

ADVANCE MEDICAL DIRECTIVES AND NATIONAL HEALTHCARE DECISIONS DAY

Ft. Knox Legal Assistance Office

April 16, 2009 has been declared National Healthcare Decisions Day. This is a day designated by concerned professionals and supporting organizations to educate Americans regarding their health care decisions. The goal is to ensure everyone has the opportunity to express their wishes regarding health care treatment in case they are unable to communicate with health care professionals at the time of treatment.

The Fort Knox Legal Assistance Office provides a number of relevant services to eligible members of the local community. These services include drafting documents known as advance medical directives (AMDs). AMDs provide the opportunity to appoint health care agents and to reduce to writing a variety of end-of-life decisions.

Federal law (10 USC 1044c) requires that AMDs drafted by a Legal Assistance attorney be recognized in all 50 states.

There are two types of AMDs: the Living Will, and the Health Care Power of Attorney.

The Living Will

A Living Will is a document which lets others know your wishes on certain life-sustaining measures and organ donation in the event you are unable to make your wishes known. Living Wills are used by doctors, family members, and state courts to determine what type of treatment you would or would not want. This information is particularly important when, in the opinion of your treating doctors, you are permanently unconscious or in the last stages of a terminal illness.

In such cases, family members and other interested parties often disagree about continued treatment. In some instances, when all interested parties cannot agree, a state court judge is required to determine what you would have wanted. Through a properly-executed Living Will, you can express your wishes regarding medical treatment, organ donation, disposition of remains, and the desire to die at home rather than at a hospital.

The Health Care Power of Attorney

A Health Care Power of Attorney (HCPOA) is a legal document that designates another person (your agent) to speak with your doctors, access your medical records, and make medical decisions on your behalf when you are unable to communicate.

An HCPOA and a Living Will are not the same document. While a Living Will contains information regarding the treatment you would or would not like to receive when you are unable to communicate, it does not designate a health care agent. Health care agents are particularly important in cases where family members or other interested parties disagree about the nature of medical treatment or when doctors refuse to discuss medical treatments with a non-family member such as a close friend or fiancée.

If you need medical care, are unable to communicate with your doctors, and have failed to designate a health care agent, a state court judge may be required to determine what you would want. If you have a validly signed and witnessed HCPOA, it is clear who you want to make medical decisions for you and it is not necessary for a state court to intervene.

When choosing an agent, remember that the person you name will have the power to make important treatment decisions, even if other people close to you might urge a different decision. Choose the person best qualified to be your health care surrogate. Also, consider picking an alternate in case your first choice is not available when needed. Be sure to tell the

person that you have named him or her as agent and make sure the person understands what is most important to you.

Kentucky's Advance Medical Directive

The AMD form established by Kentucky law for Kentucky residents combines the Living Will and the HCPOA into one document. The document has two sections. The first section allows you to designate one or more persons as your agent(s) to make health care decisions for you if you lose the ability to decide for yourself. The second section is the Living Will section in which you may make your wishes known regarding life-prolonging treatment so your agent or doctor will know what you want them to do. You can also decide whether to donate any of your organs in the event of your death.

Eligibility to make an AMD

Some Soldiers are under the mistaken impression that they do not have the right to execute an AMD, believing that their chain of command or Army Regulations control who can make medical decisions for Soldiers. This is incorrect. Any competent adult can execute a Living Will and/or HCPOA.

If you can answer YES to any of the statements listed below, you may need an AMD.

Living Will:

1. I have an opinion about being placed on life support in the event I have an irreversible, terminal condition.
2. I have an opinion about donating my organs upon my death.
3. I have an opinion about whether I wish to die at a hospital or at home.

Health Care Power of Attorney:

1. I have an opinion regarding who should make health-care decisions for me if I cannot communicate (for example a decision regarding a surgical procedure, medication, or other course of treatment).
2. I would like to designate someone to speak with doctors, review my medical records, and make medical decisions for me if I need medical treatment but cannot communicate with doctors because of my medical condition.

For more information about National Healthcare Decisions Day or for information about getting an AMD, see www.nationalhealthcaredecisionsday.org, or contact the Fort Knox Legal Assistance Office at 624-2771.