

## Changes and Improvements in North Carolina Advanced Directive Statutes and Health Care Power of Attorney Statutes

End of life decisions have always been difficult for families, particularly when a loved one has not made his or her wishes known. This is an especially important consideration in the area of elder law, where adult children may have to make these decisions for their parents. Planning in advance for health care and end of life decisions spares family members at least some of the stress and conflict involved in making such decisions.

In 1979, North Carolina enacted Article 23 of Chapter 90, authorizing people to declare a desire for a natural death and specifying the procedures for withholding treatment. In 1991, North Carolina added Article 3 of Chapter 32A, sanctioning the designation of a health care power of attorney by individuals. Many people choose to execute both of these legal documents. While these statutes initially allowed people to exercise more control over end of life decisions and treatment, some problems remained, particularly with ambiguity over terms and the lack of consistency when a conflict between the two documents existed.

House Bill 634, signed into law in the summer of 2007, lets North Carolinians direct whether the health care power of attorney or living will controls in the event of a conflict between the two documents. As originally written, in the event of an inconsistency, it was unclear which document would prevail, leaving families, attorneys, and doctors guessing as to the true wishes of the patient.

In addition, since North Carolina House Bill 634 was enacted, North Carolinians have been able to require that physicians honor the stipulations of their living wills, although patients can still give physicians the option of withholding or continuing treatment. Originally, under the living will statute an attending physician had the option of honoring the patient's healthcare directives or choosing to continue treatment. The physician still has some discretion in determining whether the conditions for withholding treatment are present, but allowing patients to insert the word "shall" provides everyone involved with clearer instructions as to the course of treatment.

The old living will statute used the terms "terminal and incurable" and "persistent vegetative state" for instructing physicians about when treatment could be withheld. The old health care power of attorney statute used the terms "terminally ill," "permanently in a coma," "suffers severe dementia," and "persistent vegetative state" to give health care agents instructions about when to ask physicians to withhold treatment. The terminology involved in both earlier statutes created a need for clarification. While the health care power of attorney statute gave severe dementia as grounds for withholding treatment, no mention of the term was made in the old living will statute. Also, the use of the language tied to dated medical

terminology could leave laymen uncertain of how expansive the powers were under either document. Terms such as “persistent vegetative state” and “coma” have been eliminated and replaced with terms describing an irreversible condition where a person is unlikely to regain consciousness. House Bill 634, signed in 2007, does a good bit to clarify the ambiguities in North Carolina’s health care power of attorney statute and the advanced directive (living will) statute. The changes involve letting principals designate whether the health care power of attorney document or the living will controls in the event of a conflict. Language is cleared up so that physicians and families have a clearer idea of what treatments can be stopped and when. Although there is no perfect solution to dealing with end of life issues, giving people more control and clear guidelines allows people and their families to at least feel comfortable knowing that their wishes will be followed.

References:

Creamer, James E. and Proctor V, E. Knox. “Overview of House Bill 634,” from End of Life Planning: New Living Will, Health Care Power of Attorney and Organ Donation Statutes, Carolina Bar Association, CLE, Oct. 10, 2007.

NCGS §§ 90-320-322

NCGS §§ 32A-15-25