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ROLL NUMBER

DESCRIPTION

22/2

2007 SENATE HUMAN SERVICES

SB 2212

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2212

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 1-24-07

Recorder Job Number: 1787, 1831

Committee Clerk Signature

Mary K Monson

Minutes:

Vice Chairman Senator Erbele opened the hearing on SB 2212 relating to health care directives.

Senator J. Lee (Dist. 13) introduced SB 2212 and reminded the committee that they did a lot of work in the last session on advanced directives etc. With this bill, they are looking at eliminating what is really kind of a redundant requirement for determining the competency of somebody in the hospital or a long term care facility that may need an advance directive. The purpose of this is that it should not assume that everybody who is in the hospital or a long term care facility is not competent.

Christopher Dodson (ND Catholic Conference) testified in support of SB 2212. He distributed to the committee a guide to health care directives, a resource for ND Catholics. Based on the changes made last session this guide was adopted (Attachment #1). If you are in the hospital or nursing home, another form needs to be added (Attachment #2). (Meter 3:25) It is an extra step that people have to go through. The presumption is something that doesn't make sense at this point in time. Why, if you are in a nursing home or hospital, you are not as competent as you are before you walk in to appoint a health care agent and that you need somebody to guide you through it and you have to go through all this extra paperwork. As he did workshops

across the state, some things came to his attention from talking to people in both catholic and non-catholic facilities. First they would ask where is the addendum they have to do. The question they can ask is why. They didn't touch it in the last session because they didn't want to address what they thought were original controversial issues. There was concern about undue influence on hospital and nursing home settings when the first advance directive law was passed.

This is one way to make it simpler. It is something he doesn't think is needed anymore in the law. The first part of the bill simply deletes the requirement and then it deletes that section from the optional form of the statute which is at the very end of the bill.

Senator Warner asked if there is a speaker bureau, speakers that go around conducting seminars to address the types of options you might want to list.

Mr. Dodson said that, as part of the outreach, there is a list of organizations that have information. Also, hospitals are required to do community outreach on advance directives.

Senator Dever asked when a person goes into a nursing home or a hospital, are they required to include the family in that conversation.

Mr. Dodson said they are not required to include family in conversation. They would be encouraged. At the moment they would have to have appointment of an agent explained to them by those designated persons. (Meter 8:25)

Under current law the agent has to accept the appointment. There must be some sort of conversation that goes on.

Bruce Levi (NDMA) testified in support of SB 2212. He distributed a booklet "Advance Health Care Planning Resource Guide for North Dakotans". He explained the undue influence law.

(Meter 11:42) The document signed in the 80's was probably the living will that didn't require a separate explanation. The durable power of attorney, if there was an agent appointed after

1991, then that provision was there. There was concern about the conflicting provisions between the old living will and the durable power of attorney for health care.

He talked about the legislative history (Meter 12:50). This was an issue that was brought up in the matter of life and death project. Last session it was something they decided was a substantive issue. They were just trying to combine the living and the durable power of attorney into one document called the health care directive. He agreed that it seems to be a redundancy. If there is an issue with capacity at the time of execution, that's a separate issue.

People can bring that up later when they are looking at actually implementing the advanced directive.

Senator Warner asked if excluding this language at this point would they create an obstacle to challenge it later, at the moment of the execution.

Mr. Levi wasn't aware of many challenges to the execution of advanced directive, whether somebody had capacity at the time they did it. (Meter 15:10)

There was no opposing testimony.

Senator J. Lee asked for neutral testimony.

Chris Dodson asked if the committee wanted to address the other issue related to the advance directives –guardianship.

Senator J. Lee told him to go ahead.

Mr. Dodson said there were a few other things they discovered during the workshop and one is something he doesn't have a solution for but it can be addressed in this bill if they wanted because it is related. It's not clear under the law as written now whether a person who is appointed as a guardian can execute an advance health care directive on behalf of their ward.

If they can do that, can they appoint someone else to make health care decisions for that ward? There are arguments both ways. The language is not clear. (Meter 17:45)

Senator J. Lee asked if they could come up with some resolution to make this bill better.

Mr. Dodson said they didn't have a position on this issue so if the committee could give them some direction on what they think the answer should be they could come up with the language. But they need a policy direction.

Senator J. Lee closed the hearing on SB 2212 and said they would reconvene for discussion later.

Job #1831

Senator J. Lee, Chairman, opened SB 2212 for discussion. She asked Chris Dodson for some direction on what direction to go with an amendment to allow guardians to assign guardianship to another person.

Mr. Dodson suggested you could say, "all guardians can execute" or you can say "all guardians with medical decision making authority could execute health care directive on behalf of the ward". The most workable might be something like, "unless an order appointing a guardian says otherwise, a guardian with medical decision making authority can execute a health care directive on behalf of the ward."

Senator Warner asked if it is normal for courts to grant that authority.

Mr. Dodson said he doesn't practice that area of law.

The committee discussed the reason for having a guardian and examples were given.

Senator Dever asked if the reason for a person to have a guardian is because there is no one else to speak for him.

Senator J. Lee answered that they have no legal responsibility for that person.

Mr. Dodson said the extent of the guardian should depend on the person's need.

There was discussion on appointing family members as guardian and court appointed guardians and what happens if there is no family or guardian. (Meter 3:30)

Senator Warner talked about reasons for the courts to intervene to appoint one sibling over another as guardian.

Mr. Dodson said it is not clear in the code what the process is if there already is an appointed guardian and they want to turn that authority over to somebody they trust to make a decision for the ward. That's the question, what does that person do?

Senator J. Lee said it is a good thing to clarify. She asked the committee if they agreed with instructing Mr. Dodson and Mr. Levi that their intentions would be that somebody with power to make health care decisions would have the ability to determine if another executor of health directive for the ward could act for the ward.

The committee agreed.

Discussion on SB 2212 was closed

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2212

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-05-07

Recorder Job Number: 2846

Committee Clerk Signature

Mary K Monson

Minutes:

Senator J. Lee, Chairman, opened SB 2212 for discussion. She reported that Mr. Boeck, Protection and Advocacy, had concerns about this.

David Boeck said they had a couple of concerns. One was with the bill itself. He didn't know what problem they were solving with it. (Meter 1:00)

Senator J. Lee responded that this was an additional requirement and it is assuming that people in hospitals and long term care facilities weren't competent enough to know what they were signing.

Mr. Boeck said he agreed with that but it doesn't hurt to explain it to them. An advance care document has a tremendous potential for having an effect on the end of your life, not to mention the status of your life before death. It's like signing two documents. (Meter 3:00)

Another issue he had was with the proposed amendments. (Meter 5:30)

Mr. Dodson provided the committee with a proposed amendment the committee had asked him to prepare (Attachment #4) and then explained it (Meter 8:30).

Mr. Boeck said he was concerned about doing this without going back to court.

There was discussion that the judge would probably want to have a hearing. (Meter 10:00)

Mr. Boeck talked about ramifications and gave examples.

Senator J. Lee addressed a situation about someone not capable of making their own decisions throughout his lifetime such a developmentally disabled person. That person would be different from someone who could express his wishes but now has lost his ability.

Mr. Boeck agreed that is different but he wasn't sure there wouldn't be that many people from birth on that couldn't express a difference, maybe not competent to sign a document but still able to verbalize.

Mr. Dodson reminded the committee that they came into this without a position. It was something they discovered. There is a problem out there (Meter 18:20). He assumes that the court looks at all the factors when they appoint a guardian and would determine whether or not a health care directive exists. The law is not clear so if you leave it, you are leaving an unclear law.

Senator J. Lee asked Rodger Wetzell to share his observation.

Mr. Wetzell chaired the Matters of Life and Death State Project. They developed a lot of educational materials on advance directives. They do a huge number of advance directives at St. Alexis. One of the required things they do is they ask every patient that is admitted if they have an advance directive, do you want assistance with one, do you want sample forms?

Most patients have a sense of what they want. In terms of guardianship, health care issues are emergencies (Meter 24:20) and if a person has an accident, a stroke, or maybe they are in the hospital, in a lot of cases somebody needs to make decisions right now. If the guardian is going to be away, is a snowbird, or has moved away, they may want to appoint someone else to make medical decision while they are gone. He talked about a variety of situations where guardianships come into play. He talked about the advantage of appointing rather than letting the process go down the family order and having the courts appoint someone who might not be all that knowledgeable or could care less but is next in line.

Senator J. Lee asked if he was talking about arranging for a co-guardian in the first place or someone to just step in.

Mr. Wetzell said the issue of co-guardian is addressed in many cases. The trouble with co-guardians is -- does it require both or just one and what happens if they disagree.

Senator J. Lee (Meter 28:00) asked how to do that if they think it's a good idea -- to make it work if those people are willing to assume responsibility again when they come back.

Mr. Dodson said he didn't think they needed to change the law because they could write it into an advance directive law. (Meter 28:54)

There was discussion that there are comparable situations with a financial power of attorney.

Senator Dever asked if that was already spelled out in the health care directive.

There was discussion on seeing merit in allowing another person to step in. There was concern that convenience would be elevated to the guardian over the ward's interest -- an assumption that the courts won't know if the second person has the ward's interest at heart.

Senator J. Lee asked Mr. Wetzell if he would comment on the addendum.

Mr. Boeck said he was willing to back off on the stuff that's crossed off the statute. The witness who witnesses the signing of the advanced directive can be the person who says he's competent and knows what he's doing. He thinks the bill, as it is, is fine. He's concerned with the other guardianship issue.

Mr. Wetzell (Meter 38:40) commented on the issue of the additional addendum which requires that if you executed advance directive as a resident of a long term care facility or in the hospital and you want to appoint a health care agent. In addition to reviewing the document asking questions, you might be required to have someone explain the nature and effect of a health care directive. You are assuming that person doesn't understand the nature of effect.

An advance directive cannot be required. (Meter 39:42) He sees this as a duplication for people who go back and forth between the nursing home and the hospital.

The committee spent some time discussing eliminating the duplicated language in this bill.

They also talked about the potential for a guardian to have some flexibility and potential language for an amendment.

Senator J. Lee will have something drafted for the committee to look at for a basis for discussion.

Senator J. Lee closed discussion on SB 2212.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2212

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-06-07

Recorder Job Number: 2918

Committee Clerk Signature

Mary K Monson

Minutes:

Senator J. Lee, Chairman, called the committee to order to resume discussion on SB 2212.

She reported that legislative council had reservations about not having the court involved.

There has to be an annual report to the court by the guardian. Examples were given of turning over health care decision making to another person (Meter :50). If there are families that are not totally functional, this could be a messy deal without that annual court report. There was discussion that if they leave the bill just as it is, it takes care of the addendum issue.

Senator Warner moved a Do Pass on SB 2212. Senator Pomeroy seconded the motion.

The bill just pulls out the additional addendum for switching back and forth from hospital and skilled care facilities.

Roll call vote 6-0-0. Motion carried. Carrier is Senator Warner.

REPORT OF STANDING COMMITTEE (410)
February 6, 2007 2:40 p.m.

Module No: SR-25-2307
Carrier: Warner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2212: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2212 was placed on the
Eleventh order on the calendar.

2007 HOUSE HUMAN SERVICES

SB 2212

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2212

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5059

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price: We will open the hearing on SB 2212.

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

Representative Weisz: We did do a lot of work on those bills, and we just don't need to clutter up those directives. We need to feel comfortable about the coverage.

Senator Lee: Based on the long term care association, and others it is a little extra hassle, but they don't see any additional benefits and I think they will be able to review from their professional division. The people who came in and spoke to the senate are responsible people representing responsible organizations who care about the patients they are serving in their facilities. They thought there was no benefit in the additional form. Deleting it would make life a bit simpler for everyone with the same protection.

Christopher Dodson, Executive Director ND Catholic Conference: See attached testimony, and guide to health care directives and addendum for hospitals and long term care facilities. This became so popular we created a non catholic one too. Everything is there that is legally required.

Rep. Porter: If an individual currently has the health care director that does not have the addendum filled out. By passing this law, will that than make it possible inside the health care facility that their existing document is okay, or will they have to go back and revisit their original now that we have changed the law.

Mr. Dodson: The requirement for the addendum only applies inside the facility. If they did this at home or a lawyers office and brought it to the facility it is good.

Bruce Levi Executive Director of ND Medical Association: See attached testimony, and booklet on directives. One of the things provided in our uniform acts that we rely on was the restrictions we have on who can be an agent. We have restrictions in the law now. I like the catholic directive; it is much shorter than ours.

Shelly Peterson with ND Long Term Care association: We appreciate what Christopher Dodson, and Bruce Levi have done, and we encourage your adoption of this legislation.

Chairman Price any one else to testify for SB 2212? If not we will close the hearing on SB 2212.

Chairman Price: Committee take out SB 2212 and we will act on the bill.

Representative Kaldor: I have recently gone through this with my aunt, and found it really frustrating for her. I would like to commend Mr. Levi and Dodson for their efforts. I make a motion for a do pass, seconded by **Representative Porter**. The vote was taken with 11 yeas, 0 nays, and 1 absent. **Representative Schneider** will carry the bill to the floor.

Date: 3/14
Roll Call Vote #: 1

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

House HUMAN SERVICES S.B. 2212 Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken As Pas

Motion Made By Rep. Baldo Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman	<input checked="" type="checkbox"/>		Kari L Conrad	<input checked="" type="checkbox"/>	
Vonnie Pietsch – Vice Chairman	<input checked="" type="checkbox"/>		Lee Kaldor	<input checked="" type="checkbox"/>	
Chuck Damschen			Louise Potter	<input checked="" type="checkbox"/>	
Patrick R. Hatlestad	<input checked="" type="checkbox"/>		Jasper Schneider	<input checked="" type="checkbox"/>	
Curt Hofstad	<input checked="" type="checkbox"/>				
Todd Porter	<input checked="" type="checkbox"/>				
Gerry Uglem	<input checked="" type="checkbox"/>				
Robin Weisz	<input checked="" type="checkbox"/>				

Total (Yes) 11 "Click here to type Yes Vote" No 0 "Click here to type No Vote"

Absent 1

Floor Assignment Rep. Schneider

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

REPORT OF STANDING COMMITTEE

SB 2212: Human Services Committee (Rep. Price, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2212 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2212

A Guide to Health Care Directives

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

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

What is an advance directive? What is a "living will," a "durable power of attorney for health care," and a "health care directive?"

A "living will" usually means a document in which a person states *only* his or her health care wishes to be followed when the person is no longer able to make or communicate decisions.

A "durable power of attorney for health care" usually means a document in which a person appoints someone to make health care decisions on his or her behalf if the person is no longer able to make or communicate decisions.

"Advance directive" usually means a living will, a durable power of attorney for health care, or a combination of the two.

"Health care directive" is what North Dakota state law now calls any advance directive. The new law went into effect August 1, 2005.

Why would I want a health care directive?

By completing a health care directive you can help make sure that your wishes for health care decisions are followed when you are not able to communicate those wishes on your own behalf. In addition, an advance directive could greatly help your family and friends during what may be a difficult time.

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

In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law will determine who may make health care decisions for you. The law authorizes persons in the following categories, *in the order listed*, to make

decisions: your health care agent unless a court specifically authorizes a guardian to make decisions for you; your court-appointed guardian or custodian, your spouse, any of your children, your parents, your adult brothers and sisters, your grandparents, your adult grandchildren, and an adult friend or close relative. No one in a lower category may make the decision if someone in a higher category has refused to consent.

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

Do I need to use a special form?

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

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

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

If you are Catholic, the North Dakota Catholic Conference suggests that you consider the *Catholic Health Care Directive* form. If the form is not attached to this document, you can get one by calling the conference at 1-888-419-1237 or by downloading it at ndcatholic.org

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

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

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

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

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

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

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

Validly executing a new health care directive automatically revokes any older advance directive. Inform everyone who might have a copy of that old document that it is no longer valid and that you have a new health care directive.

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

Although Catholics are not morally obligated to have any type of advance directive, the North Dakota Catholic Conference recommends that, if you have any advance directive, it should include the appointment of a health care agent.

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

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

Who can be my agent?

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

What should I do with my health care directive?

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

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

1. *Human life is a precious gift from God.* This truth should inform all health care decisions. Every person has a duty to preserve his or her life and to use it for God's glory.
2. *We have the right to direct our own care and the responsibility to act according to the principles of Catholic moral teaching.* Each person has a right to clear and accurate information about a proposed course of treatment and its consequences, so that the person can make an informed decision about whether to receive or not receive the proposed treatment.
3. *Suicide, euthanasia, and acts that intentionally and directly would cause death by deed or omission, are never morally acceptable.*
4. *Death is a beginning, not an end.* Death, being conquered by Christ, need not be resisted by any and every means and a person may refuse medical treatment that is *extraordinary*. A treatment is extraordinary when it offers little or no hope of benefit and cannot be provided without undue burden, expense, or pain.
5. *There should be a strong presumption in favor of providing a person with nutrition (food) and hydration (water), even if medically assisted.* Providing nutrition and hydration should be considered ordinary care since it serves a life-preserving purpose and the means of supplying food and water are relatively simple and - barring complications - generally without pain. Exceptional situations may exist in which this is not the case, such as when a person is no longer able to assimilate nourishment, or when death is so imminent that withholding or withdrawing food and water will not be the actual cause of death. In no case should food or water be removed with the intent to cause death.
6. *We have the right to comfort and to seek relief from pain.* Although our faith teaches that we can find meaning in suffering, no one is obligated to experience pain. A person has a right to pain relief and comfort care, even if the method or treatment *indirectly* and *unintentionally* shortens life. However, it is not right to deprive the dying person of consciousness without a serious reason.

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

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

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

*Fargo Diocese Respect Life Office
(701-356-7910)*

web site: www.fargodiocese.org

*Bismarck Diocese Pastoral Center
(701-222-3035)*

*North Dakota Catholic Conference
(1-888-419-1237; 701-223-2519)*

web site: ndcatholic.org

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

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

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

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

Are Catholics morally obligated to have an advance directive?

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

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

Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. You should, however, give explicit consent. The *Catholic*

Health Care Directive includes an optional section where you can give that consent.

How can I make sure my spiritual needs are met?

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

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

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

What is "viaticum?"

Literally, "food for the journey." Death is not the end. Rather, it is only a "passing over" from this world to the Father. In preparation for this journey, the Church offers Eucharist as viaticum, i.e., Christ's body and blood as food for the journey.

For additional copies of this *Guide* or the *Catholic Health Care Directive*, contact the North Dakota Catholic Conference toll-free at 1-888-419-1237

or

Visit the conference web site at: ndcatholic.org. The web site includes copies to download and resources for additional information on health care directives, ethical decision-making, and end-of-life care.

The North Dakota Catholic Conference
103 South Third Street, Suite 10
Bismarck, ND 58501

701-223-2519 + 1-888-419-1237 + E-mail: ndcatholic@btinet.net + Web site: ndcatholic.org

A Catholic Health Care Directive,
Addendum for Hospitals and Long-Term Care Facilities

These sections are necessary only if the person is either a resident of a long-term care facility, a patient in a hospital, or being admitted to a hospital and is appointing a health care agent.

Statement Affirming Explanation of Document To Resident of Long-Term Care Facility

Option One: Principal's Statement

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

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

Option Two:

(This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

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

- A recognized member of the clergy.
- An attorney licensed to practice in North Dakota.
- A person designated by the district court for the county in which the above-named facility is located.
- A person designated by the North Dakota department of human services.

Dated on _____, 20____. _____ (Signature)

Statement Affirming Explanation Of Document to Hospital Patient or Person Being Admitted to Hospital

Option One: Principal's Statement

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

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

Option Two:

(This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

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

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

Dated on _____, 20____. _____ (Signature)

A Catholic Health Care Directive

My Health Care Agent

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

<p>Health Care Agent Information Name: _____ Address: _____ Phone: _____ Relationship to You: _____</p> <p>Alternate Health Care Agent Information Name: _____ Address: _____ Phone: _____ Relationship to You: _____</p>

My Wishes

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

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

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

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

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

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

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

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

Date and Signature of Principal (This must be completed. See reverse side before signing.)

I sign this Health Care Directive on _____ (date) at _____ (city),
 _____ (state).

_____ (you sign here)

This is a two page document. See reverse side before signing. This health care directive form was prepared to reflect the requirements in North Dakota law as of August 1, 2005. It may not meet the legal requirements of another jurisdiction.

Making an Anatomical Gift (Optional)

So long as it is consistent with Catholic moral teaching, I would like to be an organ donor at the time of my death. I wish to donate the following (initial one statement):

- Any needed organs and tissue.
- Only the following organs and tissue:

This health care directive will not be valid unless it is notarized or signed by two qualified witnesses who are present when you sign or acknowledge your signature. If you have attached any additional pages to this form, you must date and sign each of the additional pages at the same time you date and sign this health care directive.

If notarized: The person notarizing this document may be an employee of a health care or long-term care provider providing your care. If witnessed: At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care.

None of the following may be used as a notary or witness:

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

Acceptance of Appointment by Health Care Agent

I accept this appointment and agree to serve as a health care agent. I understand I have a duty to act in good faith, consistent with the desires expressed in this document, and that this document gives me authority to make health care decisions for the principal only when he or she is unable to make and communicate his or her own decisions. I understand that the principal may revoke this appointment at any time, in any manner. If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not competent, I must notify the principal's physician.

(Signature of agent) (date)

(Signature of alternate agent) (date)

Option 1: Notary Public

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

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

Option 2: Two Witnesses

Witness One:

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

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

(Signature of Witness One)

(Address)

Witness Two:

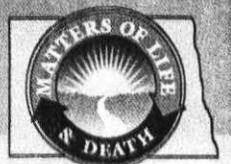
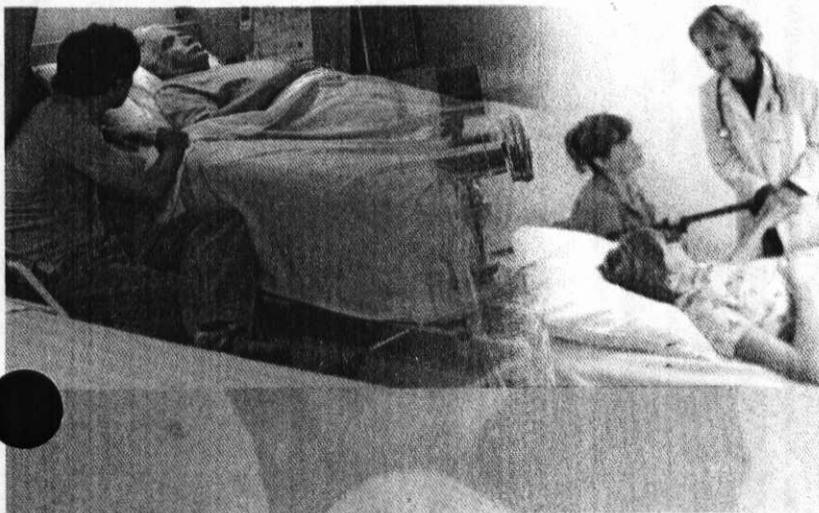
- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care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

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

(Signature of Witness Two)

(Address)

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



AARP

Association of Hospital Chaplains

Blue Cross Blue Shield of North Dakota

Dakota Medical Foundation

Guardian and Protective Services, Inc.

Hospice of the Red River Valley

Mental Health Association of North Dakota

National Association of Social Workers, ND Chapter

North Dakota Association for Home Care

North Dakota Association of County Social Workers

North Dakota Board of Medical Examiners

North Dakota Board of Pharmacy

North Dakota Catholic Conference

North Dakota Conference of Churches

North Dakota Department of Human Services

North Dakota Extension Service

North Dakota Health Care Review, Inc.

North Dakota Health Department

North Dakota Healthcare Association

North Dakota Hospice Organization

North Dakota Insurance Department

North Dakota Long Term Care Association

North Dakota Long Term Care Ombudsman

North Dakota Medical Association

North Dakota Newspaper Association

North Dakota Nurses Association

North Dakota Nursing Programs

North Dakota Office of Attorney General

North Dakota Pharmacists' Association

North Dakota Right to Life

State Bar Association of North Dakota

The Evangelical Lutheran Good Samaritan Society

UND School of Medicine & Health Sciences

S

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

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

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

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

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

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

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

In this guide...

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Making sure your wishes are followed	4
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Having the most *important* conversation

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

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

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

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

Who needs to talk about it?

You need to start this important conversation if:

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

One Family's Story

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

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

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

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

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

A Gift You Can Give

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

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

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

Making sure *your* wishes are followed

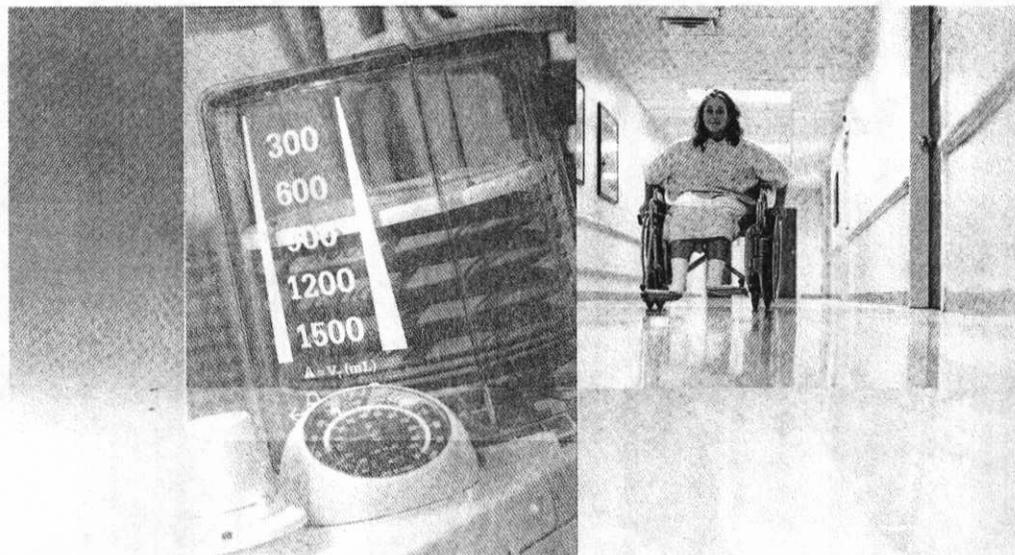
How do you *know* that your wishes for health care will be followed? How can you be certain, for example, that you won't receive unwanted medical treatments that will sustain your life, even if your quality of life is poor? Or, how do you know your life will be prolonged, if you wish, as long as possible?

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

Keep in mind:

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

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



How to *start* the conversation

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

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

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

Conversation starters:

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

One Family's Story

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

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

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

Questions to consider and *issues* to talk about

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

Conversation Checklist

Who will you talk to?

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

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

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

Many North Dakotans want to die at home.

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

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

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

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

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

Discuss specific medical options with your health care provider.

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



One Family's Story

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

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

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

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

Unfortunately, the scenario is familiar to people in medicine.

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

Hospice *care* and pain management

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

You will want to consider choosing hospice care:

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

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

When you talk about dying

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

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

Answers to some of your questions

What happens if I don't have a health care directive?
In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law will determine who may make health care decisions for you. The law authorizes persons in the following categories, in the order listed, to make decisions:

- Your health care agent, unless a court specifically authorizes a guardian to make decisions for you.
- Your court-appointed guardian or custodian.
- Your spouse.
- Any of your children.
- Your parents.
- Your adult brothers and sisters.
- Your grandparents.
- Your adult grandchildren.
- An adult friend or close relative.

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

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

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

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

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

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

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

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

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

When does a health care directive become effective? A health care directive is effective when:

- 1) you have executed a health care directive;
- 2) your agent has accepted the position as agent in writing; and
- 3) your doctor has certified, in writing, that you "lack the capacity to make health care decisions."

You lack capacity to make health care decisions when you do not have the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of proposed health care, or reasonable alternatives to that health care, or the ability to communicate a health care decision.

Should I appoint a health care agent?

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

The agent has the authority to make the same kinds of decisions about health care that you could make if you were able. This includes the selection and discharge of health care providers and institutions; approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care. You may limit any of these powers or assign additional ones.

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

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

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

Yes. You will be able to make your own health care decisions as long as you are capable of doing so. Your agent’s authority starts only when your doctor certifies in writing that you do not have the capacity to make health care decisions.

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

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

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

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

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

Will my health care directive be honored?

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

What should I do with my health care directive?

You should keep your original document in a place that is easy to find in the event you should become unable to make or communicate decisions. You should provide a copy of your health care directive to your physician and any other health care providers such as your hospital, nursing facility, hospice or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members and your attorney, if you have one. A copy of a health care directive is generally presumed to be a true and accurate copy of the original.

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

Glossary of commonly used terms

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

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

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

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

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

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

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

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

Patient Self Determination Act: A federal law that requires health care providers to educate their patients and the community on issues related to advance directives. It requires hospitals, nursing facilities, hospices, home health agencies and health maintenance organizations certified by Medicare and Medicaid to furnish written information so that patients have the opportunity to express their wishes regarding the use or refusal of medical care, including life-prolonging treatment, nutrition and hydration. The federal law takes no stand on what decisions persons should make. It does not require persons to execute an advance directive.

Resources and Web site links

North Dakota Resources

ND Senior INFO-LINE
Resource Directory
1-800-451-8693

www.ndseniorinfo.com

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

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

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

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

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

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

ND Association of Home Care
(701)224-1815
www.apnd.com/nda hc/

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

ND Right to Life
www.ndrl.org

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

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

Hospice Programs

Ashley Medical Center Hospice
(701)288-3433

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

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

Presentation Hospice, Carrington
(701)652-7229

Mercy Hospice, Devils Lake
(701)662-2131

Heartland Hospice, Dickinson
(701)456-4378

Hospice of the Red River Valley, Fargo
(701)356-1500
www.hrrv.org

*Offices in Fargo, Grand Forks, Lisbon, Mayville
and Valley City, North Dakota and Detroit Lakes,
Minnesota*

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

Sakakawea Hospice, Hazen
(701)748-2041

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

Jamestown Hospital Hospice
(701)252-1050

Linton Hospital Hospice
(701)254-4511

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

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

Mercy Hospice, Williston
(701)774-7430

Advance Directives

Aging With Dignity (Five Wishes)
1-888-5-WISHES

www.agingwithdignity.org

Altru Health System (ND and MN Forms),
Grand Forks

[http://www.altru.org/patientinformation/
advancedirectives.htm](http://www.altru.org/patientinformation/advancedirectives.htm)

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

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

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

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

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

West River Health Services, Hettinger
<http://www.wrhs.com>

Minnesota Hospice Organization
www.mnhospice.org

American Health Care Association
www.longtermcareliving.com

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

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

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

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

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

American Hospital Association
www.putitinwriting.org

Pain Management

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

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

HEALTH CARE DIRECTIVE

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

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

AND/OR

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

AND/OR

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

PART I: APPOINTMENT OF HEALTH CARE AGENT

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

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

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

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me.

This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

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

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

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

(I know I can change these choices.)

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

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

- (A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service or procedures. This includes deciding whether to stop or not start health care that is keeping me, or might keep me, alive and deciding about mental health treatment.
- (B) Choose my health care providers.
- (C) Choose where I live and receive care and support when those choices relate to my health care needs.
- (D) Review my medical records and have the same rights that I would have to give my medical records to other people.

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

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

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

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

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

PART II: HEALTH CARE INSTRUCTIONS

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

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

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

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

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

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

Who I would like to be my doctor:

Where I would like to live to receive health care:

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

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

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

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

Any needed organs and tissue.

Only the following organs and tissue: _____

PART IV: MAKING THE DOCUMENT LEGAL

DATE AND SIGNATURE OF PRINCIPAL

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

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

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

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

NOTARY PUBLIC OR STATEMENT OF WITNESSES

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

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

OPTION 1: NOTARY PUBLIC

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

(Signature of Notary Public)

My commission expires _____, 20____.

OPTION 2: TWO WITNESSES

WITNESS ONE:

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

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

(Signature of Witness One)

(Address)

WITNESS TWO:

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

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

(Signature of Witness Two)

(Address)

ACCEPTANCE OF APPOINTMENT OF HEALTH CARE AGENT

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

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

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

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

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

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

Dated this day of _____, 20____ .

(you sign here)

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

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

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

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

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

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

Dated on _____, 20____. _____
(Signature)

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

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

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

who signed this document and who is a patient or is being admitted as a patient of _____
(Name and city of hospital)

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

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

Dated on _____, 20____. _____
(Signature)

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To 30.1-28-04:

6. Unless a court of competent jurisdiction determines otherwise, a ~~durable power of attorney for health care~~ directive executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

7. Unless a court of competent jurisdiction determines otherwise, a guardian with authority to make medical decisions on behalf of the ward, may execute a health care directive pursuant to chapter 23-06.5 on behalf of the ward, including the appointment of a health care agent.

To 23-06.5-05:

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

3. Unless a court of competent jurisdiction determines otherwise, a guardian appointed pursuant to chapter 30.1-28 with authority to make medical decisions on behalf of a ward, may execute a health care directive on behalf of the ward, including the appointment of a health care agent.

To 23-12-13:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
- b. The appointed guardian or, custodian of the patient, or the individual to whom the guardian has given, pursuant to chapter 23-06.5 and chapter 30.1-28, a durable power of attorney that encompasses the authority to make health care decisions on behalf of the patient, if any;



*Representing the Diocese of
 Fargo and the Diocese
 of Bismarck*

Christopher T. Dodson
 Executive Director and
 General Counsel

To: House Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2212 (Health Care Directives)
Date: March 14, 2007

The North Dakota Catholic Conference supports Senate Bill 2212.

The revisions made by the last Legislative Assembly to the state's laws on advance directives simplified the legislative framework and created new opportunities to educate and encourage the use of health care directives. Senate Bill 2212 would take us another step in that direction.

One part of the old law not revised in 2005 was a requirement applicable only when a person is a resident or patient of a nursing home or hospital *and* if that person appoints a health care agent. In those cases: (1) the person must receive an additional explanation about the appointment from a designated individual, and (2) the facility or person must complete additional paperwork verifying that the explanation was given.

During the last two years, I conducted many workshops on health care directives, for both religious and secular groups. Participants - especially social workers and employees of health care facilities - repeatedly described the additional requirements as an unnecessary step for someone appointing a health care agent.

Senate Bill 2212 would repeal that requirement. The law already requires a person to be competent in order for he or she to execute a health care directive. There is no compelling reason to treat a person as less competent - and therefore needing additional explanations - merely because the person is inside a health care facility.

Moreover, the additional requirement exists only when the person in the health care facility appoints an agent. It does not exist if the person executed a health care directive that contained only written instructions. It makes no sense to treat the person appointing a health care agent as less competent than the person who provides just written instructions. It especially makes no sense in light of the legislature's intent to encourage the appointment of health care agents wherever possible.

We urge a **Do Pass** recommendation on Senate Bill 2212.

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**Testimony on SB 2212
House Human Services Committee
March 14, 2007**

The undue influence provision addressed in SB 2212 (NDCC 23-06.5-10) was originally part of the durable power of attorney for healthcare chapter of the North Dakota Century Code, prior to the combination of the living will and durable power of attorney for healthcare by the 2005 ND Legislative Assembly. This provision was included in 1991, and was not part of any Uniform Act. The legislative history indicates that the inclusion of the provision was not without controversy, in terms of who should be providing explanations of the appointment of a healthcare agent in these settings in a long-term care facility of hospital. The provision only applies to the appointment of an agent by an individual who is a resident of a long-term care facility or is being admitted to or is a patient in a hospital.

Our *Matters of Life & Death* project from 1999-2003, a group consisting of over fifty organizations in our state and individuals, encouraged North Dakotans to make plans in advance of a health crisis – at a time before one finds himself or herself in a hospital or long-term care facility. While deliberating on the topic of advance care planning in North Dakota during the *Matters of Life & Death* project, this provision was often identified as problematic in requiring a needless “hoop” in the process for executing an advance directive. North Dakotans are more aware of these advance care planning tools today than they were in 1991.

With respect to appointing a healthcare agent, the recognized provision for addressing undue influence by providers of care are provisions that limit who can be appointed an agent. NDCC 23-06.5-05 places restrictions on who can be an agent. These individuals prohibited from being agents are:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;
3. The principal's long-term care services provider; and
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

It is also required for the execution of a health care directive or appointment of an agent that the principal have the capacity to do so (NDCC 23-06.5-05(1)(d)).