

The Living Will: What Do I Need to Know?

What is a Living Will?

Simply put, a Living Will is a legal document that tells the doctor that you don't want to be put on a life-support machine when it won't help you get any better. In the words of the law:
a Living Will is a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of the law.

What is life prolonging intervention?

Life-prolonging intervention means any medical procedure or intervention that would artificially prolong the dying process or maintain the person in a persistent vegetative state.

Life prolonging intervention DOES include artificial feeding, whether through an intravenous line or through a tube feeding.

Life prolonging intervention DOES NOT include administration of medication or the performance of any medical procedure deemed necessary to relieve pain or provide comfort

What is a persistent vegetative state?

"Persistent vegetative state" is a term that describes the condition of patients with severe brain damage who appear awake but are unaware of themselves or the surrounding environment. The distinguishing feature of the persistent vegetative state is an irregular state of sleep and wake cycles, without any detectable expression of awareness of self or others.

When patients are in a persistent vegetative state, the part of their brain that controls all of the emotions, sensations and understanding that makes them human does not work. A patient in a persistent vegetative state only displays reflexes. Consequently, a patient in a persistent vegetative state can open his or her eyes, make meaningless grunts or moans or even smile, but he/she does not show any voluntary reactions or responses reflecting consciousness, choice or emotion. Although they may move their eyes, such patients neither focus on an object nor follow a moving target with their eyes. Because these patients do move their eyes, families and other loved ones sometimes think that these patients do recognize them and know them. However, patients in a persistent vegetative state are incapable of recognizing loved ones. Patients in a persistent vegetative state cannot eat and will need a feeding tube if a decision to prolong their lives with medically administered nutrition and hydration is made. All patients in a persistent vegetative state lose control of their bladder and bowels.

A persistent vegetative state follows different types of injury to the brain. The injury can be the result of a stroke; of a trauma, like in a car accident; of dementia, including Alzheimer's disease; and of conditions where the brain does not receive enough oxygen, like carbon monoxide

poisoning, during a CPR attempt, or a heart attack. A persistent vegetative state is considered to be permanent or irreversible when a doctor determines that the chances that patient will regain consciousness are very small.

How is a Living Will different from a Medical Power of Attorney?

A Living Will is a statement of decisions you made yourself. It tells the doctor that you do not want to be kept alive by machines, if there is no hope of getting better. A Living Will does not give this decision-making power to anyone else. A Medical Power of Attorney does. A Medical Power of Attorney gives someone else the authority to make medical decisions for you if you are unable to make them yourself.

Should I have both a Living Will and a Medical Power of Attorney?

Yes. If you make both a Living Will and a Medical Power of Attorney, then the decisions in your Living Will must be followed by the person you name as your Medical Power of Attorney.

What if I change my mind, can I revoke my Living Will?

Yes. So long as you have the capacity to do so, you can revoke your Living Will at any time by any of these methods.

1. You can destroy the Living Will. Tear it up or burn it.
2. You can tell someone else to destroy your Living Will. They must destroy it in your presence.
3. You can write out a statement that you are revoking your Living Will. This statement must be signed and dated by you. This revocation does not become effective until you give it to your doctor.
4. If you are not able to write, you can tell someone to write out a statement that you are revoking your Living Will. This person must be over 18 years old. This statement must also be signed and dated. You can tell the other person to sign your name on your behalf. This revocation does not become effective until your doctor gets it. You can have the other person give it to him or her if you are not able to.

What is capacity?

Capacity is a legal term that varies depending on what kind of a legal act you are trying to do. In the healthcare setting, capacity means the ability to:

1. Appreciate the nature and implications of a health care decision; (You understand what your doctor is telling you and understand the consequences of any choices that you make.)
2. Make an informed choice regarding the alternatives presented; (You are able to process the information the doctor gives you and make your decision based on this process.) and

3. Communicate that choice in an unambiguous manner. (You must be able to let your doctor know what you have decided. You may state your choice, write it down, or in some case, just nod your head. The important thing here is that there must be no doubt about what you are trying to express.)

Who decides whether I have capacity?

Every person over the age of 18 is presumed to have capacity. You may still have capacity even though you are very old or suffer from a mental illness. In order to determine that you lack capacity, or are incapacitated, a doctor or psychologist or advance practice nurse working with a doctor must write this in your medical records. This statement must include the reason why you were found to lack capacity.

When does my living will go into effect?

A Living Will goes into effect when two things happen.

1. When you are very sick and are not able to communicate your wishes yourself. In legal terms, this is referred to as incapacity or a lack of capacity. AND
2. When you are certified by a doctor who has examined you personally to have a terminal condition or to be in a persistent vegetative state.

Can someone prevent the doctor from carrying out my living will after I have been determined to lack capacity?

No. You make a Living Will precisely because you want your wishes to be followed in the event you lose capacity to make decisions for yourself. Once you make a Living Will, it is presumed to be valid, unless you revoke it.

Can I still revoke my Living Will after a doctor determines that I lack capacity ?

No. Once you have been determined to be incapacitated and your living will has become effective your doctor must follow the instructions in your Living Will. If you ask your doctor not to follow those instructions, he or she can only do so if it is determined that you have regained capacity. Two doctors or one doctor and one psychologist must certify that you have regained the capacity to make this determination.

How do I make a Living Will?

The law requires that a Living Will must be:

1. In writing;
2. Signed by you or by another person at your direction in your presence;
3. Dated;
4. Signed in the presence of two or more persons who are at least eighteen years old.

5. Signed by the people who watch you sign your name. A notary public must be present and acknowledge this.

The law provides an example of a Living Will that is attached to this leaflet. You may use this form or something that is very close to it.

Can my son or daughter make a Living Will if they are under 18?

Yes, if they can meet certain requirements. Any person who wants to make a Living Will must have the capacity to do so. Persons under 18 are presumed to lack capacity. In order to defeat this presumption, persons under 18 must undergo an examination by a doctor, or psychologist, or an advance practice nurse who is collaborating with a doctor and found to have the capacity to make health care decisions. Once this determination is made, these individuals are referred to as “mature minors” and may make a Living Will.

Who can be a Witness for my Living Will?

The law requires that a witness to your Living Will be over eighteen years old. Additionally, the law says that **the following people cannot be a witness to your Living Will**

1. The person who signed your living will on your behalf and at your direction cannot be a witness to your Living Will;
2. Anyone who is related to you by blood or marriage cannot be a witness to your Living Will;
3. Anyone who will inherit from you cannot be a witness to your Living Will; (This means anyone who receive property from you under the terms of your will or under the laws that provide for the distribution of your property if you do not have a will.)
4. Anyone who is legally obligated to pay for your medical care cannot be a witness to your Living Will;
5. Your doctor cannot be a witness to your Living Will;
6. The person you have named as your Medical Power of Attorney or the person you have named as successor Medical Power of Attorney cannot be a witness to your Living Will.

What should I do with my Living Will after I make it?

You should give a copy of your Living Will to your doctor. If you do not have a doctor, you should give a copy of your living will to someone else to give to a doctor in case you are not able to. It is your responsibility to make sure that the doctor knows that you have a Living Will. The doctor is not legally obligated to follow the directions in your Living Will until he or she knows that you have made one.

When I made my Living Will, I lived in another state. Is my Living Will still good in West Virginia?

Yes. As long as your Living Will complies with either the laws of the state you were living in when you signed it or with the laws of West Virginia, your Living Will is valid in West Virginia.

The hospital or nursing home says that I cannot be admitted unless I have a Living Will. Can they do this?

No. A hospital or nursing home is not allowed to condition your admittance on executing a Living Will. However, the hospital or nursing home is allowed to give you information about Living Wills and to help you execute one if you want to.

This Leaflet Provided By:
Appalachian Legal Services
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**STATE OF WEST VIRGINIA
LIVING WILL**

**The Kind of Medical Treatment I Want and Don't Want
If I Have a Terminal Condition or
Am In a Persistent Vegetative State**

Living will made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others,) I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal. I understand the full import of this living will.

Signed _____

Address _____

I did not sign the principal's signature above for or at the direction of the principal. I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

Witness _____ DATE _____

Witness _____ DATE _____

STATE OF _____ COUNTY OF _____

I, _____, a Notary Public of said County, do certify that _____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the ____ day of _____, 2000, have this day acknowledged the same before me.

Given under my hand this ____ day of _____, 2000.

My commission expires: _____

Signature of Notary Public _____