

ASSISTANCE IN DECISION MAKING

The person with a disability may need assistance in making decisions – personal or financial. There are a variety of ways of providing that assistance. From the least restrictive to the most restrictive alternative, the different ways to provide assistance are discussed here as well as how to select a person to provide assistance.

- *Advisor or Advocate – Informal Assistance*
- *Benefit Program Assistance*
- *Health Care Assistance – Durable Power of Attorney for Health Care and Living Will*
- *Guardianship*
- *Other Assistance – Durable Power of Attorney, Conservator, & Trusts*
- *Selecting Someone to Assist The Person with a Disability*

ASSISTANCE IN PERSONAL AND FINANCIAL DECISION-MAKING

New Hampshire law presumes that an adult is capable of making his or her own personal or financial decisions. The presumption is that, with the support and guidance of parents, children learn how to make decisions as they develop. Parents, as the natural guardians of children, make many decisions for their children during the child's period of development. As the years pass, children become more and more able to make both personal and financial decisions. At age 18, the law presumes them sufficiently capable to make decisions and the natural guardianship of parents automatically dissolves. Not every adult, however, attains this capability.

Parents often continue to provide decision-making assistance to their adult sons and daughters, even parents who do not have a son or daughter with a disability. However, when planning for the future or helping a son or daughter transition to a more independent lifestyle, the need for further decision-making assistance, how much assistance is necessary, and what method of assistance is best for him or her must be evaluated.

There are a number of possibilities for assistance for an adult. New Hampshire law and policy support implementation of the least restrictive alternative. Possibilities range from methods that minimally restrict the decision-making independence of the person with a disability to severely restricting it. Assistance may be an informal arrangement where a family member, friend, or team of these acts as advisor or advocate to the person. More formal assistance may come in the form of a representative payee, durable power of attorney, or a trust. Another formal arrangement, and potentially the most restrictive arrangement, is a guardianship. These alternatives are explained in the discussion that follows.

When you make a decision about assistance for the person with a disability, there are several important considerations.

- The person's capacity to make person decisions.
- The person's capacity to make financial decisions.
- The decision-making capacity that you expect him or her to develop.
- The realistic amount of support available to the person from family and friends.
- The assistance the person is or will be comfortable with.
- When assistance is necessary, what is the least restrictive alternative?

ADVISOR OR ADVOCATE – INFORMAL ASSISTANCE

An advisor or advocate is an informal type of decision-making assistance for the person with a disability. *Informal* means that it is not enforceable by law. Reliable and trustworthy family and friends may provide this type of assistance. It is the least restrictive form of decision-making assistance.

WHAT IS AN ADVISOR?

An advisor assists with particular types of decision-making. A family member or a trusted friend, or a team of these, may act as advisor to the person if he or she needs assistance to make only certain types of decisions. For example, if the person needs help making decisions beyond the day-to-day decisions, such as purchasing a large appliance or evaluating the need for elective surgery, an advisor arrangement may be beneficial and sufficient. The advisor arrangement is an informal arrangement that is not enforceable by law. You or the person with a disability may know of someone or a team of people who could be relied on for this type of support. It perhaps is the assistance arrangement that is most like a family support system.

WHAT IS AN ADVOCATE?

The advocate is similar to the advisor as it is an informal arrangement of support. It is different from the advisor as it offers a little more support. Again, a family member, friend or team of these, familiar with the person, could provide informal advocacy for him or her. An advocate could help the person with decision-making, even making some decisions, advocating, and monitoring services, as necessary. An advocate should be someone who is aware of the community resources available for the person. As with the advisor, this is not a legal arrangement.

BENEFIT PROGRAM ASSISTANCE

Social Security and New Hampshire public assistance programs (Financial Assistance, Medicaid, and Food Stamp programs) allow for adult representation for individuals who require assistance in meeting eligibility requirements or managing benefits. You should consider the rights and responsibilities of public programs when deciding whether or not the person with a disability should have assistance. The New Hampshire public assistance rights and responsibilities are presented below and are typical of public benefit programs. Following this is an explanation of the types of public benefit assistance a person might choose.

Under the **New Hampshire Financial Assistance** and **Medicaid** programs, an applicant or recipient has a number of rights and responsibilities. For example, a person has several rights relative to the application process and eligibility.

- The person may select and appoint someone (an authorized representative) to help in any part of the eligibility process.
- The State must notify the person of the eligibility requirements, the eligibility decision, the actions the State must take if the person does not comply with eligibility requirements and any changes that affect the amount of his or her benefit or level of eligibility.
- The person must receive a timely eligibility decision (45 calendar days for ANB and OAA, 90 calendar days for APTD).
- The person must not be discriminated against.
- If the person is dissatisfied with the State's decision or lack of action, the person is entitled to a review of the circumstances of the case and a fair hearing.
- The person is entitled to confidentiality.

In return, the person must: supply accurate information; report, within 10 days of the change, all changes in circumstances that might affect eligibility or the amount of assistance; comply with program requirements; and provide verification of eligibility information when requested.

The State reviews or re-determines eligibility at least annually and it may also review eligibility when there are changes in the person's circumstances. Changes in circumstance include changes in: a source of income; the amount of income received; resources available; a lump sum payment or settlement; residence; or medical insurance coverage.

If ensuring the rights, fulfilling program responsibilities or managing a small budget would be burdensome or difficult for the person, someone may be designated to provide assistance. Four types of assistance are available: a *representative payee*, an *authorized representative*, a *protective payee* and a *vendor payee*.

WHAT IS A REPRESENTATIVE PAYEE?

Social Security programs allow for a *representative payee* who is a formally appointed assistant for a person unable to manage payments due to a mental or physical condition or due to his or her young age. The representative payee is appointed through a Social Security Administration (SSA) process.

To select the payee who will best serve the interests of the person, the SSA considers the following preferences:

- A legal guardian, spouse, other relative or friend who has custody of the person or who demonstrates strong concern for his or her personal welfare;
- An agency or institution that has custody of the person; or
- A person who is qualified to carry out the responsibilities of a payee and who is able and willing to serve as a payee.

The SSA looks for a *continuing relationship* to the person and a continuing responsibility for his or her care.

The SSA pays the person's benefits to the representative payee. The representative payee must use the benefit payments for the costs of food, shelter, clothing, medical care and personal comfort items. When there is money remaining and there are no reasonably foreseeable needs, the payee must invest the payment. SSI rules state that the "preferred investment" is the U.S. Savings Bond or deposit in an interest or dividend paying account.

Warning: The SSA does not recognize a "power of attorney" as a substitute for a "representative payee."

WHAT IS AN AUTHORIZED REPRESENTATIVE?

New Hampshire Financial Assistance, Medicaid and Food Stamp programs allow for an *authorized representative* who is a person who acts on behalf of the assistance recipient in some or all of the eligibility requirements. Any adult may act as an authorized representative for the person with a disability as long as he or she is designated as such in writing on a form provided by the State. The authorized representative must, however, be someone who is concerned for the well being of the person with a disability and knows or is able to obtain information about his or her circumstances. The representative may represent the person in the eligibility process and in receipt of benefits. The representative pays the costs of basic needs that the person incurs and maintains an accounting of the person's funds. When a person has severe mental or physical disabilities, the authorized representative may assume all applicant and recipient functions.

WHAT IS A PROTECTIVE PAYEE?

New Hampshire Financial Assistance allows for a *protective payee* who is a person who receives the assistance recipient's monthly payment and pays the recipient's bills according to a budget planned with the recipient. When the State determines that direct payment of the Financial Assistance benefit is not in the best interest of the person with a disability, the State may temporarily authorize the appointment of a protective payee to receive and control the payment. The State will find that direct payment is not in the "best interest" of the person when it finds that he or she is persistently mismanaging funds. Importantly, it should be noted that physical or mental incapacity alone is not a valid reason for the appointment of a protective payee.

The role of the protective payee is temporary. When a payee is necessary, the State encourages the person with a disability to participate in the selection. During the appointment, the payee must pay and account for all bills. At the same time, the protective payee must work closely with the person, to teach him or her how to manage a household budget and to encourage him or her to participate in the cash management. The State reviews the need for protective payments every six months and terminates the arrangement on a finding that the person is able to manage funds or that protective payments are not in his or her best interest. The appointment of a guardian or other legal representative will also terminate the protective payee arrangement.

WHAT IS A VENDOR PAYEE?

New Hampshire Financial Assistance allows for a *vendor payee* who is a person or business that the State pays directly for the goods or services that the person or business provides to a Financial Assistance recipient. A person with a disability or an authorized representative may request direct vendor payment through Electronic Fund Transfer and the State will authorize such payments when they are in the person's best interest. The State will not, however, authorize vendor payments when the person with a disability has a guardian or conservator.

HEALTH CARE ASSISTANCE

Through a durable power of attorney for health care and through a living will, a person (a *principal*) can choose someone else (an *agent*) to make health care decisions for him or her in the event that he or she becomes incapacitated. Through these documents, a person may also express wishes and beliefs regarding end-of-life care and other care to inform and guide the decision-maker.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Competent adults (age 18 or older) may appoint another adult to make health care decisions for them in the event that they become incapacitated and unable to make those decisions for themselves. Appointment happens through a document known as the durable power of attorney for health care (DPOAHC). Through a DPOAHC the person with a disability may give another person, an agent, the authority to make any and all health care decisions on the person's behalf, if and when he or she becomes incapacitated. This means that the agent may consent, refuse to consent, or withdraw consent to any care, treatment, or facility admission.

There are some limitations on what the agent can do. The law does not allow the agent to consent to voluntary admission to a state institution, voluntary sterilization, or withholding life-sustaining treatment from a pregnant woman under certain conditions. In the DPOAHC, the person may list additional limitations on the decision-making power of the agent.

WHEN DOES A DPOAHC BECOME EFFECTIVE?

A DPOAHC becomes effective only when a physician certifies that the person with a disability is unable to make health care decisions. The law explains that this means that the person no longer has "the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care."

WHAT IS THE AGENT'S DECISION-MAKING PROCESS?

When making a health care decision for someone with a disability, the agent must consult with the person's health care providers and must also consider the person's wishes and religious beliefs. Therefore, it is important to discuss these issues with the agent or include them in the DPOAHC. This helps make the agent's decision-making more like that of the person with a disability. If the person has not communicated his or her wishes and beliefs, the law requires that the agent consider the person's "best interest" along with accepted medical practice. The agent may also access or disclose any of the person's health care information, such as medical records.

WHAT IS THE ROLE OF THE HEALTH CARE PROVIDER?

A health care provider, such as a physician or a residential care provider, must follow the decisions and directions of the agent. However, if a provider believes that the decision made by the agent is contrary to moral or ethical standards, the provider may transfer the person with a disability to another facility without liability.

Also, despite the DPOAHC and the incapacity of the person, health care providers may not withhold or give treatment over the objections of the person with a disability. New Hampshire law requires that the attending physician make a reasonable effort to inform the person of proposed or withheld treatment, despite his or her incapacity.

HOW DOES GUARDIANSHIP AFFECT THE ROLE OF THE AGENT?

A court may suspend or revoke an agent's authority upon request by a guardian or when the court appoints a guardian. The court must consider the preferences of the person with a disability, as expressed in the DPOAHC. Unless there is clear and convincing evidence that the agent is not in the best interest of the person, the court will leave the agent named in the DPOAHC.

HOW DO YOU CREATE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

You may create your own DPOAHC or have an attorney do this. The law requires that the document be "substantially in the form" presented in New Hampshire law, RSA 137-J:15. (See form at the end of this section.)

MAY YOU REVOKE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

A person may revoke a DPOAHC at any time. This may be done in writing or orally. A DPOAHC is automatically revoked upon the completion of a new DPOAHC or upon divorce if the spouse was the named agent. (In the case of divorce, if there is an alternate agent to the spouse, the alternate automatically becomes the named agent.)

THE LIVING WILL

New Hampshire recognizes the rights of a person to control his or her own medical care decisions. In turn, the law provides another vehicle that a person may use to communicate health care decisions when no longer able to participate actively in the decision making. With a *living will*, a competent person is able to declare written instructions to a physician regarding the provision, withholding or withdrawing of life-sustaining procedures when the person is in a terminal or permanently unconscious condition.

WHO MAY CREATE A LIVING WILL?

Only a *competent* person creates a valid living will. The living will law defines a competent person as a person “of sound mind who is 18 years of age or older.”

HOW DO YOU CREATE A LIVING WILL?

New Hampshire law provides an example of a living will that may be but need not be followed. (See example at end of this section.) Importantly, artificial nutrition and hydration may not be withdrawn or withheld unless there is a clear expression of such intent in the document. The person with a disability may request that his or her attending physician place the document, or a copy of the document, into his or her permanent medical record; the physician must fulfill such a request.

The living will becomes effective only when the person is “permanently incapable of participating in decisions about his or her care.” He or she may revoke a living will by: destroying the document; oral revocation in the presence of two or more witnesses; or written revocation, signed and dated in the presence of two or more witnesses.

WHAT IS THE PHYSICIAN’S RESPONSIBILITY?

The attending physician must follow the directions of the document as closely as possible within the bounds of responsible medical practice. If, based on his or her own personal beliefs or conscience, the physician does not wish to comply with the document, he or she must notify the family of his or her position and allow referral to another physician without delay.

GUARDIANSHIP

A *guardian* is a person or an institution that has the legal right and duty to care for a person, a person's property or both because he or she is not capable of doing so. The person that a guardian provides care for is called a *ward*.

If guardianship is the least restrictive alternative of assistance, you should consider just how restrictive the guardianship should be. Under New Hampshire law, there is a legal presumption that the person with a disability is capable. The court may only impose an order of guardianship to the extent that is necessary to address the *functional* limitations of the person. You can vary the level of restriction by the type of guardianship and by restricting the powers and duties of the guardian.

WHAT IS GUARDIANSHIP OF THE MINOR?

New Hampshire law distinguishes guardianship of the *minor*, a child under 18 years of age, from guardianship of the adult and recognizes the parent as the natural guardian of the minor person. Father and mother are joint guardians. Upon death of one parent, the surviving parent is the sole guardian. However, this natural guardianship does not continue into adulthood, even for the person with a disability or incapacity. Without court appointment, as described below, at age 18 the person with a disability is automatically without a guardian.

WHAT IS GUARDIANSHIP OF AN ADULT?

New Hampshire law provides many protections for the rights of the involuntary ward. The State's policy is to encourage the development of self-reliance, to encourage rehabilitative care, and to impose guardianship only to the extent demanded by a person's unique functional limitations. A guardianship for the person with a disability, therefore, must:

- Leave the person with as much independence as possible;
- Recognize the functional capabilities of the person;
- Be designed to address the unique functional limitations of the person;
- Ensure that, where appropriate, steps are taken to lessen or eliminate the person's functional limitations in order to lessen or eliminate the need for guardianship; and
- End if and when the person's functional limitations are lessened or eliminated so that the person with a disability no longer needs a guardian.

You should also be aware that guardianship in itself does not deprive the person of any legal rights. Unless the court specifically finds otherwise, the person under guardianship still has the right to marry, to obtain a driver's license, to testify in court or in a hearing, to make a will, to convey or hold property, or to contract.

HOW IS A GUARDIAN APPOINTED?

Any interested person may file a petition for guardianship with the probate court. The person with a disability may also file in his or her own behalf. When someone files for guardianship, the court will ensure that the person has a lawyer to represent him or her alone. If the person does not already have a lawyer, the court will appoint one.

The person that files for guardianship must prove beyond a reasonable doubt that the person with a disability has functional limitations that require him or her to have a guardian. In the law, *a functional limitation is a behavior or a condition that impairs the ability of the person to perform basic activities to ensure proper food, clothing, shelter, health care and safety.* The person filing must show that the person with a disability is suffering harm or is likely to suffer harm because he or she is unable to provide for personal needs or manage his or her financial affairs. The person filing must demonstrate this by showing more than an isolated mistake. The person filing must give specific examples of the functional limitations of the person with a disability. *The fact that the person has a disability is not enough.*

If the person filing proves that the person with a disability has such functional limitations, the court may appoint a guardian if it also finds that:

1. Guardianship is necessary to provide continuing care, supervision, and rehabilitation for the person with a disability, or to provide management of his or her property and financial matters;
2. There are no available and appropriate alternatives; and
3. Guardianship is the least restrictive alternative for the person.

The court may appoint a *guardian of the person*, a *guardian of the estate* or a *plenary guardian* (a guardian of the person and of the estate). The court may also customize these to meet the needs of the person with a disability.

Guardian of the Person--

A guardian of the person manages the personal affairs of the ward. A guardian of the person may make sure that the person with a disability receives the necessary food, shelter and clothing as well as medical care, education and rehabilitation. New Hampshire law gives the guardian of the person certain powers and duties. However, the court may limit these powers and duties or add to them. (See a listing of the powers and duties of the guardian of the person as provided in New Hampshire law at the end of this section.)

Guardian of the Estate --

A guardian of the estate manages the financial affairs of the ward. A guardian of the estate may provide for the person's support costs, invest for him or her, and seek public benefits for the person with a disability. As with the guardian of the person, New Hampshire law gives the guardian of the estate certain powers and duties. Again, the court may limit these powers and duties or add to them. (See a listing of the powers and duties of the guardian of the estate as provided in New Hampshire law at the end of this section.)

WHO MAY BE A GUARDIAN?

Almost any competent person who agrees may be appointed guardian, including an institution or an agency, or a representative of the Office of Public Guardian. However, the court may not appoint an institution or agency that provides care and custody for the person with a disability unless no other person can be found to serve. Importantly, any competent adult may nominate a person to be his or her guardian or exclude a person from being his or her guardian (other than a public guardian). The court will appoint the nominee as long as the nominated person is legally qualified, willing and able.

HOW IS A GUARDIANSHIP TERMINATED?

A guardian may end, resign from or be removed from the guardianship appointment. The guardian may file with the court to end the guardianship or resign from the guardianship. The ward or any interested person may file for removal of the guardian. In any event, the court must give approval to terminate the guardianship.

MAY A GUARDIAN ENGAGE IN ESTATE PLANNING FOR THE PERSON WITH A DISABILITY?

New Hampshire law allows the probate court to authorize a guardian to undertake estate planning for a ward. The guardian must file a request to do estate planning and the guardian must present a proposed estate plan with supporting information to the court. The court may authorize a guardian of the estate to make gifts from the person with a disability's estate during his or her lifetime. The court may also authorize a guardian to plan for the distribution of his or her estate through a will. Both must be done in a way that is consistent with the wishes of the person.

If the person's wishes cannot be determined, the court may authorize the guardian to plan for the distribution of the person's estate, upon his or her death, in a way that minimizes taxes or in a way that helps with the distribution of his or her estate to family, friends, or charities who would be likely recipients of gifts from the person.

WHAT IS THE PUBLIC GUARDIANSHIP AND PROTECTION PROGRAM?

Public guardianship law provides for guardianship and protective services that are required by law and are not otherwise available. There are two New Hampshire laws, one for adults with developmental disabilities and one for adults with mental illness, that authorize the probate court to appoint a public guardian when no relative, friend or other interested person is available, willing or able to serve as a guardian. The probate court may also appoint a public guardian in other instances if there are funds available to pay for the services. The person with a disability or his or her estate bears the cost of public guardianship services.

The public guardian has the same powers and duties as a private guardian. The public guardian must also file an annual report with the probate court, which the court reviews to ensure compliance with the law, to ensure that the person receives appropriate care and services, and to ensure that the guardian maintains the highest ethical standards.

OTHER ASSISTANCE

WHAT IS A DURABLE POWER OF ATTORNEY?

A *power of attorney* is a document in which one person appoints another to act for him or her in legal and financial matters, with either broad or limited powers. If a person with a disability is competent, he or she may establish a power of attorney that takes effect immediately. When a power of attorney is *durable*, it remains effective even if the person is later determined incompetent. However, you should note that if the person is later determined incompetent, the probate court may appoint a guardian for the person and either the individual with a power of attorney will report to the person's guardian or the guardian may terminate the power. Unless revoked sooner, a power of attorney ends upon the death of the person with a disability.

WHAT ARE TRUSTS?

A *trust* is a legal arrangement established by a person (*settlor* or *grantor*) who transfers money or other assets that he or she owns to a second person (a *trustee*) to invest and spend for the benefit of a third person (a *beneficiary*). The trust document directs how the assets are to be invested and disbursed. The arrangement may be customized to meet individual needs, as well as to eliminate the need for a guardian of the estate.

Those who support a person with a disability who is dependent upon public benefits should consider a special needs trust as described in the section *The Special Needs Trust*. The properly structured special needs trust will not be regarded as an asset in the public benefit eligibility determination. Other types of trusts may be considered assets under the public benefit programs.

SELECTING SOMEONE TO ASSIST THE PERSON WITH A DISABILITY

When selecting someone to nominate or to ask to assist the person with a disability, there are several actions you should take.

1. Choose someone you and the person know and who you know to be trustworthy.
2. Make sure that the individual you choose is capable of the level of assistance that the person with a disability will require.
3. Talk to the individual about the assistance and ask if he or she is willing to help.
4. Present your letter of intent for the person with a disability to the individual that you choose so that that he or she is aware of your expectations and you are aware of his or her response.
5. Decide when this assistance should begin.
6. Once you and the person with a disability select someone, tell others who may be affected by the choice.
7. Do these same things for alternate people who may be called upon to assist the person with a disability if the first individual that you choose should become unable to help.
8. Take all of these actions and make these decisions with the person with a disability as much as possible.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE
(RSA 137-J:15)

I, _____, hereby appoint _____ of _____ as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document or as prohibited by law. This durable power of attorney for health care shall take effect in the event I become unable to make my own health care decisions.

STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.

For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: cardiopulmonary resuscitation, mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for these or other matters. If you wish you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.

1. If I become permanently incompetent to make health care decisions, and if I am also suffering from a terminal illness, I authorize my agent to direct that life-sustaining treatment be discontinued. (YES) (NO) (Circle your choice and initial beneath it.)
2. Whether terminally ill or not, if I become permanently unconscious I authorize my agent to direct that life-sustaining treatment be discontinued. (YES) (NO) (Circle your choice and initial beneath it.)
3. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial feeding (artificial nutrition and hydration). In carrying out any instructions I have given above in #1 or #2 or any instructions I may write in #4 below, I authorize my agent to direct that (circle your choice of (a) or (b) and initial beside it):

(a) artificial nutrition and hydration not to be started or, if started, be discontinued,

-or-

(b) although all other forms of life-sustaining treatment be withdrawn, artificial nutrition and hydration continue to be given to me. (If you fail to complete item 3, your agent will not have the power to direct the withdrawal of artificial nutrition and hydration.)
4. Here you may include any specific desires or limitations you deem appropriate, such as when or what life-sustaining treatment you would want used or withheld, or instructions about refusing any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason. You may leave this question blank if you desire.

(attach additional pages as necessary)

In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____ as alternate agent.

I hereby acknowledge that I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

The original of this document will be kept at _____ and the following persons and institutions will have signed copies:

In witness whereof, I have hereunto signed my name this _____ day of ____, 19 __

Signature

I declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal has affirmed that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____ Address: _____

Witness: _____ Address: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 __, by _____

Notary Public/Justice of the Peace
My Commission Expires:

LIVING WILL
(RSA 137-H:3)
DECLARATION

Declaration made this ____ day of ____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition or a permanently unconscious condition by 2 physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized or that I will remain in a permanently unconscious condition and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial nutrition and hydration. In carrying out any instruction I have given under this section, I authorize that artificial nutrition and hydration not be started or, if started, be discontinued. (yes) (no) (Circle your choice and initial beneath it. If you do not choose "yes," artificial nutrition and hydration will be provided and will not be removed.)

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physicians as the final expression of my right to refuse medical or surgical treatment and accept the consequences of such refusal.

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

Signed _____
State of _____
_____ County

We, the following witnesses, being duly sworn each declare to the notary public or justice of the peace or other official signing below as follows:

1. The declarant signed the instrument as a free and voluntary act for the purposes expressed, or expressly directed another to sign for him.
2. Each witness signed at the request of the declarant, in his presence, and in the presence of the other witness.
3. To the best of my knowledge, at the time of the signing the declarant was at least 18 years of age, and was of sane mind and under no constraint or undue influence.

_____ Witness
_____ Witness

The affidavit shall be made before a notary public or justice of the peace or other official authorized to administer oaths in the place of execution, who shall not also serve as a witness, and who shall complete and sign a certificate in content and form substantially as follows:

Sworn to and signed before me by _____, declarant _____ and _____, witnesses on _____.

Signature _____
_____ Official Capacity

Note: “‘Artificial nutrition and hydration’ means invasive procedures such as but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include sustenance.” N.H. RSA 137-H:2 VIII.

GUARDIAN OF THE PERSON
(RSA 424-A:25 & RSA 424-A:35)

POWERS AND DUTIES OF THE GUARDIAN OF THE PERSON

Powers

- Maintain custody of the ward and establish the ward's place of abode within or without the state.
- Admit to a state institution in accordance with the following:
 1. Prior approval of the court and a court finding that, beyond a reasonable doubt, placement is in the ward's best interest and is the least restrictive placement available.
 2. Without prior approval of the court, with written certification by a licensed physician that placement is in the ward's best interest and is the least restrictive placement available.
 3. With approval by the court for an admission, authority to readmit within 60 days of discharge from the institution.
- Give consent or approval for medical or other professional care, counsel, treatment, or service or withhold consent for a specific treatment, if the court authorizes such authority. (No guardian, however, may give consent for psychosurgery, electroconvulsive therapy, sterilization, or experimental treatment of any kind without court approval.)
- Upon a finding that treatment compliance is in the best interest of a ward and by court authorization, request the assistance of law enforcement to restrain and/or transport the ward to receive the treatment.
- Authorize a health care provider to restrain or forcibly administer treatment, or both, to the ward.

Duties

- If entitled to custody of the ward: provide for the care, comfort and maintenance of the ward; when appropriate, arrange for the ward's training, education or rehabilitation; and, take reasonable care of the ward's clothing and personal effects.
- Adhere to a previously executed and valid living will and/or durable power of attorney for health care of the ward.
- Act with respect to the ward in a manner that safeguards, to the greatest extent possible, the civil rights of the ward, and restrict the personal freedom of the ward only to the extent necessary.
- File an annual report with the court.

GUARDIAN OF THE ESTATE
(RSA 424-A:26 & RSA 424-A:36)

POWERS AND DUTIES OF THE GUARDIAN OF THE ESTATE

Powers

- Perform every act which persons of prudence, discretion and intelligence and exercising judgment and care as in the management of their own affairs would perform for the purposes of the guardianship, including, but not limited to, the powers specified in the uniform trustees' powers act (RSA 564-A:3).

Duties

- Take possession, not title, of all of the ward's real and personal property, the rents, income, and benefits therefrom, and of the proceeds arising from the sale, mortgage, lease or exchange thereof.
- In regards to the estate:
 - Protect and preserve it;
 - Retain, sell and invest it as provided by law;
 - Prosecute or defend actions, claims or proceedings for the protection of the estate's assets;
 - Account for it faithfully;
 - Perform all other duties required by law; and
 - At the termination of the guardianship, deliver the assets of the ward to the persons entitled thereto.
- Apply the money and property of the estate for the support, care, and education of the ward.
- Not use funds from the estate for room and board provided by the guardian or the guardian's spouse, parent, or child unless the court so approves.
- Institute proceedings to compel any person or agency under a duty to support the ward, or a duty to pay sums for the welfare of the ward, to perform this duty.
- Take a receipt of the ward/legal representative, to whom the guardian pays or delivers the property of the ward, and file the receipt with the probate office.
- File an annual account with the probate court.