

Frequently Asked Questions Living Will and Durable Power of Attorney for Health Care

Adapted—Idaho Office of Attorney General*

Where do I obtain a living will and durable power of attorney for health care form?

A living will and durable power of attorney for health care form can be copied from Appendix B. You may also obtain a form from your local hospital, an attorney, or from the Idaho Secretary of State or Attorney General Web site. (See "Advance Care Planning Resources" in Appendix F.)

When does a living will take effect?

Your living will takes effect when one medical doctor certifies that you have a terminal and incurable illness/condition or you are permanently unconscious or in a persistent vegetative state.

When does a durable power of attorney for health care take effect?

Although both a living will and durable power of attorney for health care are available on the same form, they have separate legal significance. The durable power of attorney for health care takes effect when you are no longer able to communicate your wishes for care with your health care provider.

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

No. Medical personnel will withhold treatment if there is a Do Not Resuscitate (DNR) Order issued by your physician. In Idaho, DNR Orders are included in the Physician Orders for Scope of Treatment (POST). Paramedics will comply with the instructions provided on a POST form but will not generally follow directives in a living will.

Am I eligible to have an advance directive (living will and durable power of attorney for health care)?

Anyone over the age of 18 who is of sound mind and acting of his or her own free will can complete an advance directive.

*Used with permission. Idaho Office of Attorney General.

http://www2.state.id.us/ag/living_wills/index.htm. Accessed 9-1-2008

What is the difference between a living will and an ordinary will?

A living will specifies health care wishes. An ordinary will deals with the disposition of property upon your death.

What life support choices do I have within my living will?

There are three different choices you can make in regards to life-sustaining measures. No matter which of these three options you choose, you will always be provided any medical treatment or care that may be required to you free of pain or distress.

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

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

Option 3: You wish to receive comfort care and have all artificial life-sustaining treatment, including artificial nutrition and hydration, withheld.

In addition to these three choices, you may include an additional statement of desires, special provisions, and limitations to your living will document. (See Appendix B, section 4, page 6.)

What if I am pregnant when I become incapacitated?

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

What if I change my mind about my options?

You can make a new advance directive at any time while you are of sound mind and acting of your own free will. You may also revoke or terminate an existing advance directive at any time without creating a new one.

Who can I appoint to be my health care power of attorney in the durable power of attorney for health care?

The choice of an individual to serve as your health care power of attorney is a very important one. You should discuss your wishes at length with the individual you plan to appoint. Make sure the person you plan to appoint is comfortable with the directives in your living will and is willing and able to carry out your wishes. It is also recommended that you discuss your options and wishes with your family, physicians, attorney, and clergy/spiritual leader.

None of the following people may be designated as your health care power of attorney:

1. Your doctor or other treating health care provider
2. A nonrelative employee of a hospital, your doctor, or other treating health care provider
3. An operator of a nursing home, assisted living facility, or community care facility
4. A nonrelative employee of a nursing home, assisted living facility, or community care facility.

When does my health care power of attorney's responsibilities and authority begin?

The only time your health care power of attorney will be called on to make decisions for you is when health care decisions need to be made and you are unable to communicate your wishes for yourself. (See Section 3.)

Must an advance directive be witnessed or notarized to be valid?

No. As a result of changes to Idaho law made by the 2005 legislature, it is no longer necessary to have either a witness to your execution of a living will and/or durable power of attorney for health care nor to have your signature notarized. Having your signature witnessed or notarized is certainly permissible and is a good idea, but it is not necessary.

Do I need a lawyer to draft an advance directive for me?

No. The assistance of a lawyer in drafting any legal document is always a good idea, but it is not necessary. An advance directive document (living will and durable power of attorney for health care) is of great importance with significant consequences. Discuss your wishes and what you want to have included in your living will with people close to you, such as your family, trusted friends, your physician, your clergy/spiritual leader, and your lawyer.

What if I already had an advance directive before the 2005 legislation?

So long as the advance directive was in compliance with the existing law at the time it was executed or if it substantially conforms to the new law, it is valid. It is recommended that you review your advance directive document and confirm that it substantially meets the requirements of the new law. The living will and durable power of attorney for health care form located in Appendix B conforms to the 2005 Idaho legislation.

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

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

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

Yes. Idaho Code § 39-4504* provides a list, in order of authorization, that allows for an individual to deny, or consent to care, for a second individual who has been rendered unable to communicate. However, the issue is always made more complex in the absence of a living will or other written directive from you. (See "Persons who may give consent" and "Persons who may NOT give consent" on the following page.)

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

You may list alternates should the primary executor be unable to communicate your desires. If, for some reason, none of the executors listed in your advance directive are able to communicate your desires, then the authorization will pass on to the next available individual as listed in Idaho Code § 39-4504*. (See Appendix B, section 7, page 10.)

What if I want to replace or remove my advance directive from the Idaho Health Care Directive Registry?

You can change or remove your advance directive if it is filed in the Idaho Health Care Directive Registry. Just complete a new Registry Registration Form and check the appropriate box before sending it to the Office of the Secretary of State. Attach your new advance directive to the registration form if you want to replace your existing form. (See Appendix C.)

NOTE: The personal revocation of your advance directive (living will, durable power of attorney for health care, and/or POST) is effective immediately and is not time-delayed by the submission and acceptance of a request to remove the advance directive from the Idaho health care directive registry.

For more information about advance directives in Idaho, call the Idaho Attorney General's Office: 208-334-2400.

PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS

- (a) The legal guardian of such person;
- (b) The person named in a "living will and durable power of attorney for health care"