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Topic for the Month

Advance Directives

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PLANNING AHEAD FOR YOUR HEALTH

While people often think of estate planning as a means for transferring or distributing their wealth at the time of death, Advance Directives are simple but indispensable estate planning tools that allow individuals to plan ahead for their health care.

Wisconsin, unlike many states, is not a "next of kin" state, which means that Wisconsin law does not authorize family members to make decisions for incapacitated adult family members. As a general rule of law, spouses do not have the legal authority to make health care decisions for one another, parents do not have the legal authority to make health care decisions for adult children, and adult children do not have the legal authority to make health care decisions for their parents.

As a result, Advance Directives are used as a tool to preserve an individual's right to make decisions about his or her own health care, including the right to accept or refuse medical treatment, in situations where the individual is unable to communicate those wishes directly.

The two types of Advance Directives in Wisconsin are Declarations to Physicians, commonly referred to as Living Wills, and Powers of Attorney for Health Care. A Living Will is a declaration to your physician with your preferences about the use of life-sustaining measures to be used when you are at or near death.

A Living Will only goes into effect when two physicians, one of whom is your attending physician, agree in writing that you are either near death or in a persistent vegetative state that cannot be reversed, and, as a result, you are unable to make decisions related to your health care.

While a Living Will can be a very effective tool, its application is quite limited because an individual MUST be near death or in a persistent vegetative state before the document even applies.

A Power of Attorney for Health Care, on the other hand, is a document in which you appoint another person to act as your agent and make health care decisions on your behalf in the event you are incapacitated and unable to make those decisions yourself.

A Power of Attorney for Health Care goes into effect when two physicians, or a physician and psychologist, agree in writing that you can no longer understand

your treatment options and, therefore, cannot make your own medical decisions.

A Power of Attorney for Health Care is much more versatile as compared to a Living Will because it is not limited to situations when a person is near death. In addition, appointing a health care agent allows another person to act as your advocate and speak for you, which helps to ensure that your wishes will be carried out.

If you have both a Living Will and a Power of Attorney for Health Care, the documents will complement one another. However, it is important to make sure that the selections you make in each document do not conflict with one another. In the event a conflict arises between the two documents, the Power of Attorney for Health Care will control.

In the event you do not have an Advance Directive and your physician determines that you are incompetent to make health care decisions on your own behalf, your physician or health care facility may ask the court to appoint a guardian who will make those decisions for you.

Essentially, a guardianship is a legal relationship created by the court, whereby the guardian is granted authority to exercise the rights you are mentally unable to exercise; to make decisions you are mentally unable to make; or to simply be an advocate for your best interests. While a court appointed guardian will have the ability to exercise day to day judgment with respect to your medical care, in most situations, a guardian will not have the authority to make end of life decisions on your behalf.

Decisions regarding health care are uniquely viewed by each individual. By planning ahead and having an Advance Directive, you can not only make sure that your preferences with regards to health care are known, but you can also save yourself the emotional burden, time delays, and unnecessary expenses that are often associated with the guardianship process. As with all matters concerning estate planning, we recommend that you preserve your right to make decisions about your health care by completing an Advance Directive. In the event you have any questions about Advance Directives or any other estate planning topic, please call Stellpflug Law, S.C. and ask to speak to one of our estate planning attorneys, Dave Stellpflug, Mark Bartels, Evan Lin, or Deb DeLeers.



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