

Please note: this handout provides information about law that may be of particular interest to transgender people. But legal information is not the same as legal advice – the application of law to an individual’s specific circumstances. Also, this information was compiled in June 2010 and the law may have changed. If you have a question about a specific fact situation, you should contact an attorney directly. Need help finding an attorney? Check out resources from the Minnesota Lavender Bar Association (MLBA) at www.mnlavbar.org.

How Health Care Directives Work

Health Care Directives (HCDs) are also known as “Advanced Care Directives”. Health Care Directives are instructions that you prepare, specifying what kind of health care decisions you want made on your behalf if you are incapacitated, and who can make those decisions for you. HCD’s name an “agent” on your behalf. This document authorizes your agent, usually a family member or loved one, to make health care decisions for you.

If you become incapacitated or are unable to make your own health care decisions, your Health Care Directive will help your doctors and loved ones ensure that you receive the kind of health care you would choose if you could, and do not receive care that you would not want. Because it can be incredibly difficult to make health care decisions for other people, Health Care Directives can simplify the process, resolve disputes, and reduce conflict during difficult times. One common use of HCDs is to clarify an individual's preferences about life support treatment so that family members do not fight about whether to keep an incapacitated person on life support.

Health Care Directives can be prepared on your own, then signed by witnesses and notarized. Attorneys can assist in the preparation of an HCD, but it's not required. The document can be prepared with varying levels of detail. In its most basic form, an HCD should designate a person who you want to make your health care decisions for you if you cannot, and provide some basic information about your feelings regarding life support treatment. More detailed HCDs can address other kinds of medical care, end-of-life care, who may or may not be permitted to communicate with your doctors, and other considerations.

Why Health Care Directives Are Important For Transgender People

Health Care Directives are important for everyone, including healthy, young people. Although Health Care Directives are sometimes thought as being primarily used for aging individuals, most major court cases about health care decisions for incapacitated patients are about young people (such as the Terri Shiavo case).

HCDs are especially important for transgender people because there are so many components of health care that can be problematic for transgender patients and their loved ones. Having an HCD in place can help ensure that your loved ones are able to visit you in the hospital, communicate with your doctors, and make health care decisions, including sustaining your transition-related care, like hormone therapy, gender-appropriate clothing, names, and pronouns, and grooming.

Many health care professionals do not have knowledge or experience around working with transgender patients, and this lack of knowledge can cause a variety of problems, from referring to patients by inappropriate names or pronouns, harassing patients, refusing to permit non-married partners and non-blood relatives to visit, and discontinuing hormone therapy against a patient's wishes.

By designating a loved one who can advocate for you as a transgender person, your agent will have access to health care information that is often not available to loved ones, and your agent will be in a position to advocate on your behalf, and get you the kind of medical care that you would choose if able. Health Care Directives are especially important if you do not want your closest blood relative (like your parents or adult children) or legal spouse to make health care decisions for you. It is common for family members to disagree with a person's friends and partner about what kind of care he or she would have wanted. These disputes can and do go to court. Having a signed, witnessed Health Care Directive is a powerful legal tool to resolve these disputes.



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Making A Health Care Directive

There are different forms that you can use to prepare your Health Care Directive. The state of Minnesota offers a form that is available online. Other organizations have created more detailed forms that are designed to provide a higher level of insight and be relevant in more than one state. The “Five Wishes” advanced directive is one widely used form, and can be ordered online.

You can prepare your HCD by yourself, but it is very important to sign and date the document and provide copies to the person you named as your agent and your physician. If you are incapacitated, people will need to act quickly and having these documents accessible is very important. Ask your doctor to keep a copy in your medical chart and note in your chart that you have a Health Care Directive. If you are admitted to the hospital or have surgery, give your doctor a copy of the HCD or at least the contact information of your agent.

In Minnesota, you are not required to have witnesses sign your Health Care Directive and you are not required to have it notarized. However, having your HCD signed by witnesses and notarized gives the document more power, especially if there is a conflict and the issue goes to court or is reviewed by the hospital. You can have your HCD notarized at any Post Office, bank, or anywhere with a notary.

Remember: different states have different laws about health care directives. If you move or spend a significant amount of time in another state, research that state's health care directive laws.

RESOURCES**MN Health Care Directive Forms and Resources**

<http://www.mnaging.org/advisor/directive.htm>

The Minnesota Board on Aging has a health care directive website with suggestions for completing a MN Health Care Directive, and instructions worksheet, and the Minnesota Health Care Directive form

Five Wishes

<http://www.mnaging.org/advisor/directive.htm>

Five Wishes is a popular and widely used health Care Directive form that organizes health care plans into five comprehensive steps. It is written in everyday language and is designed to work in more than just one state. The document can be ordered online for a small fee

HIPAA Clause

http://www.mnhealthcaredecisions.info/sponsor_resources.html

It is recommended to include a HIPAA privacy rule clause with your Health Care Directive. This gives explicit permission for your agent to have access to your health information. You can visit the website above to print off the NHDD HIPAA Clause, which you can sign and enclose with your other materials.

MN Health Care Decisions Day

<http://www.mnhealthcaredecisions.info/>

On April 16th of every year, organizations across Minnesota offer free assistance preparing Health Care Directives to the community. Although the preparers do not receive special training about working with transgender clients, all of your information is confidential, and the trained preparers strive to create a welcoming and safe environment for individuals to ask questions and prepare personalized directives.