive document and consider all the possibilities or situations in which you may not be able to speak for yourself, even temporarily.

Now is the time to make your wishes known and complete a health care directive. Consider it a gift to yourself as well as your loved ones.

Led by the North Dakota Medical Association, the Matters of Life and Death Project involved a variety of organizations and individuals in North Dakota that made a concerted effort from 1999 to 2003 to improve end-of-life care in North Dakota. The organizations listed in the left column, among others, were involved in this effort.

- AARP
- Association of Hospital Chaplains
- Blue Cross Blue Shield of North Dakota
- Dakota Medical Foundation
- Guardian and Protective Services, Inc.
- Hospice of the Red River Valley
- Mental Health Association of North Dakota
- National Association of Social Workers, ND Chapter
- North Dakota Association for Home Care
- North Dakota Association of County Social Workers
- North Dakota Board of Medical Examiners
- North Dakota Board of Pharmacy
- North Dakota Catholic Conference
- North Dakota Conference of Churches
- North Dakota Department of Human Services
- North Dakota Extension Service
- North Dakota Health Care Review, Inc.
- North Dakota Health Department
- North Dakota Healthcare Association
- North Dakota Hospice Organization
- North Dakota Insurance Department
- North Dakota Long Term Care Association
- North Dakota Long Term Care Ombudsman
- North Dakota Medical Association
- North Dakota Newspaper Association
- North Dakota Nurses Association
- North Dakota Nursing Programs
- North Dakota Office of Attorney General
- North Dakota Pharmacists' Association
- North Dakota Right to Life
- State Bar Association of North Dakota
- The Evangelical Lutheran Good Samaritan Society
- UND School of Medicine & Health Sciences

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Having the most *important* conversation

Most of us know we *should* talk to a variety of people about our wishes for care when we can't speak for ourselves. It's just that, often, we *don't*. Yet, if we can document and discuss our wishes in advance, a conversation that once seemed scary can actually become comforting.

It really *is* OK to talk about dying. It *has* to be. Use this guide to help you start.

- Hold conversations about your wishes with family, health care providers and others who may be involved in your care.
- Document those wishes, in writing, by preparing a health care directive.

Then, if you are unable to communicate or make decisions in the future, your family, physician and others will know your wishes.

Who needs to talk about it?

You need to start this important conversation if:

- You are an elderly person or you have loved ones who are aging.
- You want to make sure your wishes for health care, at any age, are understood and followed.
- You don't want to burden family members or others with decisions or misunderstandings about your care.
- You want to achieve peace of mind for you and your loved ones.

One Family's Story

For reasons unknown—maybe because her mother was a former nurse—care at the end of life was an issue Anne had talked about with her parents for a long time.

"It just came up really naturally," recalls Anne, "especially as they had friends who were aging or ill. And my parents must have visited about it between them. They were very unified about what they wanted."

After Anne's mother was hospitalized with a brain hemorrhage, Anne realized that, not only had her parents "talked the talk," but that the right paperwork had been done, too. Says Anne: "We had the legal papers—the health care directive—and I knew where they were."

Anne's mother had also spoken with her physician about the kind of care she wanted at the end of life.

"Nobody has ever been clearer with me about her wishes than your mother," the doctor told Anne.

A Gift You Can Give

Talking with other people about your wishes is a true gift you give to those you love!

When you start the conversation—and when you document and discuss your wishes through a health care directive—you can help family, friends, clergy and others who might otherwise be uncertain about what you would want done when you can't speak for yourself. This vital conversation is also a great opportunity to talk about very meaningful issues:

- Your past
- Love and forgiveness
- Relationships
- Hopes and fears
- Spiritual beliefs

Making sure *your wishes* are followed

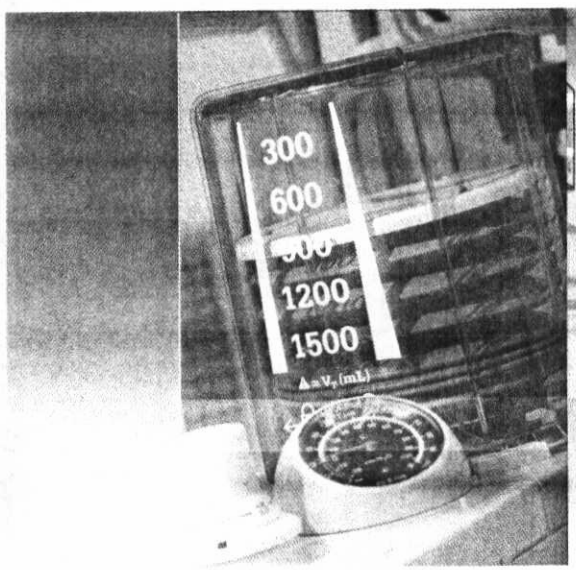
How do you *know* that your wishes for health care will be followed? How can you be certain, for example, that you won't receive unwanted medical treatments that will sustain your life, even if your quality of life is poor? Or, how do you know your life will be prolonged, if you wish, as long as possible?

There is only one way to be as certain as you can that your family, health care providers and others will understand and follow your wishes: *you must put them in writing* using a special form called a "health care directive." (An example of the form is located on pages 15-23 of this resource guide.)

Keep in mind:

- If you do not have a health care directive in place and you become seriously ill or injured, your doctors, hospital staff and loved ones will do the best they can.
- However, without clear direction from you, your loved ones may have to guess what you would want.
- If there is any uncertainty about your wishes, care could be delivered that may not be consistent with your wishes.
- If you want people to know—and follow—your wishes, you should talk with them about your preferences and have a written and signed health care directive in place.

Let this guide help you start the conversations to get that done.



How to *start* the conversation

You need to talk with your loved ones and health care professional about your wishes, so that they understand how you want to be treated if you can't speak for yourself.

Sometimes it is difficult to begin a conversation. But it really *is* OK to do so. How can you start?

- Use this guide and the sample form as a starting point for writing down notes and questions you may have about your options and wishes for care when you can't speak for yourself.
- Talk with those closest to you about your values and preferences for care. This may be an ongoing discussion for a while, and that's OK.
- Talk to your health care professional about medical options and the kinds of treatment you want or do not want.
- Think of other people—including your pastor or attorney—with whom you may also want to talk.
- Document your wishes by completing and signing a health care directive form. (More information and a sample form are found on pages 15-23 of this guide.)

Conversation starters:

- Encourage family members to discuss their plans by talking about your own: "Mom, did you know I have filled out a health care directive?"
- Open conversation by relating to a personal event: "When I was a girl, people never talked about dying, but I think it's important."
- "(Doctor, pastor, etc.), I would like to talk about my options for the end of life and make sure you understand what I want when that time comes."
- Tell a story about someone else's experience with an end-of-life or similar situation and relate that to what you would like your own experience to be.

One Family's Story

While telling family about your wishes may not make all decisions easy, it does provide a roadmap to guide them, a woman named Anne says.

Following a brain hemorrhage, Anne's mother underwent surgery and a variety of treatments. Gradually, though, her condition worsened. Knowing her mother expressly did *not* want to be permanently sustained—particularly after she became unable to speak or take care of herself—Anne and her father were finally able to let go, allowing Anne's mother to die naturally once there was no hope of recovery.

"The gift she gave us was immeasurable," says Anne. "She made it easier for us to make the decision to withdraw futile treatment. Knowing we honored her wishes has made it easier to accept what's happened."

Questions to consider and *issues* to talk about

Are you getting ready to talk? The conversation checklist offers some questions to help you get started. Make sure your specific wishes related to these questions are indicated when you create your health care directive.

Conversation Checklist

Who will you talk to?

Who will be involved in your care and needs to understand your wishes? Think about opening a conversation, or setting up an appointment to do so, with:

- ☐ Family members or loved ones closest to you (list them) _____
  _____
- ☐ Your physician or caregiver _____
- ☐ Your pastor or spiritual adviser _____
- ☐ Other people such as your attorney, hospice care provider or funeral home director _____

Where do you want to be when you die? Who do you want around you?

Many North Dakotans want to die at home.

- ☐ Are there services, such as hospice care, that could help you do that?
- ☐ Who do you want near you when you die? What do you want your loved ones to know?

Who do you want to make decisions for you when you can't?

You should name an *agent*, someone you fully trust, who will help to see that your wishes are carried out.

- ☐ Who will be involved in your care?
- ☐ Have you talked to this person about being your agent if you are unable to make or communicate decisions?
- ☐ Does your agent understand your wishes?
- ☐ Does your agent have a copy of your health care directive?

What kinds of medical treatment do you want or not want? What services will you need to be as comfortable as you want to be?

Discuss specific medical options with your health care provider.

- ☐ How do you feel about relying on machines to stay alive?
- ☐ Do you want everything possible to be done to prolong your life?
- ☐ What kind of quality-of-life measures, such as pain management, do you want?
- ☐ How could hospice care help you and your family at the end of life? How can you access those services when that time comes?

Hospice *care* and pain management

Hospice is a form of end-of-life care that focuses on enhancing the quality of life during a person's last days. Hospice services, including medical, emotional, spiritual and grief care, help you stay as comfortable as possible and allow many people to stay in the familiar surroundings of home.

You will want to consider choosing hospice care:

- When you want the focus to be on your comfort and the needs of you and your family.
- For expert help in pain and symptom management.
- When you want your loved ones to have help caring for you while you are dying.

Hospice care can have a positive impact on you and your loved ones.

When you talk about dying

Tell your loved ones, health care provider, spiritual adviser and others:

- Where do you want to die? Do you want to die at home, if possible?
- Are there hospice services that will help your family care for you? How can they access them?
- What kind of help might your loved ones need, if you are dying at home?
- Do you have questions about pain and symptom management?

One Family's Story

Dr. Hanson already knew Bill's wishes. Suffering from terminal cancer, 80-year-old Bill had told his physician he wanted no heroic measures.

"When the time comes, just let me go," Bill said.

Near the end of Bill's life, though, his children—concerned about dehydration and nutrition—insisted on continuing IVs and oxygen.

"He was unconscious, and there was no hope he would recover," Dr. Hanson recalls. "I felt we were prolonging his suffering."

Unfortunately, the scenario is familiar to people in medicine.

"Every person should really talk over their wishes with their family as well as their physician," states Dr. Hanson. "And if you have a document on hand, you should show it to your family, too. When you have talked to your family members, it really helps them make decisions in the way you would have wished."

Answers to some of *your* questions

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 will determine who may make 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.
- An adult friend or close relative.

No one in a lower category may provide consent for health care if someone in a higher category has refused to consent to the proposed health care.

Before giving consent, an authorized person must determine that you would have consented to such health care if you were able to do so. If the authorized person is unable to make this determination, he or she may only consent to the proposed health care if he or she feels the health care is in your best interests.

What form can I use?

North Dakota has an optional legal form called a health care directive that you can use to help start conversations and clearly set forth your wishes for the health care you receive if you are unable to make or communicate your decisions. This new form became effective on August 1, 2005. You can use a health care directive to:

- Give instructions about any aspect of your health care.
- Choose a person to make health care decisions for you.
- Give instructions about specific medical treatments you do or do not want.
- Give other instructions, including where you wish to die.
- Make an organ or tissue donation.

There are many other health care directive forms available that meet legal requirements in North Dakota. You should use a form with which you are comfortable and that best reflects your values and preferences. For additional options and resources, see the list of national and state resources on pages 13 and 14.

To be legal in North Dakota, a health care directive must:

- Be in writing.
- Be dated.
- State the name of the person to whom it applies.
- Be executed by a person with the capacity to understand, make and communicate decisions.
- Be signed by the person to whom it applies or by another person authorized to sign on behalf of the person to whom it applies.
- Contain verification of the required signature, either by a notary public or by qualified witnesses.
- Include a health care instruction or a power of attorney for health care, or both.

It is not necessary to have an attorney provide or fill out the form. Nor is it necessary to use a pre-printed form at all. Any written statement that meets the requirements stated above can serve as a legal health care directive. However, you should contact an attorney if you have legal questions regarding advance care planning.

What if I already have a directive that I signed before the new law?

The new law creating the optional health care directive became effective August 1, 2005. If you signed a valid health care directive, living will or durable power of attorney before August 1, 2005, that document remains in effect. You may still wish to review the new optional form and consider whether it would provide a better way for you to express your wishes.

When does a health care directive become effective?

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, or the ability to communicate a health care decision.

Should I appoint a health care agent?

While it is not required in a health care directive, you may choose another person to make health care decisions for you in the event that you cannot make decisions for yourself. This person is called a health care agent or proxy. Some documents use the term "durable power of attorney for health care" to describe this appointment. In North Dakota, the person you choose as your agent must be 18 years of age or older, and the agent must accept the appointment in writing. In North Dakota, there are certain people you cannot appoint as an agent. These are your health care provider or long-term care services provider, or a non-relative who is employed by your health care provider or long-term care services provider.

The agent has the authority to make the same kinds of decisions about health care that you could make if you were able. This includes the selection and discharge of health care providers and institutions; 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. You may limit any of these powers or assign additional ones.

Even if you choose a health care agent, you can still give health care instructions in writing that direct your health care agent in making health care decisions.

Talk beforehand to any person you wish to appoint as your health care agent. Find out if the person is willing to accept the responsibility. Tell them about your wishes and preferences for care. Be sure they are willing and able to follow your wishes.

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. Your agent's authority starts only when your doctor certifies in writing that you do not have the capacity to make health care decisions.

If I am being admitted to or am a patient in a hospital, are there any special requirements?

Yes. The appointment of an agent is not effective if, at the time of execution, you are being admitted to or are a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice law in North Dakota signs a statement that they explained the nature and effect of the appointment to you. This statement is not necessary if you acknowledge in writing that you have read a written explanation of the nature and effect of the appointment.

If I am a resident of a long-term care facility, are there any special requirements?

Yes. If you are a resident of a nursing home or other long-term care facility at the time you sign a health care directive that appoints an agent, that appointment will not be effective unless (1) or (2) occurs:

1) One of the following persons signs a statement affirming that they have explained the nature and effect of the appointment of an agent to you: a member of the clergy, an attorney licensed to practice law in North Dakota, a person designated by the Department of Human Services, or a person designated by the district court in the county where your facility is located; ***OR***

2) You state in writing that you have read an explanation of the nature and effect of the appointment of an agent, or a person designated by the hospital or an attorney licensed to practice law in North Dakota signs a statement affirming that they have explained the nature and effect of the appointment to you.

Will my health care directive be honored?

There are several things you can do to help ensure that your directive is understood and honored. Talk to your loved ones and health care professionals about your wishes and preferences and give them a copy of your directive. Keep your directive up to date. Remember, having a plan and talking about that plan with the people who are important to you ensures that you will have a say in the decisions about your care.

What should I do with my health care directive?

You should keep your original document in a place that is easy to find in the event you should become unable to make or communicate decisions. You should provide a copy of your health care directive to your physician 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 and your attorney, if you have one. A copy of a health care directive is generally presumed to be a true and accurate copy of the original.

On page 15,
you will find the North Dakota optional form.

Glossary of commonly used terms

Advance Care Planning: A process of making decisions, in advance, about the care you would want to receive if you are unable to make or communicate decisions for yourself. The process includes conversations with loved ones, health care professionals and others to provide understanding of your values and personal reflections about your wishes and preferences. The process may also include the completion of a health care directive.

Agent: A person appointed to make decisions for someone else, as in a health care directive.

Decision-making Capacity: The ability to understand and appreciate the nature and consequences of one's actions, including the significant benefits and harms of, and reasonable alternatives to, any proposed health care, and the ability to communicate a health care decision.

Durable Power of Attorney for Health Care: One form of health care directive, in which a person appoints an agent to make health care decisions on their behalf, if they are no longer able to make or communicate decisions.

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.

Health Care Directive: A written instrument that includes one or more health care instructions, a durable power of attorney for health care, or both. In North Dakota, state law provides an optional directive form called a "health care directive." Other common terms include "advance directive," a "living will," or "durable power of attorney for health care." These all generally refer to documents in which a person states choices for medical treatment and/or designates who should make treatment choices if the person is unable to make or communicate decisions.

Health Care Instruction: A person's direction concerning a future health care decision, including a written statement of the personal values, preferences, guidelines or directions regarding health care directed to health care professionals, others assisting with health care, family members, an agent, or others.

Living Will: One form of an advance directive in which a person makes a declaration of their wishes regarding health care if they are no longer able to make or communicate decisions.

Patient Self Determination Act: A federal law that requires health care providers to educate their patients and the community on issues related to advance directives. It 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 persons to execute an advance directive.

Resources and Web site links

North Dakota Resources

ND Senior INFO-LINE
Resource Directory
1-800-451-8693
www.ndseniorinfoline.com

ND Health Care Directive Statutes
www.legis.nd.gov/cencode/t23c065.pdf

ND Medical Association
(701)223-9475
www.ndmed.org

ND Long Term Care Association
(701)222-0660
www.ndltca.org/

ND Healthcare Association
(701)224-9732
www.ndha.org

North Dakota Catholic Conference
1-888-419-1237
www.ndcatholic.org/

Blue Cross Blue Shield of North Dakota
(701)282-1100
www.BCBSND.com

ND Association of Home Care
(701)224-1815
www.aptnd.com/ndahc/

Guardian and Protective Services, Inc.
(701)222-8678; 1-888-570-4277
www.gapsinc.org

ND Right to Life
www.ndrl.org

State Bar Association of ND Lawyer
Referral Program/Volunteer Lawyer
(701)255-1406; 1-800-932-8880
www.sband.org

Legal Assistance of ND
1-800-634-5263
www.legalassist.org

Hospice Programs

Ashley Medical Center Hospice
(701)288-3433

Medcenter One Home Health Hospice, Bismarck
(701)323-8400

St. Alexius Hospice, Bismarck
(701)530-4500
Branch office in Harvey

Presentation Hospice, Carrington
(701)652-7229

Mercy Hospice, Devils Lake
(701)662-2131

Heartland Hospice, Dickinson
(701)456-4378

Hospice of the Red River Valley, Fargo
(701)356-1500
www.hrrv.org
Offices in Fargo, Grand Forks, Lisbon, Mayville and Valley City, North Dakota and Detroit Lakes, Minnesota

Altru Home Services Hospice,
Grand Forks
(701)780-5258
Offices in Park River, Grafton and McVille

Sakakawea Hospice, Hazen
(701)748-2041

Dakota Prairie Helping Hands, Hettinger
(701)567-4975

Jamestown Hospital Hospice
(701)252-1050

Linton Hospital Hospice
(701)254-4511

Trinity Hospitals – Hospice, Minot
(701)857-5083

Heart of America Hospice, Rugby
(701)776-5261

Mercy Hospice, Williston
(701)774-7430

Advance Directives

ing With Dignity (Five Wishes)
888-5-WISHES
www.agingwithdignity.org

Altru Health System (ND and MN Forms), Grand Forks
http://www.altru.org/patientinformation/advancedirectives.htm

Dakota Clinic / Innovis Health, Fargo
www.dakotaclinic.com

Medcenter One Health Systems, Bismarck
http://www.medcenterone.com

MeritCare Health System, Fargo
(ND and MN Forms)
http://www.meritcare.com

St. Alexius / Primecare, Bismarck
http://www.st.alexius.org/

Trinity Health, Minot
http://trinity.minot.org

West River Health Services, Hettinger
tp://www.wrhs.com

Minnesota Hospice Organization
www.mnhospice.org

American Health Care Association
www.longtermcareliving.com

National Hospice and Palliative Care Organization
(Caring Connections)
1-800-658-8898
www.nhpco.org

Midwest Bioethics Center
(Caring Conversations)
1-800-344-3829
www.midbio.org

AARP
1-888-687-2277
www.aarp.org/endoflife

American Medical Association
www.ama-assn.org/ama/pub/category/14894.html

American Bar Association
Toolkit for Advance Care Planning
ww.abanet.org/aging/toolkit/home.html

American Hospital Association
www.putitinwriting.org

Pain Management

Pain and Policy Study Group
www.medsch.wisc.edu/painpolicy

American Pain Foundation
1-888-615-PAIN(7246)
www.painfoundation.org

HEALTH CARE DIRECTIVE

I, _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time and I know I do not have to appoint an agent or an alternate agent.)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. *None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.*

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change these choices.)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service or procedures. This includes deciding whether to stop or not start health care that is keeping me, or might keep me, alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I **DO NOT** want my health care agent to have a power listed above in (A) through (D) OR if I want to **LIMIT** any power in (A) through (D), I MUST say that here:

_____

_____

_____

_____

My health care agent is **NOT** automatically given the powers listed below in (1) and (2). If I **WANT** my agent to have any of the powers in (1) and (2), I must **INITIAL** the line in front of the power; then my agent WILL HAVE that power.

____(1) To decide whether to donate any parts of my body, including organs, tissues and eyes, when I die.

____(2) To decide what will happen to my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

_____

_____

_____

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you **MUST** complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank.)

I want you to know these things about me to help you make decisions about my health care.

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank.)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics and blood transfusions. Most medical treatments can be tried for a while and then stopped, if they do not help.

I have these views about my health care in these situations:

(**Note**: You can discuss general feelings, specific treatments, or leave any of them blank.)

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

_____

_____

_____

_____

If I were dying and unable to make and communicate health care decisions for myself, I would want:

_____

_____

_____

_____

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

_____

_____

_____

_____

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

_____

_____

_____

_____

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief, if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following *(initial one statement)*:

[ ] Any needed organs and tissue.

[ ] Only the following organs and tissue: _____

PART IV: MAKING THE DOCUMENT LEGAL

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

I revoke any prior health care directive. _____
(you sign here)

I sign my name to this Health Care Directive Form on _____ (date) at _____ (city), _____ (state)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

OPTION 1: NOTARY PUBLIC

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

_____
(Signature of Notary Public)

My commission expires _____, 20___.

OPTION 2: TWO WITNESSES

WITNESS ONE:

(1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].

I certify that the information in (1) through (3) is true and correct.

_____

(Signature of Witness One)

_____

_____

(Address)

WITNESS TWO:

(1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].

I certify that the information in (1) through (3) is true and correct.

_____

(Signature of Witness Two)

_____

_____

(Address)

ACCEPTANCE OF APPOINTMENT OF HEALTH CARE AGENT

I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated.

I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this appointment at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's physician.

_____

(Signature of agent/date)

_____

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

(Only necessary if you are a resident of a long-term care facility or are a hospital patient or person being admitted to a hospital. The principal's statement is an alternative to the explanation required on page 23.)

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this day of _____, 20___ .

_____

(you sign here)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY

(Only necessary if you are a resident of a long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if you have read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement on page 22.)

I have explained the nature and effect of this health care directive to _____
(Name of principal)

who signed this document and who is a resident of _____.
(Name and city of facility)

I am *(check one of the following)*:

[ ] A recognized member of the clergy.
[ ] An attorney licensed to practice in North Dakota.
[ ] A person designated by the district court for the county in which the above-named facility is located.
[ ] A person designated by the North Dakota Department of Human Services.

Dated on _____, 20___. _____
(Signature)

STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL

(Only necessary if you are a patient in a hospital or are being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if you have read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement on page 22.)

I have explained the nature and effect of this health care directive to _____
(Name of principal)

who signed this document and who is a patient or is being admitted as a patient of

_____.
(Name and city of hospital)

I am *(check one of the following)*:

[ ] An attorney licensed to practice in North Dakota.
[ ] A person designated by the hospital to explain the health care directive.

Dated on _____, 20___. _____
(Signature)

Your Life.
Your Choices.

Education. Career. Marriage. Retirement. All your life you make choices that help define who you are. But who will make choices for you if you become unable? Your loved ones? Strangers? The state?

Don't leave your final choices to anyone else. Use this guide to begin conversations about your future health care wishes and to put your conclusions in writing.

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Att #5
2-6-7

Proposed Amendments to SB 2308

Page 1, line 12, replace "or when the principal retains the capacity to make health care" with ", unless otherwise specified in the health care directive"

Page 1, line 13, remove "decisions"

Page 2, line 3, remove "for a principal in the case of lack of capacity to make health"

Page 2, line 4, remove "care decisions"

Page 2, after line 8, insert:

"3. Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in the same manner as a health care directive may be revoked under section 23-06.5-07."

Page 2, line 9, overstrike "4." and insert thereafter "5."

Renumber accordingly

AH #6
2-6-07

TESTIMONY OF WILLIAM L. GUY III
IN SUPPORT OF
SENATE BILL NO. 2308

Mr. Chairman and members of the Committee, my name is William L. Guy III. I live in Fargo and work as an estate planning and business succession attorney in the Moorhead office of the Vogel Law Firm. However, I am testifying in support of Senate Bill No. 2308 in my individual capacity.

As you may recall, when the 2005 Legislature authorized health care directives by enacting Chapter 23-06.5, the legislation in question was patterned, almost verbatim, after its Minnesota counterpart (Minnesota statues Chapter 145C). One of the very few items that was not carried over from the Minnesota statute in 2005 is the ability of the principal to authorize his or her healthcare agent to make healthcare decisions on behalf of the principal *whether or not the principal retains the capacity to make healthcare decisions for himself or herself.*

Thus, in North Dakota at the current time, a health care directive lies dormant until it has been certified in writing by the principals attending physician "...that the principal lacks capacity to make healthcare decisions...". This omission from Chapter 23-06.5 seriously diminishes the value of health care directives to the citizens of North Dakota.

A health care directive (or health care power of attorney) is really just a special or limited durable power of attorney that deals with the medical issues of the principal. Chapter 30.1-30 contains no such limitation with respect to a durable power of attorney for financial matters. Durable powers of attorney for financial matters (under Chapter 30.1-20) may be effective immediately upon execution or may be a "springing" power of attorney that is activated only in the event of the incapacity of the principal. In my 30 years of practice in the trust and estate area, I have seen very few springing powers of attorney for financial matters. Generally speaking individuals who designate someone to act on their behalf trust that person to act appropriately in any given situation. In fact I tell clients that if they do not have this level of trust in the person that they designate as their agent under a power of attorney for financial matters then they have probably

chosen the wrong person.

I believe that the same principles apply to the health care directive. It has been my experience, both personally and professionally, that often a seriously ill patient who still retains the capacity to make their own healthcare decisions will indicate a desire that the healthcare agent make those decisions on behalf of the patient.

Thus, this legislation would harmonize the provisions that 23-06.5 with the reality of the day-to-day utilization of these documents by giving the citizens of North Dakota the option of a health care directive that is effective immediately or one that "springs" into effect upon the disability of the principal.

I strongly urge passage of Senate Bill No. 2308. Thank you.

Additional Test. Submitted

NDLA, S JUD

From: David Boeck
Sent: Tuesday, January 30, 2007 3:33 PM
To: NDLA, S JUD
Subject: SB 2308

TO: Committee Clerk, Senate Judiciary Committee

I attended the hearing this morning on SB 2308. I got the impression that the Committee would recommend "do not pass." I could agree with that decision.

I think Mr. Dobson and/or Mr. Levi were going to submit more materials to the Committee. If they submit more material, please let me know. I would like to be there to comment any material they submit. [While Mr. Dobson and Mr. Levi are licensed attorneys, I believe neither is engaged in the daily practice of law. I practice law exclusively for people with disabilities and can offer a different perspective that would be useful to the Committee.]

Thank you.

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Protection & Advocacy Project
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IN SUPPORT OF
SENATE BILL NO. 2308

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experience, both personally and professionally, that often a seriously ill patient who still retains the capacity to make their own healthcare decisions will indicate a desire that the healthcare agent make those decisions on behalf of the patient.

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I strongly urge passage of Senate Bill No. 2308. Thank you.

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Testimony on Engrossed SB 2308
House Human Services Committee
March 14, 2007

The 2005 ND Legislative Assembly combined the prior living will and durable power of attorney for healthcare, including the optional form, into one health care directive.

SB 2308 was suggested by a Fargo attorney – William Guy (testimony included) to allow the principal of a health care directive to authorize his or her agent to make health care decisions on behalf of the principal whether or not the principal retains the capacity to make health care decisions for himself or herself. Examples include a seriously-ill individual who still retains capacity to make decisions but wishes that his or her agent make decisions.

This provision for allowing an individual who appoints an agent in a health care directive to authorize the agent to make health care decisions even though the individual still has capacity to make his or her own decisions:

> -Is provided in Minnesota law Chapter 145C.05.
> -Is an original part of the Uniform Health-Care Decisions Act approved and recommended by the National Conference of Commissioners on Uniform State Laws in 1993 and approved by the American Bar Association in 1994. (Several states adopted portions or versions of the Uniform Act. ND did not because our living will and durable power of attorney for health care were quite new at the time.)

There is a comment in the 1993 Uniform Act relating to this provision that states:
...

> Subsection (c) provides that the authority of the agent to make health-care decisions ordinarily does not become effective until the principal is determined to lack capacity and ceases to be effective should the principal recover capacity. A principal may provide, however, that the authority of the agent becomes effective immediately or upon the happening of some event other than the loss of capacity but may do so only by an express provision in the power of attorney. For example, a mother who does not want to make her own health-care decisions but prefers that her daughter make them for her may specify that the daughter as agent is to have authority to make health-care decisions immediately. The mother in that circumstance retains the right to later revoke the power of attorney as provided in section 3.

Our NDMA Commission on Ethics reviewed this possibility and determined that it is an option some people might wish to include in their health care directive and did not find it problematic.

Our current law in section 23-06.5-07 contains revocation provisions available to an individual who would wish to revoke the agency or health care directive at a later time - orally or in writing or by any other act indicating intent to revoke; or through execution of a new health care directive.