

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

PLANNING YOUR HEALTH CARE IN ADVANCE

How to Make Your End-of-Life Wishes Known and Honored



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Acknowledgments

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ELIOT SPITZER
Attorney General



Dear New Yorker:

Planning end-of-life care is difficult and involves addressing a number of complex issues. Your decision to accept or reject medical treatment, including life-sustaining procedures, ultimately depends upon your personal wishes, values and beliefs. For those who wish to plan in advance, New York law can help. This guide describes steps you can take to help make your health care wishes known and honored if and when you are unable to make decisions for yourself.

Although it is hard to talk about the final phase of life, it can be a great gift to your family and loved ones if you prepare them for the sometimes difficult and distressing decisions that must be made.

Some mistakenly believe that simply discussing your health care wishes with your family or friends gives them the authority to carry them out when necessary. Or you may assume that a trusted person will be allowed to make health care decisions on your behalf if you are no longer able to do so because of a sudden accident, a life-threatening illness, or advanced age. It is possible, however, that without written instructions from you, or without someone you named to oversee your care, your health care wishes may not be followed.

Preparing a few simple legal forms known as *advance directives* can help ensure that your wishes are respected and your health care stays in the hands of people you trust. We have included sample advance directive forms with this guide along with tips on how to use them.

We hope that this guide is helpful to you.

Sincerely

A handwritten signature in black ink, appearing to read "Eliot Spitzer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eliot Spitzer

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I. OVERVIEW: WHY PLAN IN ADVANCE?

It is possible that because of illness or injury, you may be unable to talk to a doctor and make decisions about your treatment. You may wish to plan in advance to help make sure that your wishes about treatment will be followed if you become unable to decide for yourself for a short or long time period. If you do not plan ahead, family members, loved ones or others you trust may not be allowed to follow your wishes by making decisions for you.

A few months after Ms. C suffered a paralyzing stroke, she slipped into a persistent vegetative state, unable to comprehend anything and kept alive by artificial means. Ms. C's family remembered her words. She had always said she wanted to "die with dignity" and "did not want to be a burden" on anyone. So, Ms. C's family asked her physician to stop artificial feeding and fluids (food and water through a tube) and allow her to die according to her wishes. When asked if Ms. C had a Health Care Proxy or a Living Will that made her health care wishes known, Ms. C's family discovered that she had neither. The hospital refused to stop the artificial food and fluids.

Ms. C's family went to court to order the hospital to stop feeding Ms. C. However, New York law requires clear and convincing proof of a person's wishes regarding end-of-life care.¹ That is, it must be shown that a person who has become incompetent had previously given clearly defined instructions that he or she wanted life-sustaining measures to be terminated.² In Ms. C's case, based solely on her past statements about being a burden on her children, the court could not direct Ms. C's physician to withdraw artificial food and fluids. Such remarks, the court concluded, were too unspecific and casual and were not "clear and convincing proof" that Ms. C would have wished life-sustaining procedures to be withdrawn in her medical situation.

A situation like Ms. C's (see box above) can be prevented by planning your end-of-life care in advance. Preparing a few simple legal forms - a Health Care Proxy, for example - can help to ensure that your health care wishes are followed and your health care decisions stay in the hands of people you trust.

YOUR RIGHT TO DECIDE YOUR TREATMENT

The United States Supreme Court has concluded that you have a constitutional right to be free of unwanted medical treatment.³ New York law also grants you the right to accept or reject medical treatment, including life-prolonging procedures, such as mechanical respiration and tube or intravenous feeding.⁴ New York facilities such as hospitals and nursing homes are required to inform you before you are admitted as to whether or not they will be able to honor your right to accept or reject treatment, or if you are already admitted, they are required to transfer you to a facility that will.⁵

However, under current New York law, no one, not even a family member, has the right to decide about your medical treatment if you are unable to do so, unless you have given them the legal authority to make decisions for you or leave clear and convincing evidence of your treatment wishes. One notable exception is that under the recently enacted Health Care Decisions Act for Persons with Mental Retardation, guardians of individuals with mental retardation have the authority to refuse life-sustaining treatment for such adults.⁶

WILL YOUR WISHES BE KNOWN AND HONORED?

As long as you are able to do so, you can speak directly to your doctor and your family members and let them know what care you may or may not want. But what if you are in a coma or a “persistent vegetative state” and are unable to talk to a doctor and decide about your care?

The first step towards planning your end-of-life care is to think through what type of care you may want, consistent with your values and beliefs. Discuss your wishes with your doctor, your family and loved ones. This is not an easy subject to deal with but it will help your family and loved ones know what kind of treatment you want.

The questions listed below may help you identify what kind of treatment you may or may not want if you are in a medical situation where you are no longer able to decide for yourself.

Casual statements you may have made to your family like “Don’t keep me alive on machines,” “No Heroics,” or “Make sure I am not in pain” may not be specific enough for life prolonging procedures to be given or withdrawn.

Imagine that you are an active, generally healthy adult. One afternoon you have a sudden stroke, leaving you paralyzed and unconscious. You are unable to breathe without assistance and you are placed on a breathing machine. After careful evaluation, the doctors say that there is no hope for recovery.

- | | | |
|-------------|---|--|
| Q. 1 | Would you want your doctor to withhold or withdraw medical treatment, if that medical treatment will only prolong dying? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Q. 2 | Would you want cardiopulmonary resuscitation (CPR) to restore stopped breathing and/or heartbeat? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Q. 3 | Would you want to continue mechanical respiration, i.e. use machines to keep you breathing? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Q. 4 | Would you want tube or intravenous feeding and water? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Q. 5 | Would you want maximum pain relief even if it hastens your death? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Q. 6 | Would you want to donate your organs and/or tissues? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Thinking about what care you want to receive in particular situations and talking with your doctor and loved ones about your health care wishes is an important step. Putting your wishes in writing may be more effective to ensure that your doctor, loved ones and others have a clear and reliable view of your specific wishes. Appointing someone to decide health care matters for you may be an effective way to address situations that you may not be able to anticipate. Below we explain more about the options available to you to make your wishes known so that you can decide what works best for you.

II. **ADVANCE DIRECTIVES: WHAT ARE THEY?**

In New York State, the best way to ensure that your health care wishes are known and honored is to use one or more of the following legal documents, sometimes referred to as “Advance Directives.” Remember, your advance directives will speak for you when you are unable to speak for yourself.

In New York State, there are four types of Advance Directives:

- ◆ **A Health Care Proxy** lets you appoint a healthcare agent - that is, someone you trust to make health care decisions for you if you are unable to make decisions for yourself.
- ◆ **A Living Will** allows you to leave written instructions that explain your health care wishes, especially about end-of-life care. You cannot use a Living Will to name a health care agent; you must use a Health Care Proxy.

- ◆ **A Living Will** together with a *Health Care Proxy* lets you state your health care wishes and name a health care agent.
- ◆ **A Do Not Resuscitate Order (DNR)** only lets you express your wish to do without cardiopulmonary resuscitation (CPR) - that is, emergency treatment to restart your heart and lungs if your heartbeat or breathing stops.

Type of Advance Directive	Health Care Proxy	Living Will	Do Not Resuscitate (DNR)
Established under New York Law	Yes	No, but accepted as evidence of health care wishes by NY Courts	Yes
Allows written statement about desired medical treatment decisions in advance	Yes	Yes	No, only CPR decisions
Allows appointment of health care agent	Yes	No	No

HOW TO SELECT YOUR ADVANCE DIRECTIVE

How do you choose which Advance Directive might be best for you? Here are some questions and answers that may help you:

Q. *If you are in a coma or vegetative state or otherwise incapacitated, would you want someone you trust to make medical decisions for you?*

If the answer is **yes**, consider a **Health Care Proxy** that is appointing someone you trust as your Health Care Agent to speak and decide for you when you are unable to do so (See below).

If the answer is **no** because you have no one you trust to act as your Health Care Agent, consider a **Living Will** so that your medical instructions are clear and can be read by your care givers when you are unable to communicate your wishes (See p. 9).

Q. Even though you want someone you trust to make medical decisions, do you still have strongly held views about specific situations?

If **yes**, you may consider combining a **Health Care Proxy with a Living Will** so that the person you appoint to act on your behalf can also rely on your written instructions to make decisions for you. (See p. 10).

If **no**, then maybe just a **Health Care Proxy** will meet your needs.

This guide gives you information about these advance planning tools and includes forms that you can use to prepare your advance directive of choice. You should ask your doctor to explain any medical issues.

1. A HEALTH CARE PROXY

You can complete a Health Care Proxy if you are 18 years of age or older. A Health Care Proxy, established under New York law, allows you to appoint someone you trust - a Health Care Agent - to make health care decisions on your behalf if you are no longer able to do so.⁷ You can tell your wishes to your agent orally or in writing.

A standard Health Care Proxy form approved under New York law is included with this guide (See p.19). A copy is also available from the Attorney General's Health Care Bureau at <http://www.oag.state.ny.us> Remember, New York law requires hospitals and nursing homes to provide you with a Health Care Proxy form and information about creating a proxy.⁸

Below are some things to consider in writing and signing your Health Care Proxy form.

Step 1: Understand Your Health Care Agent's Authority

Under New York's Health Care Proxy law, your agent's authority to make health care decisions begins only when two doctors determine that you have lost the capacity to make decisions for yourself.

You may give your health care agent as little or as much authority as you wish. In other words, you may allow your agent to make all health care decisions on your behalf or only certain ones.

A Health Care Agent's Rights and Obligations Under New York's Health Care Proxy Law:

- ✓ Your Health Care Agent will only have the authority to make decisions related to artificial nutrition and hydration (for example, use of a tube to give you food and water) if you have communicated your wishes to him or her. You may either tell your agent or write about your wishes in your Health Care Proxy form.
- ✓ Your agent will have the authority to decide whether or not your heart beat should be restarted through cardiopulmonary resuscitation (CPR) unless you specify in your Health Care Proxy form that your agent cannot make this decision for you.
- ✓ Once your agent's authority begins, he or she has the right to get your medical information and records to make informed health care decisions for you.
- ✓ Your agent's decision is final unless an objecting family member or facility obtains a court order overriding the decision or disqualifying the agent.
- ✓ Your agent is not financially responsible for the cost of your care.
- ✓ Overall, your agent is required to make health care decisions for you according to your wishes, religious and moral beliefs, and in your best interest.

Step 2: Choose a Health Care Agent

Picking your health care agent is a very important decision. Generally, you have the right to appoint any competent adult (18 years of age or older) as your health care agent. Your agent may be your spouse or partner, an adult child, a relative, a close friend or a lawyer. Choose someone you trust -- and someone with whom you feel confident discussing your wishes for medical care. Your agent need not agree with all of your wishes, but must be capable of carrying them out, regardless of his or her own feelings. And, of course, it is always good practice to make sure the person you approved as your agent is comfortable serving as your agent.

Under New York's Health Care Proxy law, you can appoint any competent adult as your Health Care Agent except:

- ✓ You cannot appoint your doctor as your health care agent unless your doctor is your spouse or your relative.
- ✓ You cannot appoint an operator, administrator, or employee of the hospital or nursing home where you are admitted unless they are a relative or you appointed them before your admission.

Q. Should my health care agent be living in the same city?

While the law does not require you to name an agent living in the same city or state as you do, it is a good idea to choose someone who lives nearby. If you are terminally ill, for example, and unable to make decisions for yourself, your agent may have to spend weeks or even months nearby to ensure your health care wishes are followed

Step 3: Name an Alternate Health Care Agent as your back-up agent

The Health Care Proxy form gives you the option to appoint an alternate agent. Your alternate agent can take over from your first choice only if:

- ✓ You specify the circumstances under which you would like your alternate agent to take over from your agent. For example, if you want your alternate to serve if your first choice moves out of state, then say that in your Health Care Proxy.
- ✓ Your doctor states in writing that your first choice as health care agent is not available when needed.
- ✓ A court disqualifies your agent.

Step 4: Sign Your Health Care Proxy

Two witnesses must watch you sign your Health Care Proxy form and say that you appeared to sign willingly. Neither your agent nor your alternate agent can serve as a witness. You do not need to have the form notarized.

The standard Health Care Proxy form approved under New York law has sections that must be completed for your proxy to be valid. The form also has “optional” sections that you may or may not choose to complete.

Make sure your Health Care Proxy form meets the minimum requirements listed in the box on the left.

Minimum State Requirements for a Valid Health Care Proxy Form

- ✓ Your name as the Principal who creates the proxy.
- ✓ Name of your health care agent.
- ✓ Your statement that you intend the agent to have the authority to make health care decisions on your behalf.
- ✓ You must sign and date your signature with the witnesses present. If you are unable to sign your proxy, another adult can sign for you at your request.
- ✓ Two witnesses must sign and date their signatures, and state that you (Principal) appeared to execute the proxy willingly. Neither your agent nor your alternate agent can serve as witnesses.

Optional Sections for a Health Care Proxy Form

- ✓ Statement of your treatment wishes or limitations on the agent’s authority. For example, you may want to state that you have told your agent your wishes about artificial nutrition and hydration (food and water).
- ✓ Naming an alternate agent.
- ✓ Statement of your wishes regarding organ and/or tissue donation.
- ✓ Expiration date if any, of your Health Care Proxy, or a description of circumstances that trigger expiration.



2. A LIVING WILL

While New York does not have a statute governing Living Wills, the Court of Appeals, New York's highest court, has stated that Living Wills are valid as long as they provide "clear and convincing" evidence of your wishes.⁹ If you are 18 years of age or older, you may express your wishes in writing about your health care by signing a Living Will.




There is no standard Living Will form. You may use the Living Will form which appears on page 23. You may also download a Living Will form at no charge at www.lastactspartnership.org

Below are some things to consider in planning and signing your Living Will.

Step 1: Understand the Authority of Your Living Will

-  A Living Will is a written declaration of your health care wishes. In your Living Will, you can leave specific instructions about medical treatments you may or may not want, when you are no longer able to decide for yourself.
-  A Living Will serves as evidence of your wishes.

Step 2: Write Your Living Will

-  You can use a Living Will to write your wishes about care at the end of life. You may describe the medical situations in which you would accept or refuse medical treatment. You may specify the kind of treatment that you may or may not want. For example, you may state whether you wish to be kept alive with a feeding tube or intravenous feeding if you are terminally ill or comatose and there is no hope you will recover (*Also See "Identifying your Health Care Wishes," p. 2*).
-  You may want to consult a lawyer if you wish to address issues not covered in the form included with this guide - like whether you want medical treatments such as CPR, blood transfusions and dialysis, or whether you want to be kept alive on machines for a short time if necessary to be an organ donor. A custom-tailored Living Will can help make clear your objection to unwanted medical treatments.
-  If you have questions, discuss them with your doctor, a patient representative at a hospital, or a lawyer.

Step 3: Sign Your Living Will

It is best to have two witnesses watch you sign your Living Will, and sign a statement on the form that you appeared to sign willingly. If possible, you should have the form notarized, so that it may be recognized in states that require notarization.

Regardless of which Living Will form you choose to use, make sure you meet the minimum requirements for a Living Will listed below.

Minimum Requirements for a Valid Living Will:

- ✓ Your name as the person creating the Living Will.
- ✓ Date you create your Living Will.
- ✓ Your statement regarding your personal health care wishes.
- ✓ Your signature.
- ✓ Two witnesses' signatures and dates, and statements from the witnesses that you appeared to sign the document willingly.

3. A LIVING WILL AND A HEALTH CARE PROXY

Q. What is the difference between a Living Will and a Health Care Proxy?

Although both a Health Care Proxy and a Living Will are advance directives, they are not the same thing.

A Living Will is a document that contains your health care wishes and is addressed to unnamed family, friends, hospitals and other health care facilities. You may use a Living Will to specify your wishes about life-prolonging procedures and other end-of-life care so that your specific instructions can be read by your caregivers when you are unable to communicate your wishes.

A Health Care Proxy is a person who is named by you to make health care decisions on your behalf if you are no longer able to do so. You may give this person (your agent) authority to make decisions for you in all medical situations. Thus, even in medical situations not anticipated by you, your agent can make decisions and ensure you are treated according to your wishes, values and beliefs.

Q. Can I choose to sign both a Living Will and a Health Care Proxy?

Yes. Some people choose to sign both a Living Will and a Health Care Proxy so that they can leave specific medical instructions in writing and appoint a health care agent to carry them out. Your health care agent can rely on your instructions as guidance to make decisions that reflect your wishes. **Remember**, you can leave specific instructions about your preferences for care in your Living Will or in the space provided on the Health Care Proxy form itself. You may want to discuss the best course for you with your loved ones, a patient representative, your doctor, or a lawyer.

4. DO NOT RESUSCITATE ORDERS (DNR)

Under New York law, a DNR Order instructs medical professionals not to perform cardiopulmonary resuscitation (CPR), that is, emergency treatment to restart your heart or lungs when your heartbeat or breathing stops.¹⁰ This means that doctors, nurses, or emergency personnel (i.e, ambulance paramedics) will not initiate emergency procedures such as mouth-to-mouth resuscitation, external chest compression, electric shock, insertion of tube to open your airway, or injection of medication into your heart or open chest.

You can get a DNR Order or make your DNR wishes known in your Living Will or Health Care Proxy.

In New York, any adult 18 years or older can get a Hospital or a Non-Hospital DNR Order. A Hospital DNR Order is issued if you are in a health care facility such as a hospital, nursing home, or a mental hygiene facility licensed by New York State. But if you are outside any of these facilities, at home, in a hospice or a clinic, you may want to get a Non-Hospital DNR Order. Emergency personnel, such as ambulance paramedics must honor your DNR Order during transfer.

Giving Consent to a DNR Order

If you have capacity to make decisions for yourself, you can give your consent to a DNR Order verbally or in writing. If you lack capacity to make decisions for yourself, your health care agent can consent on your behalf. But what if you become unable to decide about CPR, you did not tell your doctor about your wishes in advance, and you do not have a health care agent or a Living Will? Under New York's DNR law, in such a circumstance, a surrogate, such as a family member or a close friend, can give consent.¹¹

See the checklists below for DNR Orders.

**Checklist for a Valid Hospital
DNR Order**

- You, your health care agent or a surrogate may give written or verbal consent to your Hospital DNR order.
- Verbal consent must be witnessed by two adults, one of whom must be a doctor in the facility where you are admitted.
- Written consent must be signed by two adult witnesses.
- Your doctor can issue your DNR Order. New York State does not require your written or verbal consent to be recorded on a state form. Most facilities use their own forms.

**Checklist for a Valid Non-Hospital
DNR Order**

- You, your health care agent or a surrogate may give written or verbal consent to your Non-Hospital DNR Order.
- If you are getting your DNR Order before discharge, verbal consent may be given to your attending doctor or two adult witnesses, one of whom must be a doctor in the facility where you are admitted.
- If you are out of hospital, at home, for example, it will be sufficient to give verbal consent to your attending doctor.
- If you are giving consent in writing, it must be signed by two adult witnesses.
- Written or verbal consent must be recorded on New York State Form DOH-3473 and signed by your doctor. Form available at www.health.state.ny.us.

Q. What is the difference between a health care agent and a surrogate?

Under New York law, a health care agent is named by you in your Health Care Proxy and has the authority to accept or reject any medical treatment on your behalf. A surrogate, on the other hand, only has authority to make decisions about CPR and cannot accept or refuse other medical treatments on your behalf. Remember, a surrogate can only give consent to your DNR Order if you do not have a health care agent.

III. MAKING YOUR ADVANCE DIRECTIVES KNOWN

HEALTH CARE PROXY AND LIVING WILL

After signing your Health Care Proxy or Living Will, follow these tips:

- ✓ Make several photocopies of the completed forms.
- ✓ Keep the originals in a safe but accessible place (not a safe deposit box). Give copies to your health care agent, alternate agent, your attorney or other advisor, close family members, doctors, and anyone else you choose to involve in your health care.
- ✓ Under New York law, any doctor who is given a Health Care Proxy form must arrange for the form, or a copy of the form, to be put in your medical record.
- ✓ Consider carrying a wallet card giving information about the existence and location of your Health Care Proxy or a Living Will.

DNR ORDERS

A Hospital DNR Order is recorded in your medical chart. You must keep your Non-Hospital DNR Order form and may also consider getting a DNR Bracelet.

DNR Bracelet: A DNR bracelet may be worn only if you have been issued a valid Non-Hospital DNR Order using form DOH-3474. The law requires emergency medical personnel who see a standard DNR bracelet on you to comply with the Order.

To learn more about how to get a DNR bracelet, visit www.strems.org/bracelet.html or write to the New York State Department of Health, Box 2000, Albany, NY 12220. Along with form DOH-3474, you will receive information on where to purchase a bracelet.

IV. CANCELING YOUR ADVANCE DIRECTIVES

An advance directive remains in effect indefinitely unless you cancel it, or include an expiration date, or describe the circumstances that trigger expiration. You can change or cancel your advance directives at any time. It is important to revisit the forms you have signed to make sure they express your current health care wishes.

CANCELING A HEALTH CARE PROXY OR LIVING WILL

- You can cancel your Health Care Proxy by notifying, orally or in writing, your agent, doctor or others who have copies.
- You can cancel the appointment of the agent on your Health Care Proxy at any time and appoint a different health care agent in a new Health Care Proxy.
- If your spouse is your appointed health care agent, your Health Care Proxy is automatically cancelled upon divorce.
- You can cancel your Living Will at any time by destroying the document. You are not required to notify anyone by law before canceling your Living Will but it would be wise to inform those aware of its existence that you have canceled it.

CANCELING YOUR DNR ORDER

In general, you or your health care agent can cancel a DNR Order at any time in any way that makes your wish known. This can include the following:

- Your oral or written statement to a doctor or nurse.
- Your act that shows an intention to cancel your consent, such as:
 - Physically destroying the actual DNR document or indicating on it that it is canceled.
 - Removing any bracelet or medallion which indicates your DNR status.
 - Orally telling emergency responders not to pay attention to the order.
- However, a surrogate may cancel your DNR Order only by:
 - An oral statement to your attending doctor in the presence of one adult witness; or
 - A written statement to a doctor or nurse.
- Any doctor informed about the cancellation of a DNR Order must:
 - Immediately record the cancellation in your chart and inform the staff responsible for your care about the cancellation.
 - Any nurse or other professional who is informed about the DNR cancellation must immediately inform the doctor.

V. SOME SPECIAL ISSUES

PAIN MANAGEMENT

Unrelieved pain can have a profound effect on your physical and mental well-being. In New York, doctors have an ethical, moral, and legal obligation to treat pain as effectively as possible. Also, hospitals, nursing homes, health plans and home care agencies accredited by the Joint Commission on Health Care Organizations (JCAHO) are required to establish procedures to support the appropriate prescription or ordering of effective pain medications. You should make certain that your doctor is well-informed about your level of pain and understands your wish to receive adequate pain management. Express the nature and intensity of your pain to your doctor so that he or she can assess and address your needs accordingly. Ensure that your Living Will or Health Care Proxy makes clear your wishes related to pain management. For example, you may want to state whether or not you want medication to alleviate pain even if it shortens your life.

HOSPICE CARE

Hospice is a program of care focused on providing comprehensive care for the terminally ill and their families. The program provides palliative and supportive care to meet the special needs arising out of physical, mental, spiritual, social and economic stresses experienced during the final stages of illness, dying and bereavement. Hospice care programs are regulated under federal and state law.¹²

In New York State, there are about fifty state certified hospice care programs. You or your health care agent may indicate a preference for a hospice program in advance to fulfill your needs. Here are some factors to consider about hospice care:

- ➔ Hospice care services provided by state certified programs are usually covered by insurance such as Medicare, Medicaid, and commercial health insurance plans. Generally, hospice care is a covered benefit if you have a terminal illness with 6 months or less to live and a physician has certified that hospice care is appropriate.
- ➔ In New York, you can opt to receive hospice care in settings of your choice such as your home, in a hospital, or nursing home.
- ➔ Under federal and state law, hospice care must be administered by a coordinated team which may include your doctor, the hospice's medical director, registered nurses, certified home health aides, licensed social workers, pastoral counselors, bereavement counselors, rehabilitation therapists and volunteers who provide support with day-to-day life challenges.
- ➔ To obtain information on hospice providers and benefits or to file a complaint against a hospice care provider, call the New York State Department of Health at 1-800-628-5972.

ORGAN DONATION

In New York, any person 18 years of age or older, capable of making decisions, may donate any or all parts of their body after death to any hospital, surgeon, doctor, accredited medical school, storage facility, specific person or organ procurement organization. New York law prohibits organ donation for money or any other consideration. Your organ donation authorization cannot be cancelled by any person, family member, or your health care agent. You can choose to fill out an Organ/Tissue Donor Form or specify your wishes related to organ donation in your Health Care Proxy or Living Will.

To enroll in the New York State Organ and Tissue Donor Registry, you can request that an enrollment form be mailed to you by calling 1-800-GIFT-4-NY (1-800-443-8469) or visiting <http://www.health.state.ny.us/nysdoh/donor/index>.

Remember, you will be enrolled automatically if you check the organ donor box on your driver's license or non-driver identification (ID) card application or renewal form.

VI. OTHER DOCUMENTS TO HELP ENSURE YOUR WISHES ARE FOLLOWED

Under New York State law, you can designate a person to make property, financial, and other legal non-healthcare decisions on your behalf through a "Power of Attorney." You can create a *Non-durable*, *Durable*, or *Springing Power of Attorney* depending on your particular need for representation.

- ✓ **A *Nondurable Power of Attorney*** allows you, the Principal, to appoint an Agent to act on your behalf in a specific activity or during a specific period of time, for example, while you are traveling away from home. After the activity is completed or the period of time has elapsed, the Power of Attorney ends.
- ✓ **A *Durable Power of Attorney*** authorizes another person to act for you immediately upon its execution and lasts until cancellation by you or upon your death; this power continues when you are mentally or physically incapacitated.
- ✓ **A *Springing Power of Attorney*** becomes effective at a future time upon an event identified by you, and lasts until your death or cancellation by a court.

Remember, the New York Health Care Proxy law specifically requires you to fill out a Health Care Proxy form to appoint your health care agent. Therefore, you cannot combine your Health Care Proxy with your Power of Attorney. The agent appointed by you in your Power of Attorney may, but need not be, the person who is the Health Care Agent in your Proxy.

VII. CONCLUSION: POINTS TO REMEMBER

- ✓ Your decision to accept or reject medical treatment, including life-sustaining procedures, ultimately depends on your personal wishes, values and beliefs.
- ✓ Advance Directives can help you ensure that your health care wishes are followed if you are unable to make decisions for yourself.
- ✓ Advance Directives are for everyone, not just the elderly and the chronically ill.
- ✓ Advance Directive forms are free.
- ✓ Advance Directives can be canceled at any time.
- ✓ Advance Directives work best when accompanied by discussions with your family and loved ones about your personal values and beliefs. You may also wish to speak with a patient representative (if you are in the hospital), your doctor or lawyer.

You can obtain a copy of the New York State Health Care Proxy Form that appears on the next page at no charge by visiting:

The New York State Attorney General's Health Care Bureau at
www.oag.state.ny.us/health/health_care.html

or

The New York State Department of Health at
www.health.state.ny.us/nysdoh/hospital/healthcareproxy

HEALTH CARE PROXY FORM

(1) I, _____

hereby appoint

(name, home address and telephone number)

as my health care agent to make any and all health care decisions for me, except to the extent that I state otherwise. This proxy shall take effect only when and if I become unable to make my own health care decisions.

(2) **Optional: Alternate Agent**

If the person I appoint is unable, unwilling or unavailable to act as my health care agent, I hereby appoint

(name, home address and telephone number)

as my health care agent to make any and all health care decisions for me, except to the extent that I state otherwise.

(3) Unless I revoke it or state an expiration date or circumstances under which it will expire, this proxy shall remain in effect indefinitely. (Optional: If you want this proxy to expire, state the date or conditions here.) This proxy shall expire (specify date or conditions):

- (4) Optional: I direct my health care agent to make health care decisions according to my wishes and limitations, as he or she knows or as stated below. (If you want to limit your agent's authority to make health care decisions for you or to give specific instructions, you may state your wishes or limitations here.) I direct my health care agent to make health care decisions in accordance with the following limitations and/or instructions (attach additional pages as necessary):

In order for your agent to make health care decisions for you about artificial nutrition and hydration (nourishment and water provided by feeding tube and intravenous line), your agent must reasonably know your wishes. You can either tell your agent what your wishes are or include them in this section. See instructions for sample language that you could use if you choose to include your wishes on this form, including your wishes about artificial nutrition and hydration.

(5) **Your Identification (please print)**

Your Name _____

Your Signature _____ Date _____

Your Address _____

(6) **Optional: Organ and/or Tissue Donation**

I hereby make an anatomical gift, to be effective upon my death, of: (check any that apply)

Any needed organs and/or tissues

The following organs and/or tissues _____

Limitations _____

If you do not state your wishes or instructions about organ and/or tissue donation on this form, it will not be taken to mean that you do not wish to make a donation or prevent a person, who is otherwise authorized by law, to consent to a donation on your behalf.

Your Signature _____ Date _____

(7) Statement by Witnesses *(Witnesses must be 18 years of age or older and cannot be the health care agent or alternate.)*

I declare that the person who signed this document is personally known to me and appears to be of sound mind and acting of his or her own free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Date _____

Date _____

Name of Witness 1
(print) _____

Name of Witness 2
(print) _____

Signature _____

Signature _____

Address _____

Address _____

You can obtain a copy of the New York State Living Will Form that appears on the next page and instructions on how to complete the form at no charge by visiting:

www.lastactpartnership.org

NEW YORK LIVING WILL

This Living Will has been prepared to conform to the law in the State of New York, as set forth in the case In re Westchester County Medical Center, 72 N.Y. 2d 517 (1988). In that case the Court established the need for “clear and convincing” evidence of a patient's wishes and stated that the “ideal situation is one in which the patient's wishes were expressed in some form of writing, perhaps a ‘Living Will’.”

I, _____, being of sound mind, make this statement as a directive to be followed if I become permanently unable to participate in decisions regarding my medical care. These instructions reflect my firm and settled commitment to decline medical treatment under the circumstances indicated below:

I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying, if I should be in an **incurable or irreversible mental or physical condition with no reasonable expectation of recovery**, including but not limited to: (a) **a terminal condition**; (b) **a permanently unconscious condition**; or (c) **a minimally conscious condition in which I am permanently unable to make decisions or express my wishes**.

I direct that my treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing treatment.

While I understand that I am not legally required to be specific about future treatments **if I am in the condition(s) described above I feel especially strongly about the following forms of treatment:**

I do not want cardiac resuscitation.

I do not want mechanical respiration.

I do not want artificial nutrition and hydration. I do not want antibiotics.

However, I **do want** maximum pain relief, even if it may hasten my death.

Other directions:

These directions express my legal right to refuse treatment, under the law of New York. I intend my instructions to be carried out, unless I have rescinded them in a new writing or by clearly indicating that I have changed my mind.

Signed _____ Date _____

Address _____

I declare that the person who signed this document appeared to execute the Living Will willingly and free from duress. He or she signed (or asked another to sign for him or her) this document in my presence.

Witness 1 _____

Address _____

Witness 2 _____

Address _____

**STATE OF NEW YORK
DEPARTMENT OF HEALTH
NON-HOSPITAL ORDER NOT TO RESUSCITATE
(DNR ORDER)**

Person's Name: _____

Date of Birth: ____/____/____

Do not resuscitate the person named above.

Physician's Signature _____

Print Name _____

License Number _____

Date ____/____/____

It is the responsibility of the physician to determine, at least every 90 days, whether this order continues to be appropriate, and to indicate this by a note in the person's medical chart.

The issuance of a new form is NOT required, and under the law this order should be considered valid unless it is known that it has been revoked. This order remains valid and must be followed, even if it has not been reviewed within the 90 day period.

RESOURCE DIRECTORY

Partnership for Caring

Website: www.lastactspartnership.org

To obtain advance directive forms visit the website address. To get assistance regarding a specific end-of-life situation or obtain free advance directive forms call 1-800-989-9455.

Hospice Care

To find a hospice or palliative care program in your county, visit www.Hpcanys.org or call toll-free at 1-800-431-8988. You can also request informational brochures from The Hospice and Palliative Care Association of New York State, 21 Aviation Road, Suite 9, Albany, NY 12205.

New York State Attorney General

To obtain a free copy of the New York State Health Care Proxy form or a Living Will, visit the New York State Attorney General's Office at www.oag.state.ny.us

New York State Department of Health

Website: www.health.state.ny.us

To obtain a free copy of the New York State Health Care Proxy form with instructions go directly to <http://www.health.state.ny.us/nysdoh/hospital/healthcareproxy/intro.htm>.

To obtain a free copy of the DNR Order form or information about a DNR bracelet visit www.strems.org/bracelet.html or call 607-732-2354

To obtain information on hospice providers and benefits, or to file a complaint against a hospice care provider, call 1-800-628-5972.

Organ and Tissue Donation

To contact an organ procurement organization call:

Albany: 1-800-256-7811

Buffalo: 1-800-227-4771

Rochester/Syracuse: 1-800-810-5494

New York City/Long Island: 1-800-GIFT- 4-NY or 1-800-443-8469

To enroll in the New York State Organ and Tissue Donor Registry, you can enroll online at the New York State Department of Health at <http://www.health.state.ny.us/nysdoh/donor/index> or call 1-800-GIFT-4-NY (1-800-443-8469).

Toll Free Government Helplines

Federal Medicare Hot Line: 1-800-638-6833

TTY/TDD users: 1-800-820-1202

Federal Medicare Choice Helpline 1-800-633-4227

TTY-TDD users: 1-877-486-2048

Medicare Rights Center/HIICAP Hot Line 1-800-333-4114

NYS Department of Insurance: 1-800-342-3736

NYS Office of Aging, Senior Citizens' Hot Line:1-800-342-9871

NYS Division of Veterans' Affairs: 1-888-838-7697

NYS Partnership for Long Term Care: 1-888-697-7582

New York State Long Term Care Ombudsman: 1-800-828-2338

Endnotes

1. *In re O'Connor*, 72 N.Y.2d 517, 531, 534 N.Y.S.2d 886, 892 (1988), the court denied permission to withdraw artificial nutrition and hydration from a 77-year old severely incapacitated woman, despite her previous statements to her daughters that she would not wish to continue her life by artificial means. The court reasoned that the woman's prior statements were not clear and convincing evidence of a desire to withdraw treatment and did not reflect a firm and settled commitment to the termination of life support under the circumstances presented.
2. In *Delio v. Westchester County Medical Center*, 129 AD2d 1 (2nd Dept 1987), the court granted permission to withdraw life-sustaining treatment from a 33-year old man suffering from irreversible brain damage based on the finding that his previous statements to family members met the court's stringent "clear and convincing" standard.
3. *In Cruzan v. Director Missouri Department of Health*, 497 U.S. 261, 110 S. Ct 2841 (1990), the United States Supreme Court held that requiring clear and convincing evidence of an incapacitated patient's wish to forgo life-sustaining treatment does not violate the patient's constitutional rights.
4. In *Rivers v. Katz*, 67 N.Y. 2d 485, 504 N.Y.S.2d 74, 78 (1986), the court recognized that the common law right to refuse treatment is co-extensive with the patient's liberty interest protected by the due process clause of the [New York State] Constitution.
5. N.Y. Public Health Law § 2991 (McKinney 1993) requires hospitals and other health care facilities to provide patients with a Health Care Proxy form and information about creating a proxy. In addition, the Federal Patient Self-Determination Act requires health care facilities to notify patients of their rights under state law to create advance directives. See 42 U.S.C. § 1395cc(f) (1992).
6. N.Y. SCPA Law § 1750-B (McKinney 2004). Under the *Health Care Decisions Act for Persons with Mental Retardation* (HCDA), guardians of individuals with mental retardation have the authority to refuse life-sustaining treatment for such adults.
7. N.Y. Public Health Law, Article 29-C (McKinney 1993). See generally New York State Task Force on Life and the Law, *Life-Sustaining Treatment: Making Decisions and Appointing a Health Care Agent* (1987) (providing social, ethical, and legal background to New York Health Care Proxy Law); see also New York State Department of Health, *The Health Care Proxy Law: A Guidebook for Health Care Professionals* (1991).
8. N.Y. Public Health Law § 2991 (McKinney 1993) requires hospitals and other health care facilities to provide patients with a Health Care Proxy form and information about creating a proxy. Additionally, the Federal Patient Self-Determination Act requires health care facilities to notify their patients of their rights under state law to create advance directives. See 42 U.S.C. 1395cc(f) (1992).
9. New York State does not have a statute governing Living Wills. See *Choice in Dying, Refusal of Treatment Legislation* (1991 & Supp.)

10. N.Y. Public Health Law, Article 29-B (McKinney 1993).
11. N.Y. Public Health Law §§ 2960, 2965, 2966 (McKinney 1993) and 10 NYCRR 405.43 (F) (1) (i).
Recent amendments to this statute facilitate the ability of surrogates to consent to DNR Orders for patients in hospice and home care settings.
12. *See* 42 CFR § 418.3 and 10 NYCRR § 700.2.