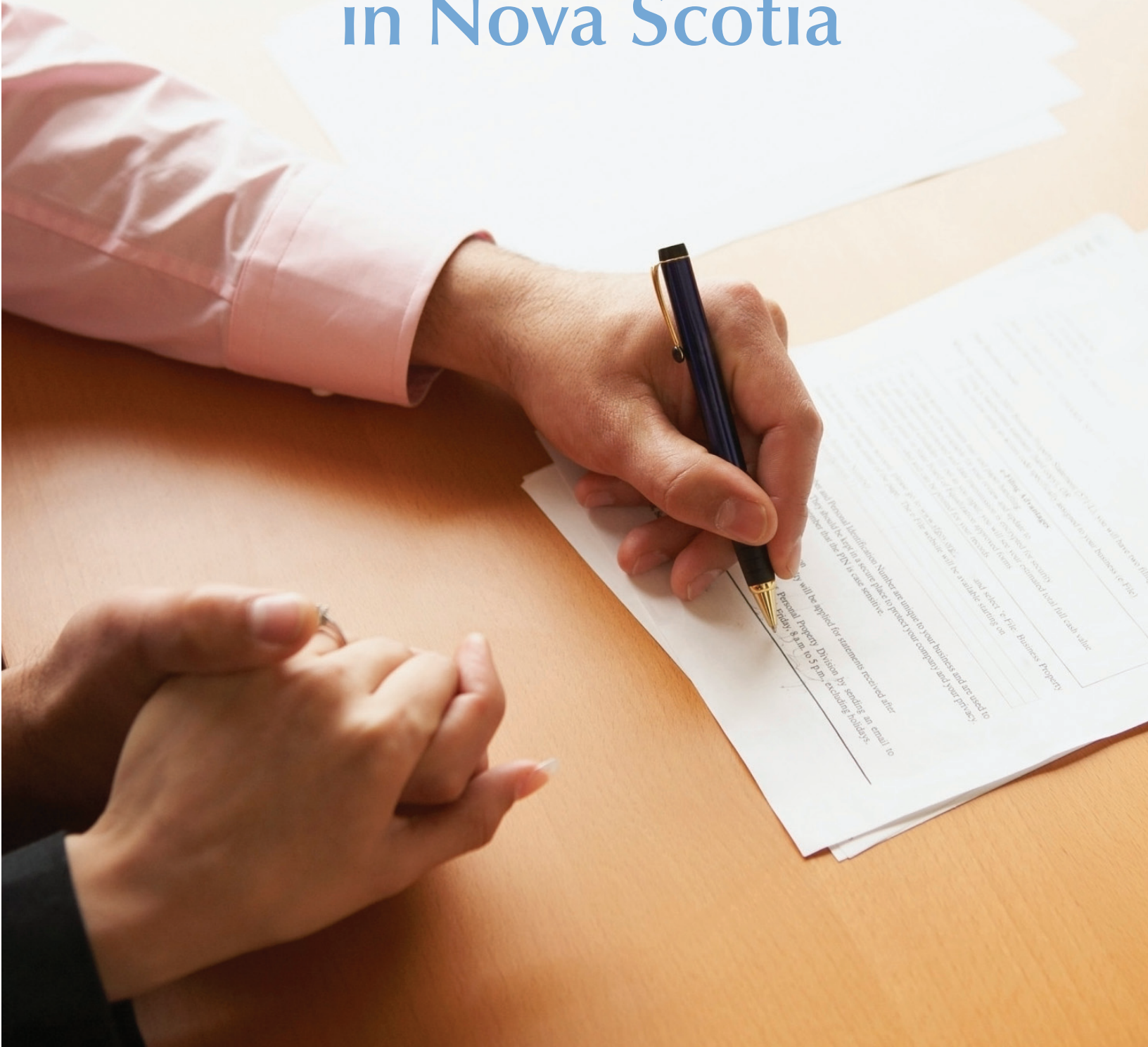


Personal Directives in Nova Scotia



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The Personal Directives Act was prepared by the Department of Justice in collaboration with the Department of Health, the Department of Community Services, and the Office of the Public Trustee. This booklet is also a collaborative effort.

Note: This information is provided to help you understand the Personal Directives Act. It is not legal advice or medical advice. Consult a professional if you need help to understand your options and the implications of your choices.

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Planning for the future is important. You should think about who you would want to make decisions for you if you are not capable (temporarily or permanently) to make them yourself. You should think about what kinds of decisions should be made for you and how they should be made.

To get ready for the future, think about preparing:

- (1) An Enduring Power of Attorney that allows you to appoint someone to look after your money, property and financial affairs when you are not mentally capable of making financial and property decisions, or if you wish them to assist you with your financial affairs when you are still capable. It is only in effect when you are alive.
- (2) A Personal Directive that allows you to set out how personal care decisions, including health care decisions, are to be made for you when you are not mentally capable of making those decisions. It is only in effect when you are alive and mentally incapable.
- (3) A Will that allows you to set out how you want your personal, property and financial assets handled after you die. It is only in effect when you are dead.

This booklet provides information about Personal Directives only. For information about Enduring Powers of Attorney and Wills, speak with a lawyer, tax advisor or financial planner.

Why think about preparing a Personal Directive now?

Imagine that you are in a car accident and unconscious for a week. You are temporarily unable to make your own decisions. What would your wishes be for personal care, including health care? Who would you want to make decisions for you?

What if you suffered a permanent brain injury? What if you were in a coma and not expected to regain consciousness? You could live for many years like this. What would your wishes be for personal care, including health care? Who would you want to make decisions for you?

Imagine that you lose your ability to make decisions slowly over time because of Alzheimer's disease. What would your wishes be for personal care, including health care? Who would you want to make decisions for you?

We often take our ability to make our own decisions for granted. We make decisions on a daily basis, such as choices about work, life and home. But we do not often think about the future and the possibility that we may not be able to make our own choices, either permanently or temporarily.

While you are still capable of making your own decisions, consider what kind of care you would want if you become unable to make your own decisions. Think about who you would want to make decisions for you.

Talk about these issues with people you trust—your family, friends, health care providers and spiritual advisors. Talking about these issues may not be easy. Yet putting loved ones in the position of having to make decisions for you can be difficult. Talking about your choices and preferences now will help ensure your wishes are followed and can ease stress for your loved ones, knowing the decisions made are what you want.

Think about the kind of care you want and then put it in writing by preparing a Personal Directive. It may be the best gift you can give to your loved ones.

What is a Personal Directive?

In Nova Scotia, you can say how personal care decisions, including health care decisions, are to be made for you through a Personal Directive. The Personal Directives Act sets out the law around Personal Directives.

Your Personal Directive takes effect when you are not able to make your own decisions. If you regain the capacity to make a decision then your Personal Directive is no longer in effect and you would make the decision for yourself.

You can name a person you trust to make personal care decisions for you when you are not capable of making these decisions. The person you name is called your delegate. This person plays a role similar to a person who was appointed under the Medical Consent Act, which is now revoked. If you made a Medical Consent authorization before April 1, 2010 (when the Personal Directives Act became law), it is still valid but it is limited to decisions about medical treatment only. A delegate under the Personal Directives Act could be authorized to make decisions about medical treatment, as well as any other personal care decision.

You can also write down instructions or other information in a Personal Directive about what or how personal care decisions should be made for you when you are not capable of making these decisions. If the instructions are clear and relevant to the decision being made, the instructions may speak for you, even if you do not have a delegate.

Whether a personal care decision is made under a Personal Directive or by a capable person, the current processes for accessing personal care services will be the same.

What kind of decisions can a delegate make for me?

Personal Directives only cover personal care decisions. Personal care decisions relate to such things as health care, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities and support services.

It is also important to appoint someone who will be able to look after your money and financial affairs (e.g., paying bills). You **cannot** appoint someone to look after your financial affairs through a Personal Directive.

How do I appoint someone to make financial or property decisions for me?

If you want to appoint someone to look after your money if you become mentally incapable of making those decisions, you will need to make a legal document called an Enduring Power of Attorney.

You should also make a Will to set out how you want your personal and financial assets handled after you die. A Will only comes into effect once you die. To prepare an Enduring Power of Attorney and a Will it is advisable that you speak with a lawyer.

Note that the executor of your Will does not have any authority to act on your behalf while you are still alive. If you become incapable of making your own decisions, the person you appointed through your Enduring Power of Attorney will look after your finances and your delegate appointed through your Personal Directive (or other person authorized by the Personal Directives Act) will make your personal care decisions. The executor of your Will cannot do these things for you.

If you have not appointed anyone to look after your finances through an Enduring Power of Attorney, a family member or friend can apply to the court for a guardianship order giving them the responsibility to look after your affairs. However, this is a more time-consuming and expensive option. It is better to **plan ahead**, and prepare an Enduring Power of Attorney and a Personal Directive naming the people you trust to be your decision-makers in the event you become mentally incapable.

Types of decisions	Plans made while you are still capable	Options once you are no longer capable and have not made plans
Financial decisions	Enduring Power of Attorney	Guardianship (guardian of finances appointed by the court)
Care decisions that relate to: – health care – admission to continuing care home – home care services	Personal Directive	Statutory decision-maker (chosen from a hierarchical list in the Personal Directives Act) OR Guardianship (guardian of the person appointed by the court)
All other care decisions	Personal Directive	Guardianship (guardian of the person appointed by the court)

Who can make a Personal Directive?

Anyone who is mentally capable of understanding the information they write in their Personal Directive and the consequences of their choices, can make a Personal Directive. It is too late once you become incapable.

What if I do not have a Personal Directive?

If you become incapable of making decisions about your health care, admission to a continuing care home or the provision of home care services, and you do not have a Personal Directive, a person chosen from the list below may be asked to make a decision for you.

The people in this list are called statutory decision-makers. If you do not have a Personal Directive, the care provider will first look for a court appointed guardian of the person. If none, the care provider will start at the top of the

list and work their way down until they find an adult statutory decision-maker who has been in personal contact with you over the past year and who is willing to act on your behalf.

- Spouse (includes married, common law, registered domestic partners)
- Child
- Parent
- Person who stands in the place of a parent
- Sibling
- Grandparent
- Grandchild
- Aunt or uncle
- Niece or nephew
- Other relative
- Last resort, the Public Trustee's office

If you become incapable of making personal care decisions that are not related to health care, admission to a continuing care home or the provision of home care services, and you do not have a Personal Directive, a court appointed guardian of the person would have to make those decisions on your behalf.

Who decides if I am incapable?

Every time you give consent to a care service, including health care, the care provider must ensure that you are capable of making this decision. That means that you understand information that is relevant to the decision, and the risks and benefits. You must also demonstrate that you understand that the information applies to your own situation. If a care provider does not believe that you can consent to the care, they will seek information on who should make decisions for you.

If you have named a delegate in a Personal Directive, this person will be asked to make the decision for you. If you have written clear and relevant instructions in a Personal Directive, the care provider will follow them.

If you do not agree with the care provider's determination that you are incapable of making the decision, you can ask for a reassessment by a physician. If you still disagree, you can ask the court to review the matter.

What can go in a Personal Directive?

In Nova Scotia, your Personal Directive may:

- Name a delegate to make personal care decisions for you when you are not capable of making these decisions;
- Set out instructions or other information about what or how personal care decisions should be made for you when you are not capable of making these decisions; or
- Do both of the above (name a delegate and set out instructions/information).

Personal care decisions include such things as health care, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities and support services.

Who should I choose to be my delegate?

A delegate is someone you name in a Personal Directive to make personal care decisions for you when you become incapable of making those decisions yourself. You can name an alternate delegate to act if your delegate is unable or unavailable to act.

Through your Personal Directive, you can name a delegate to make decisions for you for all personal care decisions that you are not capable of making, or you may choose to name different people to act as your delegate for different decisions. You cannot name two delegates to make the same type of decisions.

Your delegate must be at least 19 years old (unless they are your spouse). They do not have to live in Nova Scotia as long as they can be contacted.

Your delegate should be someone who:

- knows you very well
- is trustworthy
- is willing to respect your views and values
- is able to make difficult decisions in stressful circumstances and who you trust will speak for you

Sometimes a spouse or family member is the best choice. Sometimes they may not be the best choice because they may be too emotionally involved. You know best.

Talk to your delegate to find out if they will agree to be make decisions on your behalf. Make sure your delegate is aware of your values, beliefs and wishes regarding your care and is willing to carry out your wishes. Your delegate must follow your most current wishes you made while you were still mentally capable, so make sure you update your delegate if your wishes change, as well as your Personal Directive if possible.

You can change your wishes any time as long as you are still mentally capable. The most current wishes you expressed while you were still capable must be followed. So, if you write down wishes in your Personal Directive and then change your mind, you can tell your delegate and others your new wishes. However, it is best to update your wishes in your Personal Directive. That way, everything is in one spot and everyone knows when you expressed your new wishes.

What are the duties of a delegate?

The duties of a delegate are outlined in the Personal Directives Act. There are possibly four steps (depending on the circumstances) that your delegate must consider when making decisions on your behalf.

- (1) Your delegate must follow any instructions you write in your Personal Directive unless:
 - you later express (in writing or orally) a different wish while you were still mentally capable
 - because of changes in technology or medical advances, following the instruction would be contrary to what you intended
 - circumstances exist that, had you known them, you would have set out different instructions. Your delegate would make this decision based on what they know of your values and beliefs and any other written or oral instructions.
- (2) If you have not written instructions in your Personal Directive, then your delegate must make a decision they believe you would have wanted based on what your delegate knows of your values and beliefs and any other written or oral instructions.
- (3) If your delegate does not know what you would have wanted, then your delegate must make a decision they believe is in your best interests. When deciding what is in the person's best interests, the delegate needs to consider whether consenting or refusing consent will improve or deteriorate the person's condition; whether it is the least restrictive option; and what are the risks and benefits of consenting or refusing to consent.
- (4) If you name people in your Personal Directive that you want your delegate to talk with before making a final decision, then your delegate must do this. Sometimes this conversation can help inform your delegate and help them make the decision on your behalf. However, only your delegate can make the decision for you.

If I do not name a delegate, what are the duties of a statutory decision-maker?

If you become incapable of making decisions about health care, home care, or placement in a continuing care home, and you do not have a Personal Directive or have chosen not to name a delegate in your Personal Directive, your nearest relative (see list of people on page 6) will be asked to make that decision for you. This person is called your statutory decision-maker.

Your statutory decision-maker must make a decision they believe you would have wanted based on what they know of your values and beliefs, and any other written or oral instructions.

If your statutory decision-maker does not know what you would have wanted, then they must make a decision they believe is in your best interests. When deciding what is in the person's best interests, the statutory decision-maker needs to consider whether consenting or refusing consent will improve or deteriorate the person's condition; whether it is the least restrictive option; and what are the risks and benefits of consenting or refusing to consent.

What if I do not want someone else to make the decision for me, but want to ensure something specific is done?

You may decide that you do not want a delegate or statutory decision-maker making certain decisions, but you do want your care providers to follow specific instructions. You want your instructions to speak for themselves and care providers to rely on them without needing to get someone else's consent. Talk about your instructions with your care providers, including health care providers, to ensure your instructions reflect your wishes and that they understand what you want.

It is important to know that it is very difficult to write down instructions that cover every situation. If your instructions are not relevant to the decision to be made or if they are not clear, the care provider may need to talk with a statutory decision-maker and have them make the decision on your behalf. In these circumstances, the statutory decision-maker would be guided by what you wrote down and make the decision they think you would have wanted.

Remember, you can write specific instructions in your Personal Directive and still name a delegate who will have a duty to follow those instructions.

Do my care providers have to follow my wishes?

If you have written down clear instructions that apply to the decision to be made, and do not have a delegate or your delegate cannot be reached, your care provider would have to follow those instructions.

For example, in an emergency (e.g., you stop breathing or your heart stops), health care providers must respect any wishes you expressed while capable to refuse care (e.g., life-saving treatment) that they are aware of. So, if your delegate or statutory decision-maker cannot be reached at the time, but your doctor knows that you did not want to be resuscitated, your doctor will not start CPR. For this reason, it is very important that your health care providers know about your wishes.

In a non-emergency, your care provider will have more time to contact your delegate or statutory decision-maker so they can make a decision on your behalf. As discussed earlier in this booklet, your delegate or statutory decision-maker must follow your wishes where possible.

How do I make a valid Personal Directive?

The Nova Scotia government has provided sample Personal Directive forms for you to use if you want. You do not have to use either form, as long as your Personal Directive meets a number of criteria. There is a short form if you just want to name a delegate. A longer form is also available that sets out other options. You may find it helpful to read the sample forms and the accompanying instructions for completing them because they highlight issues you should think about when writing a Personal Directive.

Your Personal Directive is valid under the Personal Directives Act if:

- you are capable of understanding the nature and effect of the Personal Directive
- it is in writing and dated
- you sign it in the presence of a witness
- if you are physically unable to sign, but are mentally capable, another person can sign for you in the presence of both you and the witness. The person who signs for you cannot be your delegate or their spouse.

The following persons may NOT sign as the witness to your Personal Directive:

- A person you named as your delegate.
- The spouse of your delegate. A spouse includes married, common law and registered domestic partners.
- A person who signs the Personal Directive on your behalf.
- The spouse of a person who signs the Personal Directive on your behalf. A spouse includes married, common law and registered domestic partners.

You do not need a lawyer to write a Personal Directive, but you may wish to speak with a lawyer when you are discussing other planning tools such as an Enduring Power of Attorney and a Will.

How do I prepare my Personal Directive?

You should talk to your care providers (including your doctor) and your loved ones before you complete a Personal Directive. It is important that you understand the choices that you are making about your future care, including health care. Your care providers can help you understand the choices that are relevant to you. At the end of this booklet, there is a list of words that relate to personal care choices. These may help you think about some of the possible choices you may wish to consider.

Once you have thought about your choices, make sure your delegate and loved ones know your wishes. If your wishes are not expressed clearly, then your delegate or statutory decision-maker will not be able to follow them.

What do I do with my Personal Directive once it is signed?

- Keep the original at home in a special place and tell people where it is.
- Give a copy to your delegate.
- Give copies to other trusted family members and friends.
- Give a copy to your physician and other people who will be providing care to you.
- If you are traveling, take a copy with you. Many provinces and U.S. states will honour your wishes. Some will follow the rules in place in their province or U.S. state. If you plan to travel you should check the procedure in that location.
- If you are admitted to a hospital or continuing care home, take a copy with you.
- List the people you have given copies of your Personal Directive to and keep this list with your Personal Directive. If you change or cancel your Personal Directive, let these people know.

How do I change or cancel my Personal Directive?

If you want to change or cancel (revoke) your Personal Directive, you should destroy all copies of the old Personal Directive to avoid any confusion and make a new Personal Directive. You can also declare your intention to cancel your Personal Directive in writing, signed and witnessed. Keeping a list of who has copies of your Personal Directive will help you make sure that everyone has copies of your most current wishes.

It is a good idea to review your Personal Directive every year, whenever you or your delegate have a significant change in your health, or when you experience a significant event in your life such as the death of a loved one, a marriage or a divorce.

If you write some new wishes, date and sign the paper. The most current wishes made while you were still capable will be followed. The most current wishes override anything you previously put in your Personal Directive.

Checklist

- Think about your own values and wishes.
- Talk over your options and wishes with people who can provide information and advice including your friends, family, doctor, other care providers or spiritual advisor.
- Look at the sample Personal Directives forms and the accompanying instructions for completing them. Decide which parts you want to complete.
- Sign, date and witness your Personal Directive.
- If you want to change your wishes, let your delegate and others know. Revise any written or video or audio-taped instructions. Make sure you date the most recent instructions. If you want to change your Personal Directive, it is best to make a new one and destroy all copies of the old one.

Information to think about when planning for future personal care decisions

Some general information and descriptions of common health conditions and health interventions that you may want to think about when planning for future care decisions are provided below. You may want to discuss some of the health interventions with your doctor before completing your Personal Directive.

Personal Care Terms

Clothing relates to decisions about what you want to wear. For example, you may want to wear clothing that has religious or cultural significance, or you may want to look a certain way.

Comfort measures focus on care not cure. Some examples of comfort measures are—nursing care, medication for managing symptoms including pain, oxygen for shortness of breath, fluids for dehydration except by intravenous therapy, mouth care, positioning, warmth, emotional and spiritual support, and other measures to relieve pain and suffering. Comfort measures do not include treatment aimed at cure of the illness.

Continuing care homes are homes under the authority of the Departments of Health or Community Services (for example, nursing homes and group homes).

Nutrition relates to the food or drink you may wish to have. You may want to receive a certain type of diet (for example, vegetarian); you may want to receive food consistent with your cultural or religious beliefs (for example, Kosher or Halal). Nutrition can become a health care issue (for example, if you become diabetic).

Shelter is about where you live. You may wish to indicate your preferences about where you would like to live, especially if you cannot be cared for at home. Do you prefer a specific continuing care home?

Support services means services that help a person with daily activities such as housekeeping, preparing meals, laundry, toileting, dressing, feeding, mobility and transportation (for example, for grocery shopping and going to appointments).

Health Conditions

Stroke is a potentially life threatening event in which parts of the brain are deprived of blood carrying oxygen. Strokes are commonly caused by either blockage of a blood vessel (usually in the form of a clot) or by breaking of a blood vessel that results in bleeding in or around the brain. The impact of a stroke on you physically and mentally can range from mild to severe. Stroke may affect your ability to walk resulting in the need for a cane, or a wheelchair or confinement to bed or a chair. Depending on the part of the brain affected, stroke may affect your ability to communicate, for example, speaking and/or understanding. You may have the supports at home to meet your needs or you may need to live in a continuing care home. How well you recover from a stroke will depend on many factors.

Dementia is a term used to describe the symptoms of many illnesses that cause a loss of memory, judgment, ability to think clearly, recognize people and communicate, as well as changes in behaviour and mood. These symptoms may be temporary and related to another condition, or they may gradually get worse over time. Symptoms can range from mild to severe.

You might be forgetful but able to have meaningful conversations; you might sometimes not recognize your family and friends, but usually be able to carry on conversations; you might not recognize your family and friends and be unable to have a conversation. You may need care for part of the day or you may need 24 hour care.

The most common form of dementia is Alzheimer's Disease.

Permanent coma is a state of unconsciousness where there is no reasonable expectation of regaining consciousness. You would need to be in bed and receive nourishment through a feeding tube. You would need 24 hour care.

Health Interventions

Antibiotics are drugs that may be provided to treat an infection. For example, a person with a terminal illness (such as bone cancer) may develop pneumonia. Left untreated, it can lead to death. A person may choose to die of pneumonia rather than the terminal illness.

Blood transfusions are where blood is infused into your body through an intravenous line (a needle in your vein).

Chemotherapy is a term used specifically to refer to drugs given to treat cancer.

Defibrillation is where the heart is given an electric shock. Sometimes this is used as part of CPR to start the heart. Other times it is used to make an irregular heart beat become regular.

Intravenous therapy (IV) means that a needle is inserted into a vein, usually in your hand, arm or foot. This needle is connected to a tube that can carry fluids and medications directly into your blood stream.

Intubation is where a tube is inserted down your airway so that you can breathe. If you are unable to breath on your own, intubation may result in the use of a ventilator or breathing machine. Some people may want to be resuscitated, but may not want to be intubated. A definition of ‘resuscitation’ is included below.

Kidney dialysis cleans the blood of toxins by machine (hemodialysis) or by fluid passed through the abdomen (peritoneal dialysis). It is needed when the person’s kidneys are not working.

Radiation is a concentrated x-ray beam directed at a certain spot (e.g., a cancerous growth).

Resuscitation (cardiopulmonary resuscitation [CPR]) is used to re-start the heart if it stops beating. It includes chest compression, drugs, electric shocks and artificial breathing. Television shows give the impression that

CPR is highly successful, when in actual fact, survival rates are about 0–20% depending on the person’s condition.

Surgery could include minor surgery (e.g., wisdom teeth removed or feeding tube inserted) or major surgery (e.g., gall bladder removed).

Tube feeding gives liquid nutrition through a tube into your body. A person who can’t eat or drink needs a feeding tube to get nutrition. The tube is inserted into the stomach either through the nose or a small hole cut into the abdomen.

