

The Health Care Directives and Substitute Health Care Decision Makers Act provides the framework for preparing a health care directive in Saskatchewan. Before this legislation came into effect, the term *living will* was often used to describe what we now call a health care directive.

Living Wills

A living will is not really a will at all. It is a *health care directive* that tells others how you would like to be treated if you lose your capacity to make decisions about health care. It contains instructions about your choices of medical treatment. You prepare it in advance, looking ahead to a time when you may no longer be able to make health care decisions for yourself. It can be a useful tool to help you plan for the future and will take effect when you can no longer consent to, or refuse, treatment directly.

The term living will is often used when a person is planning for their last illness, but can be made in any circumstances, not just terminal illness. A living will and a health care directive are the same thing. In the rest of the pamphlet we use the term "directive".

Health Care Directives

A directive gives your doctor or other health care provider directions about what kind of measures are acceptable to you when you can no longer communicate what you want. When your doctor or other health care provider follows your directive, he or she has protection from subsequent legal action.

A directive *cannot* permit active euthanasia or assisted suicide.

▶ Who can make a directive

To make a directive you must be at least 16 years of age and capable of making health care decisions.

Our laws regarding health care directives apply only in Saskatchewan. If you live in another province, check about the applicable laws in that province.

▶ When a directive should be made

You may want to make a directive in a situation where you know you are ill. For example, if you are facing a terminal illness, or if you have an illness where you may have periods when you are incapable of making health care decisions.

You may want to make a directive when you are in good health, planning ahead to a time when you may no longer be able to make decisions for yourself.

In any event, a directive must be made when you are capable of making a health care decision - it is too late once you become incapable.

A person is capable of making health care decisions when he or she is able to understand information about potential treatments, the consequences of making or not making a decision, and is able to communicate the decision.

Appointing someone under a power of attorney to deal with your personal affairs will not apply to decisions under the *Health Care Directives and Substitute Health Care Decisions Makers Act*.

▶ What to include in a directive

Your directive should either give specific directions regarding certain treatments and situations, or name another person to make decisions when you cannot make or

communicate those decisions yourself. This person is known as a "proxy".

You can also have a directive that deals with certain situations and names a proxy to make decisions in other situations not dealt with in your directive.

▶ Making a directive

The law requires that a directive must be in writing, and include your signature and the date. If you sign the directive yourself, it does not need to be witnessed. If you are unable to sign the directive yourself, someone else, other than your proxy or your proxy's spouse, may sign for you at your direction and in your presence. This signature must be witnessed by another person.

A directive will take effect when you become incapable of making or communicating your health care decisions.

A living will or directive will be effective if it was made in a form acceptable under Saskatchewan law, even if it was made before the law was passed. However, it must meet the requirements set out in the Act.

A directive made in another place will be effective in Saskatchewan, if it is made in an acceptable form and meets all the requirements set out in our legislation.

A lawyer can prepare a health care directive for you for a fee. However, you can make a health care directive without the assistance of a lawyer.

▶ Ending a directive

If you no longer want your directive to be binding, you may revoke it orally or in writing. You may also destroy it, or make a new directive, which will revoke your old directive.

A directive will not be in effect while you are capable of making and communicating health care decisions.

Proxies

In your health care directive, you can name another person as your proxy to make health care decisions for you. Your proxy will make decisions for you when you are not able to make or communicate those decisions yourself and your directive does not address the situation.

Your proxy does not need to be a family member. You can choose any person who is at least 18 years old and has the capacity to make health care decisions.

A married person who is not yet 18 may be a proxy for his or her spouse.

You may name two or more proxies if you wish. These may be named as alternate or joint proxies.

You should choose someone you trust as your proxy. Treatment wishes should be discussed clearly and completely with your proxy. If your proxy knows your wishes, he or she must act according to your wishes. If your proxy does not know your wishes, your proxy must act according to what he or she believes is in your best interests.

A proxy is responsible for making health care decisions for you. Your proxy cannot choose another person to make decisions about your health care.

Personal Guardians

If you have made a directive and the court later appoints a personal guardian, your directive will be followed to determine health care issues. If your directive does not give

instructions for a particular situation, and a proxy was named in your directive, your proxy's decision will be preferred. If there is a disagreement, either the proxy or the personal guardian may apply to the Court of Queen's Bench for direction.

Disputes

Your directive gives instructions to your doctor and other health care providers. If your health care crisis involves a situation you have foreseen and dealt with in your directive, your doctor or other health care provider must follow your directions. If your health care crisis involves a situation you have not foreseen, and no proxy was named, your directive will be used as a guide.

Before making a directive, you may want to discuss treatment options and other issues with your doctor or other health care providers. You will also want to have discussions with family members and your proxy, if you name one.

If a dispute arises, an interested person may apply to the Court of Queen's Bench to challenge the appointment of a proxy, or a decision made by a proxy or nearest relative.

If You Do Not Have A Directive

The decision whether or not to make a directive is up to you. The law now clearly recognizes your right to direct the types of treatment acceptable to you, but you can simply choose not to prepare a directive.

If you become ill and incapable of making health care decisions, and have not prepared a directive, another person may still make decisions for you. That person will be your nearest family member. Your nearest relative is determined in the following order ...

- ▶ your spouse or person you live with as a spouse
- ▶ your adult son or daughter
- ▶ your parent or legal custodian
- ▶ your adult brother or sister
- ▶ your grandparent
- ▶ your adult grandchild
- ▶ your adult uncle or aunt
- ▶ your adult nephew or niece

These include relatives by adoption.

If there are no family members, or the family members cannot be found, then your doctor or other health care provider will make decisions for you by consulting another doctor or health care provider. The second doctor must agree in writing that the proposed treatment is needed.

For More Information

- ▶ PLEA Publications

Older Adults and the Law
Patients' Rights

- ▶ Information about health care directives

Saskatchewan Hospice/Palliative Care
Association
P.O. Box 36053
Regina, SK S4S 7K3
Tel: (306) 585-2871

- ▶ Assistance in finding a lawyer

Call the Lawyer Referral Service,
operated by the Law Society of
Saskatchewan, toll free at
1-800-667-9886.

- ▶ Seniors Legal Assistance Service
(operated by the Law Society of Saskatchewan)

Tel: (306) 359-1767 (Regina)
Toll Free: 1-800-667-9886
E-mail: reception@lawsociety.sk.ca

Public Legal Education Association of Saskatchewan

Saskatoon, Saskatchewan
Tel 653-1868 Fax 653-1869 E-mail plea@plea.org
www.plea.org

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This pamphlet contains general information about the law. For further information on this and other areas of law, contact a library, government agency or PLEA. PLEA is a non-profit, non-government agency that provides a variety of legal information services to the public.

If you need legal advice, contact a lawyer.

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health care directives

ensuring your choices about medical
treatments are recognized



Public Legal Education Association of Saskatchewan