

# Making Your Wishes Known

New law clarifies end-of-life choices in NH.

By Katherine M. Hanna

Death may be as certain as taxes, but many people still avoid thinking about it. However, a new law underscores the importance of planning 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 the capacity (temporary or permanent) to make health care decisions for themselves. The new law, effective Jan. 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 previously signed documents to ensure they comply with the revised law.

New Hampshire's 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. The new law codifies an option not previously available to NH's citizens: the right to request a "Do Not Resuscitate Order" with a standardized ID bracelet, necklace, card, or other written medical order to alert medical personnel that they do not want CPR in the event of cardiac or respiratory arrest.

Despite the recent public debate in NH regarding these issues—and even despite the national attention brought by the 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 a 28-year-old husband who is rushed unconscious to the hospital. Even if his wife is present and prepared to consent to health care 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 an agent appointed under a durable power of attorney for health care; or a legal guardian appointed by the probate court.

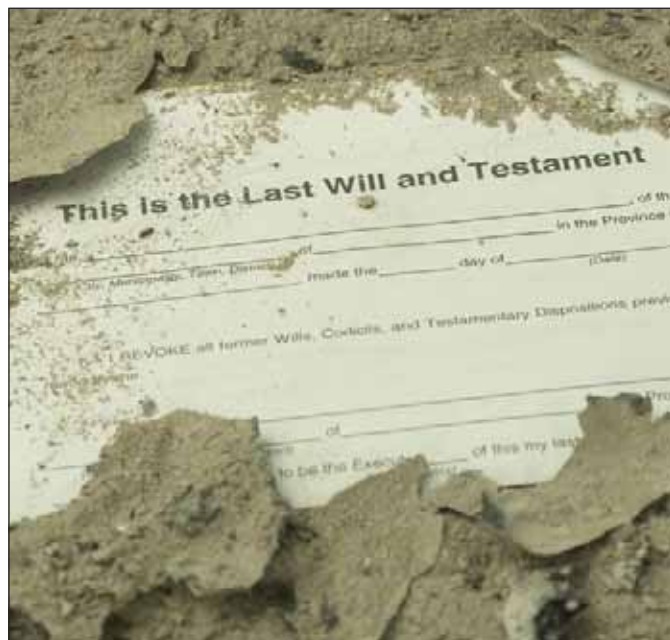
A person's spouse, parent, adult child, or adult sibling, unless duly appointed as the agent or guardian, is not authorized to make these choices. The last thing that a family

wants to worry about in a critical care situation is the time-consuming and costly process of seeking a court order for a surrogate decisionmaker.

Those who execute advance directives should take the time to discuss their health care wishes with their loved ones and health care 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 health care choices. The new law encourages advance discussion with agents, families and health care providers about these important issues.

Some points worth considering when executing new advance directives or updating your current ones:

- Select an agent 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 care 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 health care 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 you wish to have artificial nutrition withheld or withdrawn under your living will. Make sure you update your documents to address these issues.



• Snowbirds should 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 health care providers need to act on your advance directives.

• After executing your advance directives, deliver copies to your primary health care 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 health care decision-making, even when they cannot communicate their wishes directly to their health care 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 NH Foundation for Healthy Communities at [www.healthynh.org](http://www.healthynh.org).

*Katherine M. Hanna is the chair of Sheehan Phinney Bass + Green's Health care Practice Group in Manchester. She can be reached at 603-627-8106 or at [khanna@sheehan.com](mailto:khanna@sheehan.com).* ■

