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CONSUMERS' GUIDE FOR PLANNING AHEAD: THE HEALTH CARE POWER OF ATTORNEY AND THE LIVING WILL

AN INFORMATION PAPER

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PREFACE

The U.S. Senate Special Committee on Aging has prepared this guide to assist seniors and their advocates in planning ahead for a disabling accident or illness. Although the importance of making forward-looking health care decisions has become more and more self-evident, most individuals have left no written instructions to aid their doctors or family members.

Planning ahead for the possibility of a disabling accident or illness is a highly personal matter, but it is necessary to better assure that individuals' wishes regarding health care be carried out when they are no longer able to make those decisions for themselves.

In presenting this document, we hope to make seniors and their advocates across the Nation aware of various ways of expressing their wishes about Health Care decisions, in the event that they become disabled and unable to make these decisions themselves.

The Special Committee wishes to recognize the contributions of Kenneth Thomas, American Law Division, Congressional Research Service, to the writing of this report. The Committee also wishes to thank Portia Porter Mittelman, Chris Jennings, Anna Kindermann, Nathan Fretz, and Daniel Tuite of the Committee staff for their contributions to the development of this print.

DAVID PRYOR,
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CONTENTS

	Page
Preface	III
Contents	V
Introduction	1
Types of directives	2
A. The living will	2
B. Durable power of attorney for health care	2
Complying with State statutes governing advance directives	4
A. The living will	4
1. Competency	4
2. Form	5
3. Witnessing requirements	5
4. Enforcement of a living will	6
5. Duration	7
B. Durable power of attorney for health care	8
1. Competency	8
2. Form	9
3. Witnessing requirements	9
4. Duration	9
5. Scope of authority	10
Appendix—State-by-State analysis of statutes authorizing advance directives	11
Glossary	57
Additional information	57

CONSUMERS' GUIDE FOR PLANNING AHEAD: THE HEALTH CARE POWER OF ATTORNEY AND THE LIVING WILL

INTRODUCTION

In the wake of the 1990 Supreme Court decision in *Cruzan* v. *Director, Missouri Department of Health,* the importance of planning ahead for a disabling illness has become a necessary, but often overlooked, aspect of our lives. The *Cruzan* decision recognized a constitutional "right to die" so long as an individual leaves explicit instructions regarding his or her medical treatment. Unfortunately, most individuals have left no written instructions to aid their physicians or family in reaching these crucial decisions.

Recognizing the need to increase awareness of an individual's right to dictate his or her future medical treatment through written instructions, Congress passed the Patient Self-Determination Act (PSDA). In accordance with this legislation, which was included in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–964), all health care institutions serving Medicare or Medicaid patients are now required to provide new patients with written information describing the patient's rights under State law to make decisions about medical care, including the right to execute a living will or a durable power of attorney for health care. These documents are generally referred to as advance medical directives.

This information paper is designed to familiarize individuals with two options for medical decisionmaking: (1) The durable power of attorney for health care, and (2) the living will. The report will describe these directives, propose advantages and disadvantages of each, and provide drafting suggestions. In addition, since the laws of each State vary with respect to advance directives, a State-by-State analysis of living wills and durable powers of attorney for health care has been included for your reference.

TYPES OF DIRECTIVES

A. THE LIVING WILL

Most States have statutes which authorize an individual to execute a written statement of his/her wishes regarding the withholding or withdrawal of life-sustaining procedures. Such statements are to be followed when the individual is unable to provide such instructions. A living will (sometimes known as a treatment directive) is generally applicable only when the individual becomes terminally ill and death is imminent, and is limited to decisions about life-sustaining procedures in the event of terminal illness.

Because it is difficult to predict all possible medical circumstances that may arise, a living will may be rendered inapplicable. In addition, a living will drafted in one State may not be recognized if implementation is sought in another State.

When properly executed according to State law, however, a living will should be easily enforceable in that State. Further, States with living will statutes provide protections for life insurance benefits which might otherwise be jeopardized.

B. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

The durable power of attorney for health care (frequently referred to as an appointment directive) is a document which directs the appointment of another individual, agent, or proxy (usually, but not always, a spouse or another family member) to make medical decisions for one if, and only if, the individual becomes incapacitated and cannot make decisions for him/herself. The appointment can be given to any competent adult, whether they be a family member, a friend, or another person.

The health care power of attorney offers a number of advantages over a living will. An individual who delegates health care decisions under a power of attorney need not anticipate every possible medical situation

which may arise. The health care power of attorney also allows the medical treatment to be deferred until such time as a particular medical situation has occurred, allowing the appointed decisionmaker an opportunity to evaluate the specific details of the medical situation before making a decision. In addition, a health care power of attorney may also contain directions to the appointed agent describing what medical treatment should or should not be used.

Although a health care power of attorney affords more flexibility than a living will, it does have some disadvantages. For example, providers may be reluctant to follow instructions of a designated agent. In addition, a health care power of attorney drafted in accordance with one's State law may not be valid in another State. There is also no formal system for monitoring agent decisions. This makes it especially important to carefully choose the person (or agent) who will carry out the advance directive.

COMPLYING WITH STATE STATUTES GOVERNING ADVANCE DIRECTIVES

A. The Living Will

Most States and the District of Columbia have statutes which provide for the creation of a living will (treatment directive). These statutes provide a framework by which an individual may express his or her wishes regarding the withholding/withdrawing of life-sustaining measures when it is clear that such procedures would serve only to postpone death.

All of the living will statutes specify what persons have the right to execute such a document, and the statutes generally include a model form to assist in drafting. In addition, these statutes generally include procedural requirements, such as the presence of a witness(es), to assure that the document represents the true desires of the individual.

Requirements of the different statutes may vary. The following sections will examine the range of requirements imposed by State laws authorizing treatment directives.

1. COMPETENCY

Most State statutes require that a person be "competent" or of "sound mind" in order to execute a living will. For the States offering a model form, a statement of competency is generally included. In addition, the model forms generally provide that witnesses who can affirm the competency of the declarant must sign the document.

Some State statutes provide for the drafting of a living will on behalf of incompetent adults. Such statutes often provide a list of individuals who are authorized to execute a living will on behalf of the incompetent individual. The statutes generally specify the order in which persons are authorized to execute a treatment directive on behalf of an incompetent individual; persons later in the order are only authorized to draft a

treatment directive if persons listed previously are unavailable for consultation.

2. FORM

The majority of States with living will statutes provide a model document which may be followed. The model documents are standardized forms with blanks provided for the declarant's and witnesses' signatures. The witnesses should be present when the declarant signs the living will so that they can later confirm that the signature of the declarant is an original. Witnesses may also be called upon to comment about the circumstances surrounding the signing, especially if there is concern that the declarant was coerced into signing the document.

State statutes vary regarding the use of living wills which are not in the same form as the model provided. Some statutes require that the same form be used; others allow for modifications; and still others offer the model form only as a suggested guide. If an individual is in a State which provides a model form, it is a good idea for him/her to adhere to the model as closely as possible in order to prevent later objections to the implementation of the directive. Any additional directions an individual would like to specify should be written as an addendum to the model form to ensure that the provisions of the model treatment directive are enforced should the additional provisions be found invalid. To avoid the possibility of additional directions being found invalid, it is also wise to make sure that these provisions are written, signed, and witnessed in accordance with the State requirements.

3. WITNESSING REQUIREMENTS

The majority of States require that, two adult witnesses sign a treatment directive. To avoid the possibility of coercion, certain persons who might benefit from the declarant's illness or accident are excluded from being witnesses. For example, State statutes often exclude as witnesses the following: (1) Persons related by blood or marriage, including spouses, parents, or children; (2) persons who, at the time of execution stand to inherit from the declarant's estate by law or through the declarant's will; (3) persons who would have a claim against the declarant's estate, such as an individual to

whom the declarant owes money; (4) persons who are financially responsible for the medical treatment of the declarant; or less often (5) beneficiaries of life insurance policies taken out on the declarant. In addition, attending physicians, their employees, employees of health care facilities where declarants are located, and others involved with the declarant's care are generally not allowed to act as witnesses.

Some State statutes make special provisions for particularly vulnerable individuals such as those residing in nursing homes or hospitals. Such provisions require that, in addition to witnesses being present to observe the execution of a treatment directive, an official of the institution where the patient is located must also be present. The same individual is frequently required to act as a witness to the living will. In other States, a specially appointed State official is made available to observe such proceedings, and to protect the rights of the declarant.

In order to avoid later challenges to a living will, the declarant should always attempt to find witnesses who are not relatives, have no financial connections to him/her, and have no relationship to possible medical treatment, i.e., friends, co-workers, and neighbors. The declarant should avoid persons who are not familiar with his/her wishes, or persons who might not be available in the event that the validity of the directive is challenged.

4. ENFORCEMENT OF A LIVING WILL

State statutes authorizing living wills generally provide for the withdrawal of medical treatment only under certain circumstances. Most statutes require that the declarant be diagnosed to be in a "terminal condition," and no longer able to communicate with persons around them. In addition, the majority of statutes only provide for withdrawal of "life-sustaining," "life-prolonging," or similar types of medical treatment.

Most statutes specifically define the phrase "terminal condition." In the majority of States, the phrase is defined to mean that the condition will lead to death even if medical treatment is applied. Some statutes also provide that the condition must be "incurable" or "irreversible"; while others set limits under which death must occur, either a specific number of weeks or by re-

quiring that death be "imminent." Although the majority of these statutes appear to apply only to dying patients, some States provide for treatment directives when a patient is in a persistent vegetative state or is permanently unconscious.

State statutes frequently specify what type of medical treatment may be withdrawn from a patient. Most living wills direct that only "life-sustaining" or "life-prolonging" treatments should be withdrawn. These are generally defined as those treatments which are used to artificially prolong the dying process, but which will not ultimately prevent the patient from dying. In addition, some States forbid the withdrawal of certain treatments, such as artificial nutrition and hydration. Further, almost all the statutes provide that comfort care and pain-relieving treatment should not be withdrawn.

With respect to the impact of a treatment directive on insurance and legal liability, all statutes either specifically provide that executing such documents will not affect the provision of life insurance, or state that the withdrawal of medical treatment in accordance with a treatment directive shall not be considered suicide for any purpose. Many of the statutes also provide that individuals may not be required to execute a treatment directive in order to obtain health care insurance.

Generally, health care providers and others involved with the execution of a treatment directive are protected by State statutes so that they will incur no criminal or civil liability if they follow the directions contained in a living will.

5. DURATION

Some statutes provide that a living will does not take effect until it has been delivered to certain individuals. Generally, a copy must be provided to the physician responsible for the patient. A few States also require that the document be filed with a State agency. For this reason the declarant should provide copies of the treatment directive to all persons most likely to be involved with his/her treatment, e.g., the attending physician. In addition, he/she should be sure to distribute copies to friends, family, and others who might be in a position to bring the document to the attention of the attending physician, as well as retain a copy for their own

records, alerting others to where the document can be found.

A properly executed treatment directive will remain in force throughout the declarant's lifetime unless revoked. Some States, however, impose a time limitation on how long a treatment directive is effective without being re-executed.

Most of the statutes specifically provide for methods of revoking a living will. The methods of revocation vary and include any expression of the declarant's intent to revoke.

B. Durable Power of Attorney for Health Care

Most States and the District of Columbia have statutes which authorize appointment directives. Some of these statutes specifically provide that the power to make decisions regarding life-sustaining treatments may be given to another. Other statutes allow the appointment of a power of attorney for all purposes, but are silent as to whether the authorization would extend to these types of decisions. A few statutes specifically restrict the use of the statutes for these purposes.

Like treatment directive statutes, statutes authorizing appointment directives usually include certain procedural requirements, such as the presence of witnesses, to assure that the document represents the declarant's true desires.

Requirements of the different statutes may vary. The following sections will examine the range of requirements imposed by State laws governing appointment directives.

1. COMPETENCY

As with living wills, many durable power of attorney statutes require that a person must be "competent" or of "sound mind" to execute an appointment directive. Other statutes do not specify these requirements, but a statement of competency is sometimes included in the model appointment directive. Model documents also generally provide that the appointment directive be signed by witnesses who can affirm the declarant's competency. It is advisable, therefore, to choose witnesses who are well acquainted with the declarant so that they might later be available to establish the competency of

the declarant at the time of execution, should that question arise.

2. FORM

Only some of the States that have authorizing statutes for appointment directives provide model forms which may be followed. These models are standardized forms with blanks for relevant information and the declarant's and witnesses' signatures. In addition, some model forms provide a blank space in which the declarant can indicate any desired treatment about which they would like the appointed decisionmaker to be aware.

Like the treatment directives, States vary as to whether an appointment directive may be used which is not in the same form as the model provided. To prevent later objections to the implementation of the appointment directive, it is always wise to adhere as closely as possible to the model form provided. Any modification should be treated with the formalities required by the statute.

3. WITNESSING REQUIREMENTS

The majority of States require that two adult witnesses or a notary public sign an appointment directive. Some States limit who may act as a witness, generally prohibiting this role to the appointed decisionmaker or persons who will benefit from a declarant's death. Persons who are involved with the declarant's care are usually excluded as well. It is advisable to find witnesses who are not relatives, have no financial connections to the declarant, and have no relationship to possible medical treatment in order to avoid later challenges to the appointment directive.

4. DURATION

As with the treatment directive, copies of an appointment directive should be provided to the declarant's physician. A few States require that the document be filed with the court. Copies should also be distributed to friends, family, and others who might be in a position to bring the document to the attention of the declarant's treating physician. In addition, a declarant should keep a copy of the document for his own records, alerting

other responsible persons to where the document is stored.

Generally, an executed appointment directive will remain in force throughout the life of the declarant unless revoked. Some States, however, impose a time limitation on how long an appointment directive is effective without being re-executed. In addition, most States provide for methods of revocation which are usually broad, and include any manifestations by the declarant of the desire to revoke.

5. SCOPE OF AUTHORITY

The scope of authority of an appointed decisionmaker under an appointment directive is usually established by the terms of the document granting such power, but may also be dictated by statute. For example, one State allows an appointed decisionmaker to enforce an appointment directive, but does not give him/her independent power to make this decision. Further, some statutes require the specific delegation of health care decisions, while others contain such directions in a standard form. Generally, the power of the appointed decisionmaker may not be broader than that of the declarant. Thus, the same legal limits which may restrict the individual in the withdrawal of health care will apply to an appointed decisionmaker.

APPENDIX

STATE-BY-STATE ANALYSIS OF STATUTES AUTHORIZING ADVANCE DIRECTIVES

As of this writing, 47 States and the District of Columbia have living will statutes. (Massachusetts, Michigan, and New York do not have such statutes.) In addition, a majority of States and the District of Columbia have durable power of attorney laws which specifically permit agents to make medical decisions on behalf of the declarant. Other States have general power of attorney laws which do not specify an agent's ability to make medical decisions on behalf of the declarant. The following presents highlights of those statutes which authorize advance directives. It is meant to provide general guidance and should not be followed without consulting a legal and/or medical professional. This is especially important to remember, given the recent flurry of action and change in this area of the law.

Alabama

a. *Living Will.*—The Alabama Natural Death Act, Ala. Code §§ 22–8A–1 to –10 (1990).

- —Provides for a living will which allows the withdrawal of medical treatment (that which serves only to prolong the dying process and not ultimately prevent death from occurring) only when a diagnosis has been made that the declarant is "terminally ill or injured"; death must be "imminent" or the individual's condition "hopeless."
- —Living will should follow the model provided by statute, but more specific directions may be included.
- —Individual who executes the document must be of "sound mind."
- —Document must be signed by two witnesses, 19 years of age or older. To avoid any conflict of interest, these witnesses may not sign on behalf of and

58–174 - 92 - 2

at the direction of the declarant, may not be related to the declarant by blood or marriage, may not be eligible to inherit from the declarant, nor may they be directly responsible for the declarant's care.

b. Health Care Power of Attorney.—The Alabama Durable Power of Attorney Act, Ala. Code §§ 26-1-2 (1986).

—While the statute does not specifically provide for the appointed agent to make medical decisions, it does not preclude this type of authority.

Alaska

a. Living Will.—The Alaska Rights of the Terminally Ill Act, Alaska Stat. §§ 18.12.010 to .100 (1986).

—Allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed with a "terminal condition"; death must be expected to occur within a relatively short time.

—Living will need not follow the model provided by statute.

—A declaration executed in another State which complies with the law of that jurisdiction will be recognized by Alaska.

b. Health Care Power of Attorney.—The Alaska Statutory Form Power of Attorney Act, Alaska Stat. §§ 13.26.332 (Cum. Supp. 1990).

—Provides for a power of attorney through which an individual may designate another to make decisions regarding health care services on his/her behalf should he/she become incompetent.

—The appointed decisionmaker may not authorize the withdrawal of life-sustaining procedures unless enforcing a properly executed treatment directive under the living will statute.

Arizona

a. Living Will.—The Arizona Medical Treatment Decisions Act, Ariz. Rev. Stat. Ann. §§ 36-3201 to -3202 (1986).

—Provides for a living will which allows for the withdrawal of medical treatment (only that which would prolong the dying process) only when the declarant has been diagnosed as in a "terminal condi-

tion"; the condition must be "incurable" or "irreversible."

—Living will must substantially follow the model provided by statute, but more specific directions may be included.

—Individual who executes the document must be of "sound mind," and this must be confirmed by two witnesses who also sign the document. The witnesses must be at least 18 years old, unrelated by blood or marriage to the declarant, not eligible to inherit from the declarant's estate, not financially responsible for the declarant's medical expenses, and may not have a claim against the declarant's estate.

b. Health Care Power of Attorney.—The Arizona Powers of Attorney Act, Ariz. Rev. Stat. Ann. § 14-5501 to -5502 (Supp. 1989).

—Provides for a general power of attorney, through which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.

—While the statute does not specifically provide for the appointed agent to make medical decisions, it does not preclude such authority.

Arkansas

a. Living Will.—The Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, Ark. Stat. Ann. §§ 20-17-201 to 218 (1989 Supp.).

—Provides for a living will which allows for the withdrawal of medical treatment (that which would only prolong the dying process or would maintain the declarant in a state of permanent unconsciousness) when the declarant has been diagnosed as in a "terminal condition"; the condition must be "incurable" and "irreversible," and death must be expected to occur in a relatively short time.

—Living will need not follow the model directive provided by statute.

—Individual executing the document must be of "sound mind."

—Document must be signed by two witnesses who are at least 18 years of age.

—Can be prepared for an individual who is not able to make health care decisions by the following individuals, with the restriction that a person later on the list can only make a decision if the persons prior to them on the list are not reasonably available for consultation: (1) legal guardian of the individual; (2) the individual's spouse; (3) the individual's adult child, or if there is more than one, then a majority of the individual's adult children participating in the decision; (4) the individual's adult sibling, or, if there is more than one, then a majority of the individual's adult siblings participating in the decision; (5) persons standing in loco parentis to the individual; and (6) a majority of the individual's adult heirs at law who participate in the decision.

b. Health Care Proxy.—The Arkansas Rights of the Terminally Ill or Permanently Unconscious Act provides for a directive which appoints a health care agent to make medical decisions on behalf of the declarant.

California

a. Living Will.—The California Natural Death Act, Cal. Health and Safety Code §§ 7185-7195 (1991).

—Provides for a living will which allows for the withdrawal of medical treatment (that which would only prolong the dying process; death must be imminent) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable, and death would occur regardless of the use of medical treatment.

—Living will must follow the model provided by statute.

—Individual executing document must be of "sound mind," and this must be confirmed by two witnesses who also must sign the document. These witnesses may not be related to the individual executing the directive by either blood or marriage, are not eligible to inherit from the person's estate, are not financially responsible for the individual's medical expenses, and do not have a claim against the estate. In addition, an attending physician, his employee, or an employee of a health facility may not be witnesses.

—If the individual is in a specified category of nursing facility, one of the witnesses for the directive must be a patient advocate or ombudsman designated by the State Department of Aging for this purpose.
—Remains effective for 5 years following the date of execution.

b. Health Care Power of Attorney.—The California Statutory Form Durable Power of Attorney for Health Care, Cal. Civil Code §§ 2430–2444 (West 1991 Cum. Supp.).

—Durable power of attorney must follow the model provided by statute.
—Must be notarized by a notary public, and signed by two witnesses, who may not be a health care provider, their employees, the appointed decision-maker, or the employees or operator of a community care or residential care facility. In addition, at least one of the witnesses may not be related by blood or marriage, or entitled to inherit from the declarant.
—A power of attorney for an individual who is in a skilled nursing facility must be signed by a patient advocate or ombudsman.
—Prohibits appointment of an individual's health care provider, the provider's employees, or any employees of residential or community care facilities as agent unless such person is related by blood or marriage to the individual.
—Prohibits appointment of the conservator of the individual's estate as agent.
—Document remains valid for 7 years from the date of execution.

Colorado

a. Living Will.—The Colorado Medical Treatment Decision Act, Colo. Rev. Stat. § 15–18–101 to 113 (1987 and 1990 Cum. Supp.).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable and irreversible.

—Living will need not follow the two models provided by statute: (1) a model for withholding the life-sustaining medical treatment; and (2) a model for withholding of artificial nutrition and hydration.
—Individual who executes the living will must be competent.
—Declaration should be signed by two witnesses who are unrelated to the declarant, the attending physician, an employee of the attending physician or health care facility, or do not have a claim against the estate of the declarant.

b. Health Care Power of Attorney.—Uniform Statutory Form Power of Attorney Act, Colo. Rev. Stat. §§ 15-1-301 to -320 (1992).

—Provides for a power of attorney by which an individual may appoint another to exercise his legal powers should the individual become incompetent.
—Does not empower agents to make health care decisions on behalf of the declarant.

Connecticut

a. Living Will.—The Connecticut Removal of Life Support Act, Conn. Gen. Stat. § 19a–570 to –575 (Supp. 1991).

—Provides for a living will which allows a doctor to remove "life support systems" (defined as any mechanical or electronic device, excluding artificial nutrition and hydration, used to replace the function of vital organs, and which prolong the dying process) if he/she determines, among other things, that the patient is in a "terminal condition"; the condition must be incurable or irreversible.
—Living will must follow the model provided by statute.
—Individual who executes the document must be of "sound mind."
—Must be signed by two witnesses.

b. Health Care Power of Attorney.—Connecticut Statutory Short Form Durable Power of Attorney Act, Conn. Gen. Stat. §§ 1–55 (Cum. Supp. 1991).

—Provides general authority for an individual to act on behalf of the declarant.

—While the statute does not specifically provide for the appointed agent to make medical decisions, it does not preclude such authority.

Delaware

a. Living Will.—The Delaware Death With Dignity Act, Del. Code. Ann. tit. 16, §§ 2501 to 2509 (1983).

—Provides for a living will which allows for the withdrawal of "maintenance medical treatment" (that which would only artificially prolong the dying process; medication, however, may not be withdrawn) when the declarant has been diagnosed as in a "terminal condition"; it must be probable that death will occur whether or not medical treatment is used.

—Individual who executes the directive must be competent.

—Must be signed in the presence of two adult witnesses who are not related to the person executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, are not financially responsible for the person's medical expenses, and do not have a claim against the estate. In addition, an employee of a health facility where the patient is located may not be a witness.

—Provides that an agent can be appointed to make health care decisions for the declarant, including the withdrawal of treatment that would extend the life of the declarant; there is no separate authorizing statute.

District of Columbia

a. Living Will.—The District of Columbia Natural Death Act, D.C. Code Ann. § 6-2421 to -2430 (1989).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only artificially prolong the dying process; administration of medication may not be withdrawn) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable and any treatment would only postpone the moment of death.

—Provides a model directive.

—Must be executed by an individual of "sound mind." May also be executed by another person at the express direction of the declarant and in the declarant's presence.
—Should be signed by two witnesses, who are not related to the person executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, and do not have a claim against the estate. In addition, an attending physician, their employee, or an employee of a health facility in which the declarant resides may not be a witness.
—In the case of a declarant who is a patient in an intermediate care or skilled care facility, a declaration is valid only when one of the witnesses to the directive is a patient advocate or ombudsman.

b. Health Care Power of Attorney.—The District of Columbia Health Care Decisions Act, D.C. Code Ann. § 21-2201 to -2213 (1989).
—Provides for a durable power of attorney which allows for the appointment of another to make health care decisions on behalf of the declarant.
—A declarant's health care provider may not be appointed as a decisionmaker.
—Durable power of attorney need not follow the model provided by statute.
—Should be signed by two witnesses, at least one of whom is not related to the person executing the document by either blood or marriage, who is not eligible to inherit from the person's estate, and is not the declarant's health care provider or employee of such provider.

Florida

a. Living Will.—Life-Prolonging Procedures Act of Florida, Fla. Stat. § 765.302 to .310 (1992).
—Providers for a living will which allows the withdrawal of "life-prolonging procedures" (that which replace a spontaneous bodily function and which would only artificially prolong the dying process; and, nutrition and hydration) only when the declarant has been diagnosed as in a "terminal condition"; death must be imminent.

—Living will need not follow the model provided by statute.
—Individual who executes the declaration must be competent.
—Declaration must be signed by two witnesses, one of whom is neither the spouse nor blood relative of the declarant.
—Next of kin has the right to prevent the removal of artificial feeding.

b. Health Care Power of Attorney.—Health Care Surrogate Act, Fla. Stat. Ann. §§ 765.202 to -.205 (1992).
—Provides for appointment of a proxy to make health care decisions for the declarant.
—Appointment directive need not follow the model provided by statute.
—Proxy may not be the treating provider or employee or relative thereof; may not be the operator or employee of a health care facility in which the declarant resides or relative thereof; or a guardian of property of the declarant.
—If no proxy is designated, one will be appointed in the following order: judicially appointed guardian; declarant's spouse; adult child of the declarant; father or mother of the declarant; or if none of these are available, the health care facility may petition the court to appoint a guardian.
—Must be in writing and signed by the declarant in the presence of two attesting witnesses, one of whom must not be the declarant's spouse, a blood relative, an heir to the declarant's estate or be responsible for paying the declarant's health care expenses.
—Declarant must make written declaration in order to authorize the agent to make decisions regarding withholding or withdrawing life-prolonging procedures.
—Document expires 7 years after the date of execution.
—Declarant may revoke so long as competent to do so.

Georgia

a. Living Will.—The Georgia Living Wills Act, Ga. Code Ann. § 31-32-1 to -12 (Cum. Supp. 1991).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only artificially prolong the dying process; includes nourishment and hydration) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable, and death must be imminent.

—Living will need not follow the model provided by statute.

—Must be executed by a competent (of sound mind) adult.

—Should be signed by two competent adult witnesses, who are not related to the person executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, are not financially responsible for the person's medical expenses, and do not have a claim against the estate.

—An attending physician, their employee, or an employee of a health care facility where the declarant is located may not be a witness.

—In the case of a declarant who is a patient in a hospital or skilled care facility, a directive is valid only with an additional witness beyond the two normally required who is either a physician on the hospital medical staff not participating in the care of the declarant, or a physician on the hospital medical staff of the skilled care facility also not participating in the care of the declarant.

—Effective for a period of 7 years from the date of execution.

b. Health Care Power of Attorney.—The Georgia Durable Power of Attorney for Health Care Act, Ga. Code Ann. § 31-36-1 to -13 (1991).

—Provides for the appointment of an individual to make medical decisions on behalf of the declarant.

—Appointment directive need not follow the model provided by statute.

—Should be signed by two competent adult witnesses. When a declarant is in a hospital or skilled nursing facility, should also be signed by the attending physician.

—No health care provider directly or indirectly involved with the declarant's treatment may be appointed decisionmaker.

Hawaii

a. Living Will.—Hawaii Medical Treatment Decisions Act, Hawaii Rev. Stat. §§ 327D–1 to –27 (Supp. 1990).

—Provides for a living will which allows the withdrawal of "life-sustaining" support (that which would only artificially prolong the dying process) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be likely to occur in a relatively short time.

—Living will need not follow the model provided by statute.

—Should be signed by two witnesses 18 years or older, who are not related to the declarant executing the declaration by either blood, marriage, or adoption. In addition, an attending physician, their employee, or an employee of a health facility where the declarant is located may not be a witness.

b. Health Care Power of Attorney.—The Hawaii Uniform Durable Power of Attorney Act, Hawaii Rev. Stat. §§ 551D–1 to –7 (1990).

—Provides for a durable power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.

—While the statute does not specify that the appointed decisionmaker may direct the withdrawal of medical procedures, it does not preclude such authority.

Idaho

a. Living Will.—The Idaho Natural Death Act, Idaho Code §§ 39–4501 to –4509 (1991 Cum. Supp.).

—Provides for a living will which directs the withdrawal of medical treatment procedures where death is imminent and treatment would only postpone the dying process; or when the declarant is in a persistent vegetative state.

—Living will must follow or contain the same elements as the model provided by statute.

—May be executed by any competent (of sound mind) person.

—Provides for the appointment of an agent who can make health care decisions regarding life-sustaining

treatment when the declarant is not able to make such decision for him/herself.

b. Health Care Power of Attorney.—There is no separate authorizing statute.

Illinois

a. Living Will.—Illinois Living Will Act, Ill. Ann. Stat. ch. 110½, para. 701 to 710 (Smith-Hurd Supp. 1991).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only artificially prolong the dying process; nutrition and hydration may not be withdrawn if the cause of death would be starvation or hydration) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable and irreversible, and death must be imminent.

—Living will need not follow the model provided by statute.

—May be executed by an individual of sound mind.

—Must be signed by two witnesses at least 18 years old.

b. Health Care Power of Attorney.—Illinois Powers of Attorney Health Care Act, Ill. Ann. Stat. ch. 110½, para. 804–10 (Smith-Hurd Supp. 1991).

—Power of Attorney need not follow the model provided by statute.

—Should be signed by one competent adult witness.

Indiana

a. Living Will.—Indiana Living Wills and Life-Prolonging Procedures Act, Ind. Code Ann §§ 16–8–11–1 to -22 (1990).

—Provides for a living will which allows the withdrawal of medical treatment (that which replaces a vital bodily function and which would only artificially prolong the dying process) only when the declarant has been diagnosed as in a "terminal condition"; there must be no possibility of recovery, and death will occur within a short period of time without medical treatment. Also provides for a declaration which requests that life-sustaining procedures be maintained even if a person is in a terminal condition.

—Living will must substantially follow the model provided by statute, although it may include more specific directions.
—May be executed by a person of sound mind.
—Should be signed by two witnesses who did not sign the declaration on behalf of the declarant, who are not a parent, spouse, or child of the declarant, who are not eligible to inherit from the declarant's estate, and who are not financially responsible for the declarant's medical expenses.
—Does not require that a doctor withhold medical treatment, but merely represents strong evidence of the declarant's intentions. A person may be appointed by a declarant to be consulted by a doctor as to the intent and validity of a declaration.

b. Health Care Power of Attorney.—Indiana Powers of Attorney Act, Ind. Code Ann. §§ 30–5–1–1 to –10–4 (Supp. 1991).
—Provides for a power of attorney which confers a general authority with respect to health care authorizing an agent to consent to or refuse health care on behalf of the declarant by properly executing and attaching to the power of attorney a declaration or appointment or both.
—Declaration must be in writing and signed by the declarant in the presence of a notary public.
—Allows the agent to request that health care be withdrawn or withheld when it is not beneficial or when any benefit is outweighed by the demands of the treatment and death may result provided the declaration includes specific language to that effect.

Iowa

a. Living Will.—Iowa Life-Sustaining Procedures Act, Iowa Code Ann. §§ 144A.1 to .11 (1989).
—Provides for a living will which allows the withdrawal of medical treatment (that which would replace a spontaneous bodily function and would only artificially prolong the dying process; includes artificial nutrition and hydration) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable or irreversible and will result in death in a short period of time.

58-174 - 92 - 3

—Living will need not follow the model provided by statute.
—Any competent adult may execute a declaration.
—Should be signed by two witnesses.
—Life-sustaining procedure can be withheld from a declarant who is not able to make health care decisions by the following individuals, with the restriction that persons later on the list can make a decision only if the persons prior to them on the list are not reasonably available for consultation: (1) an individual with power of attorney, if one has been appointed; (2) a legal guardian; (3) the declarant's spouse; (4) the declarant's adult child, or if there is more than one, then a majority of the declarant's adult children who are reasonably available; (5) a parent of declarant, or both parents; or (6) the declarant's adult sibling.

b. Health Care Power of Attorney.—Iowa Powers of Attorney Act, Iowa Code Ann. §§ 633.705 to .706 (Cum. Supp. 1991).
—Provides for a power of attorney by which an individual may appoint another to exercise the declarant's legal power if the declarant becomes incompetent.
—Does not specify that the appointed decisionmaker may direct the withdrawal of medical procedures, but the Iowa Life-Sustaining Procedures Act allows decisions regarding life-sustaining procedures to be made by an appointed decisionmaker if there is no living will.

Kansas

a. Living Will.—The Kansas Natural Death Act, Kan. Stat. Ann. §§ 65-28,101 to -28,109 (1985).
—Provides for a living will which allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed as having a terminal condition.
—Living will should follow the model provided by statute, but may include additional directions.
—May be executed by any adult person so long as he/she is "emotionally and mentally competent," and this is confirmed by two witnesses who must also

indicate on the document that the individual is of sound mind.

—Should be signed by two witnesses who did not sign the document on behalf of the declarant, who are not related to the declarant by either blood or marriage, are not eligible to inherit from the person's estate, or are not financially responsible for the person's medical expenses.

b. Health Care Power of Attorney.—Kansas Durable Power of Attorney for Health Care Decisions Act, Kan. Stat. Ann. §§ 58-625 to -632 (1991).

—Provides for a power of attorney by which an individual may appoint another to make health care decisions for the declarant if the declarant becomes incompetent.

—The appointed decisionmaker may direct the withdrawal of medical procedures.

—Power of attorney need not follow the model provided by statute.

—Should be prepared with the same formality as a declaration under the Kansas Natural Death Act.

Kentucky

a. Living Will.—Kentucky Living Will Act, Ky. Rev. Stat. §§ 311.622 to .642 (Supp. 1990).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed as having a terminal condition, and death is likely to occur in a relatively short time.

—Living will should follow the model provided by statute, but may include additional directions.

—May be executed by any adult person provided he/she is "emotionally and mentally competent," and this is confirmed by two witnesses who must also indicate on the document that the individual is of sound mind.

—Should be signed by two witnesses who are not related to the declarant by blood, are not employed by a health care facility in which the declarant is residing, are not the declarant's attending physicians, are not eligible to inherit from the declarant's

estate, and are not financially responsible for the declarant's medical expenses.

b. Health Care Power of Attorney.—Kentucky Health Care Surrogate Act, Ky. Rev. Stat. §§ 311.970 to .986 (Supp. 1990).

—Appointment directive should substantially follow the model provided by statute, but may contain other specific instructions not inconsistent with the Act.

—Should be signed by two competent adult witnesses, or notarized by a notary public or other person authorized to administer oaths.

—When a declarant is in a hospital or skilled nursing facility, the document may not be signed by the operator or employee of that facility, unless the declarant and the witness are related. In addition, no such health care provider may be appointed decisionmaker.

—An appointed decisionmaker may not request the withdrawal of nutrition and hydration except in specified circumstances.

Louisiana

a. Living Will.—Louisiana Life-Sustaining Procedures Act, La. Rev. Stat. Ann. §§ 40:1299.58.1 to .10 (Cum. Supp. 1990).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only artificially prolong the dying process) only when the declarant has been diagnosed as having a "terminal and irreversible" condition.

—Living will need not follow the model provided by statute.

—May be executed by an adult who is "emotionally and mentally competent," and this is confirmed by two witnesses to the declaration.

—Should be signed by two witnesses. A witness must be a competent adult who is not related to the declarant by either blood or marriage, and is not eligible to inherit from the person.

—Can be prepared for an incompetent, terminally ill patient by the first person on the following list who is reasonably available for consultation: (1) the judicially appointed tutor or curator, if one has been

appointed; (2) the declarant's spouse; (3) the declarant's adult child; (4) the parents of the declarant; (5) the declarant's siblings; or (6) the declarant's other ascendant or descendants. If more than one person in these classes is reasonably available, then the decision shall be made by all the persons of that class.

—Provides that a declaration may contain the appointment of a health care proxy.

b. Health Care Power of Attorney.—Louisiana Power of Attorney Act, Pub. Act 184 (1991).

—Provides for a power of attorney to make health care decisions, other than life-sustaining procedures, which may include surgery, medical expenses, nursing home residency, or medication.

—Powers must be expressly for these purposes.

Maine

a. Living Will.—Maine Uniform Rights of the Terminally Ill, Me. Rev. Stat. Ann. tit. 18a, §§ 5–701 to –714 (1990).

—Provides for a living will which allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed as having a terminal condition, and death is likely to occur in a relatively short time.

—Living will need not follow the model provided by statute.

—May be executed by an individual who is of sound mind ("emotionally and mentally competent").

—Must be signed by two witnesses.

b. Health Care Power of Attorney.—Maine Powers of Attorney Act, Me. Rev. Stat. Ann. tit. 18A, §§ 5–501 to –502 (Supp. 1989).

—Provides for a general power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.

—The appointed decisionmaker may direct the utilization or withdrawal of medical procedures, but a power of attorney which contains this authority must be notarized.

—The phrase "this power of attorney shall not be affected by disability of the principal" or "this power

of attorney should become effective upon the disability of the principal" should appear in the document.

Maryland

a. Living Will.—Maryland Life-Sustaining Procedures Act, Md. Health—General Code Ann. §§ 5–601 to –614 (1990).

—Provides for a living will which allows the withdrawal of medical treatment (that would supplant a vital bodily function, and would secure only a "precarious and burdensome" prolongation of life) only when the declarant has been diagnosed as having a "terminal" condition; the condition must be incurable, and death must be imminent.

—Living will must substantially follow the model provided by statute.

—Any individual who is qualified to make a will in Maryland may execute a declaration.

—Should be signed by two witnesses who are at least 18 years old, who did not sign the declaration for the declarant, are not related to the declarant by either blood or marriage, are not eligible to inherit from the declarant's estate, are not financially or otherwise responsible for the declarant's medical treatment, and do not have a claim against the declarant's estate.

b. Health Care Power of Attorney.—Maryland Durable Power of Attorney Act, Md. Est. & Trusts Code Ann. §§ 13–601 to –603, as interpreted by 73 Opinions of the Attorney General [No. 88–046, 1988].

—Provides for a general power of attorney, by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.

—While the statute does not specify that the appointed decisionmaker may direct the utilization or withdrawal of medical procedures, it also does not preclude such action.

—The phrase "this power of attorney shall not be affected by disability of the principal," or "this power of attorney should become effective upon the disability of the principal," or similar language should appear.

—A decision to withdraw medical treatment for a disabled person requires a court order.

Massachusetts

a. Living Will.—Massachusetts does not have a living will statute.

b. Health Care Power of Attorney.—An Act Providing for the Execution of Health Care Proxies by Individuals, 1990 Mass. Acts ch. 332.

—Authorizes the appointment of a health care agent which becomes effective upon a determination that the declarant lacks the capacity to make health care decisions.

—Powers of the agent are deemed to be as broad as the powers of the declarant's unless they are otherwise limited by the declaration.

—The agent is required to make his/her decisions in the best interests of the declarant.

Michigan

a. Living Will.—The State has no living will law.

b. Health Care Power of Attorney.—None passed to date.

Minnesota

a. Living Will.—Minnesota Adult Health Care Decisions Act, Minn. Stat. §§ 145B.01 to .17 (1991 Cum. Supp.).

—Living will need not follow the model provided by statute.

—May be executed by a competent adult who is of "sound mind."

—Requires that two witnesses sign the declaration, neither of whom is able to inherit, or has been designated as a medical proxy in the document.

—Provides that an individual executing a declaration may appoint a health proxy either to enforce specific instructions, or to make the medical decision without instructions; there is no separate authorizing statute.

—A health care proxy may not consent to the withdrawal of nutrition and hydration absent explicit authorization.

Mississippi

a. Living Will.—Mississippi Withdrawal of Life-Saving Mechanisms Act, Miss. Code Ann. §§ 41-41-101 to -121 (1991 Cum. Supp.).

—Provides for a living will in which the declarant may direct the withdrawal of life-sustaining mechanisms if death is imminent.

—Living will must substantially follow the model provided by statute.

—May be executed by an individual who is mentally competent.

—Must be signed by at least two witnesses who are not, to their knowledge, related to the declarant by either blood or marriage, and who will not inherit from the declarant or have a claim against the estate. In addition, the witness cannot be the declarant's physician or an employee of such physician.

b. Health Care Power of Attorney.—Mississippi Durable Power of Attorney for Health Care Act, Miss. Code Ann. §§ 41-41-151 to -183 (1991 Cum. Supp.).

—Provides a model appointment directive as well as models for witness statements and notary public affirmations.

—The appointed decisionmaker may not be a treating health care provider, or an employee of a treating health care advisor.

—The document must specifically authorize the decisionmaker to make health care decisions.

—Must be signed by at least two witnesses who are not the declarant's health care provider, an employee of the declarant's health care provider, or the declarant's appointed decisionmaker. At least one of the witnesses must not be related to the declarant by either blood or marriage or entitled to inherit from the declarant.

Missouri

a. Living Will.—Missouri Life Support Declarations Act, Mo. Ann. Stat. §§ 459.010 to .055 (1991 Cum. Supp.).

—Provides for a living will in which the declarant may direct the withdrawal of "death-prolonging procedures" if he/she is in a "terminal condition";

the condition must be incurable or irreversible, and death will occur in a short period of time.
—Living will need not follow the model provided by statute.
—May be executed by any competent person (one who is of sound mind, and who is able to receive and evaluate information and communicate a decision).
—Must be signed by two witnesses 18 years of age or older, neither of whom signed the declaration on behalf of the declarant's competence.

b. Health Care Power of Attorney.—Missouri Durable Power of Attorney for Health Care Act, Mo. Ann. Stat. §§ 4404.800 to .865 (1991).
—Provides for the appointment of another individual to make health care decisions for the declarant.
—Prohibits an attending physician or an owner, operator, or employee of the health care facility in which the declarant is a resident from serving as agency unless he/she is related or a member of the same religious community.
—The power to withdraw/withhold artificially supplied nutrition and hydration must be specifically granted by the declarant to his/her agent in writing.
—The benefit and burden of treatment as well as evidence of medical diagnosis and prognosis of the declarant must be sought by the proxy in making any health care decision.
—A copy of declaration must be made part of the declarant's medical record.
—May be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke; revocation must be made part of the declarant's medical record.

Montana

a. Living Will.—Montana Rights of The Terminally Ill Act, Mont. Code Ann. §§ 50–9–101 to –111, 201 to 206 (1991).
—Provides for a living will through which an individual may direct the withdrawal of "life-sustaining procedures" if the declarant is terminally ill; the condition must be incurable and irreversible, and death will occur in a relatively short period of time.

—Living will need not follow the model provided by statute.

—A competent adult may execute a declaration.

b. Health Care Power of Attorney.—Montana Durable Power of Attorney for Health Care Act, Mont. Code Ann. §§ 72-5-501 to -502 (1991).

—Provides for a power of attorney so long as in writing and containing the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the declarant that the authority conferred shall be exercisable notwithstanding the declarant's subsequent disability or incapacity.

—Unless the document states a time of termination, the power is exercisable notwithstanding any lapse of time from the time of its execution.

Nebraska

a. Living Will.—Rights of the Terminally Ill Act, L.B. 671 (Approved February 12, 1992).

—Provides for a living will through which an individual may direct the withholding or withdrawal of life-sustaining treatment (any medical procedure or intervention that, when administered to a qualified declarant, will serve only to prolong the process of dying or maintain the qualified declarant in a persistent vegetative state).

—Living will need not follow the model provided by statute.

—May be executed by an adult of sound mind.

—Must be signed by the declarant and witnessed by two adults or a notary public. Only one witness may be an administrator or employee of a health care provider who is caring for or treating the declarant, and no witness may be an employee of a life or health insurance provider for the declarant.

b. Health Care Power of Attorney.—L.B. 696 (approved February 12, 1992).

—Provides for the execution of a power of attorney for health care which allows an individual to designate another person to make health care and medi-

cal treatment decisions if he/she becomes incapable of making such decisions for him/herself.

—Must (1) be in writing, (2) identify the declarant and the designated agent, (3) specifically authorize the designated agent to make health care decisions on behalf of the declarant, (4) show the date of execution, (5) be witnessed and signed by at least two adults, each of whom witnesses either the signing and dating of the power of attorney for health care by the declarant or the declarant's acknowledgment of the signature and date.

—Power of attorney must substantially follow the form provided by statute.

Nevada

a. Living Will.—Nevada on the Rights of the Terminally Ill Act, Nev. Rev. Stat. §§ 449.540 to .690 (1986 & Supp. 1989).

—Provides for a living will through which an individual may direct the withdrawal of "life-sustaining procedures" (procedures which replace vital bodily functions) if such procedures only postpone the moment of death.

—Living will must substantially follow the model provided by statute.

—May be executed by an adult of sound mind.

—Must be signed by two witnesses in the same manner in which a will is executed, except a witness may not be related to the declarant by blood or marriage, and may not have a claim against the estate of the declarant. In addition, an attending physician, his employee, or an employee of a health facility in which the declarant is a patient may not be a witness.

b. Health Care Power of Attorney.—Nevada Durable Power of Attorney for Health Care Act, Nev. Rev. Stat. Ann. §§ 449.800 to .860 (Supp 1989).

—Forbids the appointment of a power of attorney for health care to providers who treat the declarant, the provider's employees, or any employees or operator of a health care facility in which the declarant resides.

—Provides for a durable power of attorney for health care.

—Durable power of attorney for health care must substantially follow the model provided by statute.
—Must be notarized by a notary public, and signed by two witnesses, neither of whom may be a health care provider, their employees, the appointed decisionmaker, or employees or operators of a health care facility. In addition, at least one witness may not be related by blood or marriage to the declarant, or entitled to inherit from the declarant.
—A health care power of attorney for declarants who are in a skilled nursing facility must be signed by a patient advocate or ombudsman.

New Hampshire

a. Living Will.—New Hampshire Living Wills Act, N.H. Rev. Stat. Ann. §§ 137–H:1 to H:16 (1990 Cum. Supp.).
—Provides for a living will through which an individual may direct the withdrawal of "life-sustaining procedures" (those which artificially prolong life; medication or sustenance, however, may not be withdrawn) if he/she is in a "terminal condition"; the condition must be incurable, and death must be imminent.
—Living will need not follow the model provided by statute.
—May be executed by an individual of sound mind.
—Must be signed and notarized by two witnesses who are not a spouse, are not in a position to inherit from the declarant, and do not have a claim against the declarant's estate. In addition, a witness cannot be the declarant's physician or acting as an employee of such physician.
—A declaration executed by a person in a hospital or skilled nursing facility must be signed in the presence of the chief of the hospital medical staff or the medical director of the nursing facility where the declarant is located.

b. Health Care Power of Attorney.—New Hampshire Durable Power of Attorney for Health Care, N.H. Rev. Stat. Ann. §§ 137–J:1 to –J:16 (1991).
—Provides for a durable power of attorney through which an agent may be appointed to make health

care decisions on behalf of the declarant should he/she be unable to do so for him/herself.

—Artificial nutrition and hydration may not be withdrawn or withheld unless there is a clear expression of such power in the declaration.

—Power of attorney must substantially follow the form provided by statute.

—Must be signed by the declarant in the presence of two or more witnesses, only one of which may be the declarant's health or residential care provider or such provider's employee, and neither of whom, at the time of execution, may be the agent, spouse, heir, or person entitled to any part of the declarant's estate upon his/her death.

—May be revoked by any act evidencing the declarant's intent to revoke the power.

New Jersey

a. Living Will and Health Care Power of Attorney.—New Jersey Advance Directives for Health Care Act (1991), S.B. 1211.

—Provides for the execution of a living will or durable power of attorney for health care.

—Declarant may execute either directive at any time.

—Must be signed and dated by, or at the direction of the declarant in the presence of two subscribing adult witnesses who attest that the declarant is of sound mind and free of duress and undue influence, or be acknowledged by the declarant before a notary public, an attorney, or other individual authorized to administer oaths.

—With respect to a durable power of attorney, the designated agent may not act as a witness to execution.

—With respect to a durable power of attorney, an operator, administrator, or employee of a health care institution in which the declarant is a patient or resident may not serve as agent unless related to the declarant by blood, marriage, or adoption.

—May be revoked by any act of the declarant evidencing an intent to revoke.

b. Health Care Power of Attorney.—New Jersey Act, N.J. Stat. Ann. § 46:B-8 (Supp. 1989).

—While the statute does not specifically provide the authority for the appointed decisionmaker to make decisions regarding medical procedures, it does not preclude such appointment.
—Provides a durable power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.
—The phrase "this power of attorney shall not be affected by disability of the principal," or "this power of attorney shall become effective upon the disability of the principal," or similar language should appear.

New Mexico

a. Living Will.—New Mexico Right to Die Act, N.M. Stat. Ann. §§ 24-7-1 to -11 (1991).
—Provides for a living will through which the declarant can direct the withdrawal of "maintenance medical treatment" (treatment designed solely to sustain the life processes) when he/she is either in a "terminal condition" or in a "irreversible coma."
—May be executed for an incompetent person who has family members reasonably available who can confirm that the patient would have chosen to forego treatment.
—Must be executed with the same formality as a will.
—An individual of sound mind may execute a declaration.

b. Health Care Power of Attorney.—New Mexico Durable Power of Attorney Act, N.M. Stat. Ann. §§ 45-5-501 to -502 (1991).
—Provides for a general power of attorney, by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.
—Power of attorney need not follow the model provided by statute.
—Provides the authority for the appointed decisionmaker to make decisions regarding medical procedures.
—Provides that the phrase "this power of attorney shall not be affected by disability of the principal," or similar language should appear.
—Should be notarized.

New York

a. Living Will.—No authorizing statute.

b. Health Care Power of Attorney.—New York Health Care Proxy Act, N.Y. Pub. Health Law §§ 2980 to 2994 (McKinney Supp. 1991).

—Allows an individual to appoint a health care agent to make treatment decisions in the event of incapacity.

—Should be signed by two witnesses proxies executed by persons in mental hygiene facilities must have additional qualified witnesses.

—The health care agent may not be an operator, administrator, or employee of a hospital where the declarant is located, unless they are related to the declarant; or a physician affiliated with the facility, subject to some exceptions; nor shall a nonrelative proxy be appointed as health care agent for more than 10 declarants.

—In order to act with respect to withdrawal/withholding of life-sustaining measures, the agent must have a basis for knowing that a declarant would not want artificial nutrition and hydration. Instructions regarding feeding should be written directly on the proxy document.

North Carolina

a. Living Will.—North Carolina Right to Natural Death Act, N.C. Gen. Stat. §§ 90–320 to –322 (1991).

—Provides for a living will through which an individual can direct that "extraordinary means" (a medical procedure which would replace a vital function, and would only artificially postpone the moment of death) not be used if he/she is in a terminal condition and is incurable.

—Living will must follow the model provided by statute.

—May be executed by an individual of "sound mind," and this must be confirmed by two witnesses who must so indicate on the declaration.

—Should be signed by two witnesses who are not related to the person executing the declaration by either blood or marriage, do not expect to inherit,

and do not have a claim against the declarant's estate. In addition, an attending physician, his employee, or an employee of a health facility where the declarant is located may not be a witness.
—Must be approved by a clerk or assistant clerk of a superior court, or a notary public.

b. Health Care Power of Attorney.—North Carolina Power of Attorney Act, N.C. Stat. §§ 32A-15 to -26 (1991).
—Provides a general power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.
—The phrase "this power of attorney shall not be affected by subsequent incapacity or mental incompetency," or "this power of attorney shall become effective after I become incapacitated or mentally incompetent," or similar language should appear.
—While the statute does not specifically address whether the appointed decisionmakers may direct the utilization or withdrawal of medical procedures, it does not preclude such action.
—Documents relating to power of attorney must be filed with a county courthouse within 30 days.

North Dakota

a. Living Will.—North Dakota Rights of the Terminally Ill Act, N.D. Cent. Code §§ 23-06.4-01 to -14 (1991 Cum. Supp.).
—Provides for a living will through which an individual may direct the withdrawal/withholding of life-sustaining measures.
—Living will must substantially follow the model provided by statute.
—May be executed by an individual of sound mind.
—Must be signed by two witnesses who are not related to the declarant executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, are not financially responsible for the person's medical expenses, and do not have a claim against the estate. In addition, an attending physician of the declarant may not be a witness.

—If the declarant is in a long-term care facility at the time the declaration is executed, one of the two witnesses to the declaration must be a regional long-term care ombudsman.

b. Health Care Power of Attorney.—North Dakota Durable Powers of Attorney for Health Care Act, N.D. Cent. Code §§ 23-06.5-01 to -18 (1991).

—Provides for a durable power of attorney through which an individual may appoint another to make health care decisions on his/her behalf should he/she become incompetent.

—Durable power of attorney must substantially follow the model provided by statute.

—Declarant's health care provider, a nonrelative of the declarant who is an employee of that health care provider, the declarant's long-term care services provider or a nonrelative of the declarant who is an employee of that long-term care provider may not serve as proxy.

—Must be signed by the declarant in the presence of at least two or more subscribing witnesses, neither of whom may at the time of execution be the proxy, the declarant's health or long-term care services provider or provider's employee, the declarant's spouse, heir, or person related to the declarant by blood or adoption, or any person entitled to any part of the estate of the declarant or any other person who at the time of execution has a claim against the estate of the declarant.

—May be revoked by any act of the declarant evidencing a specific intent to revoke.

—Does not limit enforceability of a durable power of attorney for health care or similar instrument which has been validly executed in another State or jurisdiction.

Ohio

a. Living Will.—Ohio Modified Unified Rights of the Terminally Ill Act, Ohio Rev. Code Ann. §§ 2133.01 to .15 (1991).

—Provides for a living will through which an individual of sound mind may govern the use or continuation, or the withholding or withdrawal of life-sustaining treatment.

—Must be signed by the declarant and witnessed by two individuals not related to the declarant by blood, marriage, or adoption, and who are not the attending physician or administrator of a nursing home in which the declarant resides. Or may be acknowledged by the declarant before a notary public.
—A valid durable power of attorney for health care supercedes a treatment directive to the extent that provisions of the two documents would conflict provided the declarant is in a terminal condition or permanently unconscious state.
—May be revoked at any time and in any manner.

b. Health Care Power of Attorney.—Ohio Power of Attorney for Health Care Act, Ohio Rev. Code Ann. §§ 1337.11 to .17 (Anderson 1989).
—Provides for the appointment of a general durable power of attorney for health care decisions.
—Appointed decisionmaker may not be an attending physician, his agent, or an employee of a health care facility where the declarant is located.
—The appointed decisionmaker may not request the withdrawal of medical treatment which will result in death unless the declarant is terminally ill, and is also restricted as to his/her ability to refuse nutrition and hydration.
—Must be notarized by a notary public, or signed by two witnesses, neither of whom may have the following characteristics: (1) be related to the declarant by blood or marriage; (2) be in a position to benefit from the declarant's death; (3) also be the appointed decisionmaker; (4) be a physician or his agent; or (5) be a health care provider or their agent.
—Expires 7 years following its execution.

Oklahoma

a. Living Will and Health Care Power of Attorney.—Rights of the Terminally Ill or Persistently Unconscious Act, Okla. Stat. Ann. tit. 63, §§ 3101.1 to .16 (1992).
—Provides for the execution of a living will, appointment of a health care proxy, or both which become effective when the declarant is no longer able to make decisions regarding the administration of life-sustaining treatment.

—Directives must substantially follow the models provided by statute.
—May be executed by an individual of sound mind.
—Must be signed by the declarant and witnessed by two individuals who are 18 years old or older who are not legatees, devisees, or heirs at law.
—Directive may be revoked at any time and in any manner by the declarant without regard to the declarant's mental or physical condition.
—Execution of an advance directive in another State in compliance with the law of that State is valid to the extent it does not exceed this statute.

Oregon

a. Living Will.—Oregon Rights With Respect to Terminal Illness Act, Or. Rev. Stat. §§ 17.605 to .650 (1990).
—Provides for a living will which allows the withdrawal of "life-sustaining treatment" (those which replace a vital function and would only artificially prolong the dying process) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable.
—Living will need not follow the model provided by statute.
—May be executed by an individual of sound mind.
—Must be signed by two witnesses who are not related to the person executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, and do not have a claim against the estate. In addition, an attending physician of the declarant, his employees or an employee of the health care facility where the declarant is located may not be witnesses.
—If an individual is in a long-term care facility at the time the declaration is executed, one of the two witnesses to the declaration must be a person designated by the Oregon Department of Human Resources.
—If an individual is in a terminal condition and is permanently unconscious, and no declaration has been prepared, then life-sustaining procedures may be withdrawn at the request of the first of the following, in the listed order, who can be located with reasonable effort: (1) the individual's spouse; (2) a guardian of the individual; (3) a majority of adult

children of the individual who can be located; or (4) either parent of the individual.

b. Health Care Power of Attorney.—Oregon Durable Power of Attorney for Health Care Act, Or. Rev. Stat., §§ 127.505 to .585 (1990).

—Provides for a durable power of attorney through which an individual may designate another to make health care decisions on his/her behalf should he/she become incompetent.

—Durable power of attorney must strictly follow the model provided by statute.

—The designated decisionmaker must be a competent adult.

—Must be signed by two witnesses, at least one of whom must not be related to the person executing the declaration by either blood or marriage, is not eligible to inherit from the person's estate, and does not have a claim against the estate. In addition, an attending physician of the declarant or the appointed decisionmaker may not be a witness.

—The designated agent may not be an attending physician, an employee of that physician, or an operator or employee of a health care facility in which the declarant is located; unless that decisionmaker is a relative. In addition, such decisionmaker shall not be responsible for the declarant's health care costs.

—Declaration shall remain in effect for 7 years from the time of execution.

—A decisionmaker may request the withdrawal of life-sustaining procedure only if (1) he has been specifically authorized to do so under the power of attorney; or (2) if the declarant is irreversibly comatose, terminally ill, and the decision is approved by a hospital committee. Nutrition hydration may only be withdrawn if this is also specifically authorized by the power of attorney.

Pennsylvania

a. Living Will and Health Care Power of Attorney.—Pennsylvania Advance Directive for Health Care Act, 1992 Pa. Laws 24, S.B. 3 (enacted April 16, 1992).

—Provides for the execution of a declaration through which an individual may govern the initiation, con-

tinuation, withholding, or withdrawal of life-sustaining treatment.
—May be executed by an individual of sound mind.
—Must be signed by the declarant, or another on his/her behalf or at his/her direction, and must be witnessed by two individuals 18 years of age or older, neither of whom has signed the declaration on behalf of and at the direction of the declarant.
—Declaration need not follow the model provided by statute.

Rhode Island

a. Living Will.—Rhode Island Rights of the Terminally Ill Act, R.I. Gen. Laws §§ 23-4.11-1 to -13 (1991).
—Provides for a living will which allows for the withholding/withdrawal of life-sustaining procedures.
—Living will need not follow the model provided by statute.
—Declaration must be signed by the declarant or another at the declarant's direction in the presence of two subscribing witnesses not related to the declarant by blood or marriage.
—Declaration must be made part of declarant's medical record.
—Operative only when communicated to the attending physician and the declarant is determined to be in a terminal condition and is unable to make treatment decisions.
—May be revoked at any time and in any manner by which the declarant is able to communicate his/her intent to revoke. Such revocation must be made a part of the declarant's medical record.
—A declaration executed in another State and in compliance with the law of that State will be recognized.

b. Health Care Power of Attorney.—Rhode Island Health Care Power of Attorney Act, R.I. Gen. Laws §§ 23-4.10-1 to -2 (1989).
—Provides for a durable power of attorney through which the declarant may assign another to make health care decisions on his/her behalf should he/she become incompetent.
—Power of attorney must strictly follow the model provided by statute.

—Declarant must be a resident of Rhode Island.
—The appointed decisionmaker may not be the declarant's treating health care provider, a nonrelative employee of the treating health care provider, an operator of a community care facility in which the declarant resides, or a nonrelative employee of such facility.
—At least one of the witnesses to the execution must be personally known to the declarant and at least one must not be related to the declarant by blood, marriage, or adoption, and such witness may not be entitled to inherit from the declarant.

South Carolina

a. Living Will.—South Carolina Death With Dignity Act, S.C. Code Ann. §§ 44-77-10 to -60 (1990 Cum. Supp.).
—Provides for a living will which allows the withdrawal of medical treatment (that which would only prolong the dying process) only when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable and irreversible, and death will occur in a relatively short time.
—Living will must substantially follow the model provided by statute.
—May be executed by an individual who is "emotionally and mentally competent," and this must be confirmed by two witnesses who must indicate on the document that the individual is of sound mind.
—Must also be signed by two witnesses, who are not related to the person executing the document by either blood or marriage, are not eligible to inherit from the person's estate, are not financially responsible for the person's medical treatment, are not a beneficiary of a life insurance policy on the person, and do not have a claim against the estate. In addition, an attending physician of the declarant or his employees may not be witnesses.
—An employee of a health care facility where the declarant is located may be a witness, but only if the other witness is not an employee of the same health care facility.
—A declaration executed by a declarant in a hospital or skilled nursing facility must be witnessed and

signed by an ombudsman designated by the Office of the Governor of South Carolina.

b. Health Care Power of Attorney.—South Carolina Power of Attorney Act, S.C. Code Ann. §§ 62-5-501 to 502 (1990 Cum. Supp.).

—Provides for a durable power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.

—While the statute does not specifically provide the authority for the appointed decisionmaker to make decisions regarding medical procedures, it does not preclude such action.

—The phrase "this power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate" or similar language should appear in the document.

—Should be executed with the same formalities as a will.

South Dakota

a. Living Will. South Dakota Living Will Act, S.D. Codified Laws Ann. §§ 34-12D-1 to -22 (Supp. 1991).

—Provides for a living will which governs the withholding or withdrawal of life-sustaining treatment at any time.

—Living will need not follow the model provided by statute.

—Must be signed by the declarant and witnessed by two adult witnesses or signing must be notarized.

—Operative when declarant is determined to be in a terminal condition.

—Declarant may revoke at any time and in any manner without regard to his/her mental or physical condition.

b. Health Care Power of Attorney.—South Dakota Durable Powers of Attorney Act, S.D. Codified Laws Ann. §§ 59-7-2.1 to -2.8 (Supp. 1991).

—Provides for a power of attorney, by which an individual may appoint another to exercise the declarant's legal powers if he/she becomes incompetent.

—The phrase "this power of attorney shall not be affected by disability of the principal" or "this power

of attorney shall become effective upon the disability of the principal," or similar language should appear in the document.

—The appointed decisionmaker may make health care decisions for the principal.

—The appointed decisionmaker is restricted in their ability to provide for the withdrawal of nutrition and hydration, unless the power of attorney expressly grants this power or directs this result.

Tennessee

a. Living Will.—Tennessee Right to Natural Death Act, Tenn. Code Ann. §§ 32-11-101 to -110 (1990 Supp.).

—Provides for a living will which allows the withdrawal of "medical care" only when the declarant has been diagnosed in a terminal condition (that which would cause death within a short period of time whether or not medical treatment is provided). Simple nourishment and fluids, however, may not be withheld.

—Living will must substantially follow the model provided by statute, although other specific directions can be added.

—May be executed by any competent adult (an individual who is able to understand and appreciate the nature and consequences of a decision to refuse or accept medical treatment).

—Must be signed by two witnesses who are not related to the declarant by either blood or marriage, are not eligible to inherit from the declarant's estate, and do not have a claim against the estate. In addition, an attending physician of the declarant, his employees, or an employee of the health care facility where the declarant is located may not be a witness.

—Model form appears to indicate that the declaration should also be notarized by a notary public.

b. Health Care Power of Attorney.—Tennessee Durable Power of Attorney for Health Care Act, Tenn. Code Ann. tit. 34, §§ 34-6-101 to 214 (Cum. Supp. 1990).

—Provides for a power of attorney which allows a declarant to designate an agent to act on his/her behalf with respect to health care decisions should he become incompetent.

—Appointed decisionmaker may not be a health care provider, employee of a health care provider, an operator of a health care institution or an employee thereof.
—Document must be executed before a notary public, or must be signed by two witnesses neither of whom are the declarant's attorney in fact, health care provider or an employee of the health care provider, or an employee of a health care institution or an employee of an operator of a health care institution in which the declarant is located. At least one of the witnesses must be unrelated to the principal by blood, marriage, or adoption, and may not be entitled to any part of the declarant's estate.
—Includes a form that a notary seal on the document should be in.
—While the appointed decisionmaker is authorized to make health care decisions regarding situations where the declarant is terminally ill, he/she may not authorize the withdrawal of nutrition and hydration if the result would be to cause death by starvation or dehydration.

Texas

a. Living Will.—The Texas Natural Death Act, Tex. Rev. Civ. Stat. Ann. §§ 672.001 to .021 (1991 Supp.).
—Provides for a living will which allows the withdrawal of "life-sustaining treatment" (those which would only artificially prolong the dying process of a declarant whose death is imminent) only when the declarant has been diagnosed as in a "terminal condition"; death must be produced regardless of the use of medical treatment.
—Living will need not strictly follow the model provided by statute.
—May be executed by any competent adult.
—Must be signed by two witnesses who are not related to the person executing the declaration by either blood or marriage, are not eligible to inherit from the person's estate, and do not have a claim against the estate. In addition, an attending physician of the declarant, his employees, employees of a health care facility who are caring for the declarant or who are directly involved in the financial affairs of

the facility where the declarant is located or another patient of such facility, may not be a witness.

—If a patient is incompetent, terminally ill, and has not executed a declaration, a decision to withdraw life-sustaining procedures may be made by the attending physician and the patient's legal guardian based on knowledge of the individual's desires, if known. If there is no legal guardian, the decision may be made by the attending physician and at least two persons of the following categories, in the following order: (1) the declarant's spouse; (2) a majority of the declarant's reasonably available adult children; (3) the declarant's parents; or (4) the declarant's nearest living relative.

b. Health Care Power of Attorney.—Texas Durable Power of Attorney for Health Care Act, Tex. Rev. Civ. Stat. tit. 71, art. 4590h-1 (Vernon 1991).

—Provides for a durable power of attorney through which a declarant may designate another to make health care decisions on his/her behalf should he/she become incompetent.

—Durable power of attorney must follow the model provided by statute.

—Must be notarized by a notary public, and signed by two witnesses, neither of whom may be the appointed decisionmaker, the declarant's health or residential care provider or their employees, a spouse, or a person entitled to a portion of the declarant's estate.

—Forbids the appointment of the following as agents: health care providers who provide treatment to a declarant, the provider's employees, or any employees or operator of a residential care facility in which the declarant is located (unless that person is a relative of the declarant).

Utah

a. Living Will.—Utah Personal Choice and Living Will Act, Utah Code Ann. §§ 72-2-1101 to 1118 (1991 Cum. Supp.).

—Provides for a living will which allows for the withdrawal of medical treatment (that which would only artificially prolong the dying process) when

the declarant has been diagnosed as in a "terminal condition."

—Also provides for a less restrictive declaration by which specific medical treatments can be either accepted or rejected.

—Living will must substantially follow the model provided by statute.

—May be executed by an individual of "sound mind," and this must be confirmed by two witnesses who must also indicate on the declaration that the individual is of sound mind.

—Must be signed by two witnesses who did not sign the declaration on behalf of the declarant, are not related to the person executing the declaration by either blood or marriage, are not financially responsible for the declarant's medical expenses, are not eligible to inherit from the person's estate, and do not have a claim against the estate. In addition, no employee or other agent of a health care facility who is caring for the individual may be a witness.

—If a patient is incompetent, terminally ill, and has not executed a declaration, a decision to withdraw life-sustaining procedures may be made by the agreement of the attending physician, another physician, and any of the following persons in the following order who is available, willing, and competent to act: (1) a legal guardian or the person's spouse; (2) a parent; or (3) the person's children 18 years of age or older.

—Provides for an appointment directive which allows the appointment of a third person to make medical decisions for the declarant.

—Provides for an appointment directive which allows the appointment of another to make medical decisions on behalf of the declarant should he/she become incompetent although there is no separate authorizing statute.

Vermont

a. Living Will.—Vermont Terminal Care Document Act, Vt. Stat. Ann. tit. 18, §§ 5251 to 5262 and tit. 13, § 1801 (1987).

—Provides for a living will which directs the withdrawal of "extraordinary measures" (that which

would replace a vital function, and which only postpones the moment of death) when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable.

—Living will need not substantially follow the model provided by statute.

—May be executed by a person of sound mind.

—Must be signed by two witnesses who are not a spouse, an heir to the person, nor do they have claim against the estate. In addition, an attending physician or anyone working under his direction or control may not be a witness.

b. Health Care Power of Attorney.—Vermont Durable Power of Attorney for Health Care Act, Vt. Stat. Ann. tit. 14, ch. 121, §§ 3451-3467 (Supp. 1988).

—Provides for a durable power of attorney for health care.

—Durable power of attorney must substantially follow the model provided by statute.

—Individual who uses the model must also sign and acknowledge a disclosure statement.

—Forbids the appointment of health care providers who provide treatment to a declarant, the provider's employees (unless a relative of the declarant), or any employees or operator of a residential care provider or their employees (unless a relative of the declarant) as agents.

—Must be signed by two witnesses, neither of whom may be the declarant's health or residential care provider, their employees, the appointed decisionmaker, a spouse or heir eligible to inherit from the declarant, or an individual who has a claim against the declarant's estate.

—Power of attorney executed for declarants who are in a skilled nursing facility must be signed by an ombudsman, member of the clergy, an attorney, or other person appointed by a probate court who explains the nature and effect of the durable power of attorney.

Virginia

a. Living Will.—Virginia Natural Death Act, Va. Code §§ 54.1-2981 to -2992 (1988 & Cum. Supp. 1991).

—Provides for a living will which directs the withdrawal of a "life-prolonging procedure" (those which replace a vital function, and which serve only to postpone the moment of death) when the declarant has been diagnosed as in a "terminal condition"; no recovery can be possible, and death must be imminent.
—Living will need not follow the model provided by statute.
—May be executed by any competent adult.
—If an individual is unable to communicate, is terminally ill, and has not executed a declaration, a decision to withdraw life-sustaining procedures may be made by the agreement of the attending physician, and any of the following persons in the following order of priority if no individual of the prior class is available, willing, and competent to act: (1) a legal guardian or committee of the patient, if one has been appointed; (2) a person designated by the patient in writing; (3) the patient's spouse; (4) the patient's adult children if or by a majority of the children if there are more than one; (5) the parents of the patient; or (6) the nearest living relative of the patient. No decision made by persons in categories 3, 4, 5, and 6 shall be effected unless at least two of the persons consent to withdrawal, provided they are reasonably available.

b. *Health Care Power of Attorney.*—Virginia Durable Power of Attorney Act, Va. Code § 11.9.1 (1991).
—Provides for a durable power of attorney by which an individual may appoint another to exercise the declarant's legal powers if the declarant becomes incompetent.
—The phrase "this power of attorney (or his authority) shall not terminate on disability of the principal" or similar language should appear.
—A physician may withhold medical treatment from an individual if they are authorized by an appointed decisionmaker specifically authorized to make such decisions under a durable power of attorney. The appointed decisionmaker may not be the attending physician or his employer, Va. Code § 37.1-134.4 (1990).

Washington

a. Living Will.—Washington Natural Death Act, Wash. Rev. Code Ann. §§ 70.122.010 to .905 (Supp. 1991).

—Provides for a living will which directs the withdrawal of "life-sustaining procedures" (those which replace a vital function and serve only to postpone the moment of death; includes nutrition and hydration) when the declarant has been diagnosed as in a "terminal condition"; the condition must be incurable.

—Living will should substantially follow the model provided by statute, although additional specific instructions may be added.

—May be executed by an adult person of "sound mind" and this must be confirmed by two witnesses who must also indicate on the declaration that the individual is of sound mind.

—Should be signed by two witnesses who are not related by blood or marriage, are not eligible to inherit from the person's estate, and do not have a claim against the declarant's estate. In addition, an attending physician, his employees, or an employee of the health care facility in which the declarant is located may not be a witness.

b. Health Care Power of Attorney.—Washington Durable Power of Attorney-Health Care Decisions Act, Wash. Rev. Code Ann. §§ 11.94.010 to .046 (1990 Cum. Supp.).

—Provides for a durable power of attorney by which an individual may appoint another to exercise his/her legal powers should he/she become incompetent.

—Declarant may provide the authority for the appointed decisionmaker to make decisions regarding medical procedures.

—The phrase "this power of attorney shall not be affected by disability of the principal" or "this power of attorney shall become effective upon the disability of the principal" or similar language should appear in the document.

—Forbids the appointment of the declarant's physician, the physician's employees, or the owner, administrator, or employees of any health care facility where the principal resides, unless that indi-

vidual is a spouse, brother or sister, or adult child of the declarant as agent.

West Virginia

a. Living Will.—West Virginia Natural Death Act, W. Va. Code Ann. §§ 16-30-1 to 10 (Supp. 1991).

—Provides for a living will which allows for the withdrawal/withholding of life-sustaining procedures.

—Living will must substantially follow the model provided by statute.

—Must be executed by an individual who is of "sound mind," and this must be confirmed by two witnesses who must also indicate on the declaration that the individual is of sound mind.

—Should be signed by two witnesses who have not signed the declaration on behalf of the declarant, are not related by blood or marriage, are not eligible to inherit from the person's estate (or are not aware that they have been made a beneficiary of the person's will), are not directly financially responsible nor do they have claim against the estate. In addition, an attending physician, his employees, or an employee of the health care facility in which the declarant is located may not be a witness.

b. Health Care Power of Attorney.—West Virginia Medical Power of Attorney for Health Care Act, W. Va. Code §§ 16-30A-1 to -20 (1990 Cum. Supp.).

—Provides for a Medical Power of Attorney through which an individual may designate another to make medical decisions on his behalf should he/she be rendered incompetent.

—Power of attorney must substantially follow the model provided by statute.

—Must be signed by two witnesses, neither of whom may be related by blood or marriage, entitled to inherit, responsible for the declarant's medical expenses, the provider's physician, the appointed decisionmaker, or employees or operators of a health care facility.

Wisconsin

a. Living Will.—Wisconsin Natural Death Act, Wisc. Stat. Ann. §§ 154.01 to .15 (1989 Supp.).

—Provides for a living will which directs the withdrawal of treatment (that which serves only to prolong the dying process; nutrition and hydration, however, may not be withdrawn) when the declarant has been diagnosed as in a "terminal condition"; death must be imminent.
—Living will need not follow the model provided by statute.
—Provides that the Wisconsin Department of Health and Human Services distribute copies of the model declaration.
—May be executed by any person of sound mind.
—Must be signed by two witnesses who are not related to the declarant by blood or marriage, are not eligible to inherit from the declarant's estate, and do not have a claim against the estate. In addition, an attending physician, nurse, or medical staff, an employee of the attending physician or an employee of a health care facility in which the declarant is located who is involved with the declarant's care may not be a witness.

b. Health Care Power of Attorney.—Wisconsin Power of Attorney for Health Care Act, Wisc. Stat. Ann. §§ 155.01 to .80 (1990).

—Provides for a power of attorney which allows for the withholding or withdrawal of any medical treatment, with the exception that the decisionmaker must be explicitly authorized to require the withholding of non-oral nutrition and hydration.
—Power of attorney must strictly follow the model provided by statute.
—May be executed by any person of sound mind.
—Must be signed by two witnesses who must also indicate on the document that the individual is of sound mind.
—Witnesses may not be related to the person executing the document by either blood or marriage or adoption, have knowledge that they are eligible to inherit from the person's estate, be financially responsible for the person's medical treatment, be an attending health care provider, or the appointed decisionmaker.

Wyoming

a. Living Will.—Wyoming Living Act, Wyo. Stat. §§ 33-22-101 to -109 (1990 Cum. Supp.).

—Provides for a living will which directs the withdrawal of a "life-sustaining procedure" (those which serve only to prolong the dying process) when the declarant has been diagnosed as in a "terminal condition"; there must be reasonable certainty that recovery will not occur, and death must be imminent.

—Living will need not follow the model provided by statute.

—May be executed by any adult.

—Should be signed by two witnesses who have not signed the declaration on behalf of the declarant, are not related to the declarant by blood or marriage, are not eligible to inherit from the declarant's estate and are not directly financially responsible for declarant's health care.

b. Health Care Power of Attorney.—Wyoming Durable Power of Attorney for Health Care Act, Wyo. Stat. §§ 3-5-201 to -214 (1991).

—Provides for a durable power of attorney through which the declarant may designate another to make health care decisions on his behalf should he/she become incompetent.

—Neither the declarant's treating health care provider nor an employee of the treating health care provider, nor an operator of a community or residential care facility in which the declarant resides nor employee thereof may be appointed as proxy unless a relative of the declarant by blood, adoption, or marriage.

—May be revoked at any time the declarant has the capacity to designate a durable power of attorney for health care.

—Provides that a durable power of attorney shall not make health care decisions unless:

(1) Specifically authorized by the appointment directive;

(2) Appointment directive contains the date of its execution; and

(3) The declaration is witnessed by (1) signature of at least two witnesses, not relatives of the declarant or individuals entitled to a por-

tion of the declarant's estate; or (2) sworn to and acknowledged before a notary public.

GLOSSARY

Advance Directive.—Document, including a living will, or the appointment of a health care proxy, or both.

Declarant.—Any individual who has issued an advance directive; also known as the principal.

Declaration.—The treatment or appointment directive document.

Proxy.—Competent individual designated to make decisions on behalf of the declarant.

ADDITIONAL INFORMATION

For additional information about advance directives in your State, you may contact any of the following:

—Choice in Dying, 250 W. 57th Street, New York, NY 10107. This organization will be able to provide you with your State's statutory forms if they exist; and/or

—Your State and local bar associations or your State and local offices on aging. These organizations will be able to refer you to legal assistance, should you desire the help of an attorney.