

**LIVING WILL DIRECTIVE
AND
HEALTH CARE SURROGATE
DESIGNATION
IN KENTUCKY**

QUESTIONS AND ANSWERS

**Legislative Research Commission
Frankfort, KY**

FOREWORD

This booklet has been prepared as a result of the multitude of inquiries to the Legislative Research Commission on 1994 SB 311, the living will directive and health care surrogate designation legislation. The sole purpose of the booklet is to set out the contents of the statute in a question and answer format that will be understandable to the public. Every effort has been made to answer the commonly asked questions, and the specific statutory citations have been included so that the statute itself can be consulted. The forms replicated here are taken verbatim from the statute.

We hope this publication will help clarify existing law in a matter of utmost seriousness to every individual.

Vic Hellard, Jr.
Director

The Capitol
August, 1994

QUESTIONS AND ANSWERS ABOUT THE LIVING WILL DIRECTIVE AND HEALTH CARE SURROGATE DESIGNATION DOCUMENTS

Introduction

The 1990 session of the Kentucky General Assembly passed what has become known as "living will" legislation, which allows an adult Kentuckian to sign a document saying that he or she does not want artificial life support should he or she become terminally ill. The 1990 General Assembly also passed health care surrogate legislation, which allows an adult Kentuckian to sign a second document granting another person the authority to make health care decisions should the grantor lose the capacity to make those important decisions on his or her own behalf.

Senate Bill 311, passed during the 1994 session of the Kentucky General Assembly, combines into a single form the provisions of the living will directive and health care surrogate designation. The bill affects the previous living will law by providing adult Kentuckians with more decision-making capacity regarding their health care.

This pamphlet is designed to inform Kentuckians about the changes in the law and its current provisions. It is divided into two parts. The first answers frequently asked questions about 1994 Senate Bill 311. The second contains two forms related to the living will directive and health care surrogate designation. The first form must be signed in the presence of two witnesses, while the second form must be signed in the presence of a notary public. *Only one of these forms should be signed by a person wishing to make a decision about a living will or health care surrogate.* The forms are specifically approved by 1994 Senate Bill 311.

Questions and Answers

What is a living will?

A living will is a document that enables a person to make his or her wishes known regarding life-prolonging treatment in advance of the time when the person is no longer able to participate actively in decisions concerning his or her medical care. (KRS 311.621-KRS 311.643)

What is a surrogate?

A surrogate, as relates to health care, is an adult who has been properly designated (KRS 311.621(15)) pursuant to Kentucky law to make health care decisions on behalf of another person.

I currently have a living will. Am I required to execute another living will after the new forms and provisions of Senate Bill 311 are effective?

No. A new living will is not needed if the person wishing to make the directive previously executed a valid living will *and does not wish to make any of the additional decisions authorized under the new law.* The new law is effective on July 15, 1994. (KRS 311.621(2))

How does Senate Bill 311 affect the existing living will law in Kentucky?

There are several major ways the bill affects existing living will law. After the effective date of the bill, an adult Kentuckian may direct the withholding or withdrawal of artificially provided nutrition or hydration. (KRS 311.625) The law did not previously allow this decision to be made in a living will.

The bill also allows an adult Kentuckian to designate one or more adults as a "surrogate" in the same document that also contains the living will. (KRS 311.625) The living will must be honored by the grantor's family, regular family physician or attending physician, and any health care facility in which the grantor is a patient. (KRS 311.623(2)) An emergency medical responder or paramedic may be notified of a wish not to be resuscitated on a standard form or identification approved by the Kentucky Board of Medical Licensure, in consultation with the Cabinet for Human Resources. (KRS 311.623(3))

What are the requirements of a living will or health care surrogate designation under the new law?

The living will or health care surrogate designation, also known as an advanced directive, must be in writing, be dated, and signed, either by the grantor, who must be at least 18 years of age, or another adult person at the grantor's direction. The document must be: (1) witnessed by two adults in the presence of each other and in the presence of the grantor; or (2) acknowledged before a notary public or some other person authorized to administer oaths. (KRS 311.621(1) and KRS 311.625)

Can any person be a witness to a living will or health care surrogate directive?

No. The bill states that the following persons may not be a witness to a living will or health care surrogate directive: (1) a blood relative of the grantor; (2) a beneficiary of the grantor under the Kentucky laws of descent and distribution; (3) an employee of a health care facility in which the grantor is a patient (unless the employee serves as a notary public); (4) an attending physician of the grantor; or (4) any person directly financially responsible for the grantor's health care. In addition, any witness must be at least 18 years of age. (KRS 311.621(1) and KRS 311.625(2))

Can any person act as a surrogate?

No. The bill states that an employee, owner, director, or officer of a health care facility where the grantor is a resident or patient may not be designated or act as a surrogate, unless the person is a member of the same religious order or is a blood relative within the fourth degree to the grantor. (KRS 311.625(4))

Can a person refuse to act as a surrogate?

Yes. A person designated as a surrogate may resign at any time by giving written notice to the grantor, to the immediate successor surrogate, to any attending physician, or to any health care facility that is then waiting for the surrogate to make a health care decision. (KRS 311.625(3))

If I execute a living will directive or health care surrogate designation, may I revoke the document if I later change my mind?

Yes. A living will directive or health care surrogate designation may be revoked by a signed and dated writing by the grantor declaring an intention to revoke; by an oral statement to revoke made by the grantor who has decisional capacity in the presence of two adults, one of whom shall be a health care

provider, or by destruction of the document by the grantor or another person in the grantor's presence and at the grantor's direction. The revocation is effective immediately. (KRS 311.627)

How does the attending physician or health care facility where the grantor is a patient learn about the existence of a living will directive or health care surrogate designation?

It is the grantor's responsibility, or that of the grantor's responsible party, to provide notification to the attending physician or health care facility where the grantor is a patient. If the grantor is physically or mentally incapable of providing the notification, any person may notify the attending physician or health care facility. A health care provider may legally refuse to follow the directions of the living will or surrogate, but the health care provider may not prevent or impede the transfer of the grantor to another health care provider who has expressed a willingness to follow the directions. (KRS 311.633)

What does a person do with the living will or designated health care surrogate documents upon completion?

The documents should be kept in a safe place, and a family member and a physician should be informed of the existence and location of the document(s). They may be kept in a bank lock box, with at least one copy at home for ready use. If a health care surrogate is chosen, the surrogate should be given a copy of the document.

LIVING WILL	HEALTH CARE SURROGATE
<p>A document which enables an adult to make his or her wishes known regarding life-prolonging treatment when the person is terminally ill and no longer able to participate actively in decisions concerning medical care. The document is now part of the same form as the health care surrogate designation form and is authorized by 1994 Senate Bill 311.</p>	<p>A document which designates another adult to make health care decisions when a person no longer has the capacity to make such decisions. Subject to certain exceptions in the law, the health care surrogate would have the power to authorize the withholding or withdrawal of life-prolonging treatment or artificially provided nutrition or hydration. The document is now part of the same form as the living will form and is authorized by 1994 Senate Bill 311.</p>
ORDINARY WILL	DURABLE POWER OF ATTORNEY
<p>A document which allows a person to designate to whom and how ownership of one's personal property and real estate will be distributed after death.</p>	<p>A document which allows a person to designate someone to make decisions for that person regarding health, personal, and financial affairs even when the designator is disabled.</p>

***Living Will Directive and
Health Care Surrogate Designation
as set forth in KRS 311.625***

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

_____ Designate _____ as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If _____ refuses or is not able to act for me, I designate _____ as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

_____ Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

_____ DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

_____ Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

_____ DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

_____ Authorize my surrogate, designated above, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

In the absence of my ability to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

Form I: Two witnesses

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this ____ day of _____, 19____.

Grantor

Address

In our joint presence, the grantor, who is of sound mind and eighteen years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Witness

Address

Witness

Address

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.

**Living Will Directive and
Health Care Surrogate Designation
as set forth in KRS 311.625**

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

_____ Designate _____ as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If _____ refuses or is not able to act for me, I designate _____ as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

_____ Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

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If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Form 2: Notary public

Signed this ____ day of _____, 19 ____.

Grantor

Address

Commonwealth of Kentucky
_____ County

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age, or older, and acknowledged that he/she voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this ____ day of _____, 19 ____.

Notary Public or Other Officer

Date Commission Expires

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.