



Katherine M. Hanna
Direct dial: 603.627.8106
Fax: 603.641.2365
khanna@sheehan.com

Practice Areas

Health Care

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New Law Clarifies End-of-Life Choices in NH

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Death may be as certain as taxes, but many still avoid thinking about it. Now there are new incentives to plan for the inevitable. On June 19, Gov. John Lynch signed into law an updated and revised statute governing medical decision-making for adults who lack capacity (temporary or permanent) to make healthcare decisions for themselves. The new law, effective January 1, 2007, makes substantial changes to NH's current procedures for executing and implementing Living Wills and Durable Powers of Attorney for Health Care, also known as "Advance Directives." Its passage serves as a compelling reminder to NH citizens to execute Advance Directives or to dust off their previously-signed documents to ensure they comply with the revised law.

NH law affirms a person's right to control decisions about his or her medical care, including end-of-life decisions about withholding or withdrawing life-sustaining treatment. Medical providers will follow an individual's wishes regarding end-of-life care, provided that the individual has included those wishes in a properly executed advance directive. A new law provides more options involving advance directives, but far too few of us have taken advantage of these important planning documents.

Despite the recent public debate in NH regarding these issues – and even despite the national attention brought by the Terri Schiavo case in Florida – most people delay executing Advance Directives until late in life, even though incapacity may occur at any age. The elderly are not the only ones who need Advance Directives. Consider the 28-year-old husband who is rushed unconscious to the hospital. Even if his wife is present and prepared to consent to healthcare treatment for him, she will learn that in NH the only people legally authorized to make non-emergency medical decisions for an incapacitated adult are: 1) an agent appointed under a Durable Power of Attorney for Health Care, and/or 2) a legal guardian appointed by the Probate Court—not the person's spouse, parent, adult child, or adult sibling, unless duly appointed as the agent or guardian. The last thing that a family wants to worry about in a critical care situation is the time-consuming and costly process of seeking a court order for a surrogate decision maker.

Those who execute Advance Directives should take the time to discuss their healthcare wishes with their loved ones and healthcare providers, to ensure that their wishes are understood and honored. Many spend more time talking with their lawyers than with their physicians and agents about their particular end-of-life healthcare choices. The new law encourages advance discussion with agents, families, and healthcare providers about these important issues.

Some points worth considering when executing new Advance Directives or

updating your current ones:

- Select an agent(s) who is likely to outlive you. While you may want to list your spouse as agent, you may also want to consider an alternate agent from the next generation;
- If you list multiple agents (all of your adult children, for example), they will have legal priority in the order listed, *unless* you indicate they must act jointly or that any one of them may act individually;
- Don't wait until you are at death's door to talk with your family and healthcare providers about your wishes; a sudden illness or injury could prevent you from having the discussion if you put it off too long;
- Consider whether you may want a "Do Not Resuscitate Order," and discuss the option with your healthcare providers;
- If you executed Advance Directives before 1991, you may not have addressed whether, in the event of a terminal illness or permanent unconsciousness, you authorize your Agent to withhold nutrition or hydration or if wish to have artificial nutrition withheld or withdrawn under your Living Will. Make sure you update your documents to address these issues;
- "Snowbirds," be aware that Advance Directives executed in other states are enforceable in NH only to the extent that they comply with the essential requirements of our laws. Therefore, consider executing Advance Directives on NH's form *and* on forms accepted in states where you reside or visit frequently, to avoid delay and confusion when your healthcare providers need to act on your Advance Directives; and
- After executing your Advance Directives, deliver copies to your primary healthcare provider, your agent, your local hospital, and your family members.

Those who act in a timely manner can continue to be the masters of their own destinies with respect to their healthcare decision-making, even when they cannot communicate their wishes directly to their healthcare providers. Fortunately, the new law has succeeded in simplifying the process of completing Advance Directives. Concise, cogent, and free brochures and forms are available from the New Hampshire Foundation for Healthy Communities at <http://www.healthynh.org/>.

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