



OLD NORTH STATE TRUST, LLC

Being in Good Form: A Guide to Essential Paperwork for Health Care in Estate Planning

Estate planning is a process that's heavy on documents, often lots and lots of documents, starting with the all-important will. What many people overlook, and this can include estate planners, too, are the many important documents that affect medical care and end-of-life issues.

The practice of medicine, and the legal issues surrounding it, is constantly changing. Estate-planning professionals need to keep up with these changes just as we do with evolving tax laws.

Just the other day, a client who lives in a retirement community came to see one of our advisors. She told her that one of her friends and neighbors had recently suffered a heart attack and an ambulance was called to take her to the hospital. The emergency medical technicians wanted to know if the patient had something called a MOST form.

Our advisor had never heard of that particular document, and neither had her client. The patient had a living will, a health-care power-of-attorney form, and various other papers, but the EMTs didn't want to see any of those documents. They only wanted the MOST form – something that even the staff at the retirement community wasn't familiar with, either.

It turns out that a state law passed in 2013 created this MOST form to go along with, and expand on, the already familiar DNR or "Do Not Resuscitate" form that doctors, nursing homes and the like typically take care of within their facilities.

So having learned more about this latest development, we'd like to offer a brief overview of these important documents, what they mean, and how they should be used.

The first two, which have the most direct life-and-death consequences, are typically handled together, at least in North Carolina.

DNR: A "Do Not Resuscitate" order. This states that, in the event the patient's heart or breathing stops, "efforts at cardiopulmonary resuscitation SHOULD NOT be initiated." The DNR order does not affect any other "medically indicated or comfort care." Of course, if you want CPR to be attempted under any circumstances, you shouldn't complete a DNR form.

MOST: This is the new form that we had to educate ourselves about after our advisor's client meeting. The acronym stands for "Medical Orders for Scope of Treatment," and it includes what the DNR order covers, as the first of several "yes/no" options. The form's first section says that if "patient has no pulse and is not breathing," medical personnel either should perform cardiopulmonary resuscitation, or not, according to the patient's preference. The MOST form goes on to give instructions for less severe situations, with a choice of "full scope of treatment" including hospitalization; or "limited medical intervention" that should not include intensive care; or mere "comfort measures" to relieve pain and suffering.

Other sections address whether and how to use antibiotics, intravenous fluids and feeding tubes. The form also explicitly notes with whom these treatment requests have been discussed and agreed. That can include the patient, of course, but may also include a legal guardian, attorney-in-fact with power to make health care decisions (health care POA), spouse or the patient's adult family members.

According to North Carolina law, the DNR and MOST forms are available only through licensed medical offices. So if you have not already completed these forms, we urge you to ask your doctor for copies, discuss your feelings about the various choices, and complete them both.

Other relevant documents that should be part of anyone's estate and end-of-life planning process include:

HCPOA: As noted earlier, this means "health care power of attorney." It grants a responsible person the authority to make medical decisions on behalf of someone who can't do so personally. This isn't just for a person who has become legally incompetent because of dementia or a similar disability. It can also be invaluable for basically healthy persons who unexpectedly become unable to make their own medical decisions. For example, think of what would happen if you were in a coma as a result of a stroke, or if you were unconscious following a car accident? A HCPOA typically includes language that distinguishes between permanent and temporary disabilities. That means a patient has someone to speak for them in emergency situations like these, but allows the patient to resume responsibility for their own care as they recover.

It's worth noting that the law gives spouses and "next of kin" legal authority to make medical decisions for someone who can't do so themselves. But people who aren't married, or who disagree with close relatives about such things, should not take chances. Designating someone you trust, which whom you've discussed such matters, to act on your behalf is only common sense.

Living will: A living will is a document that spells out in detail your wishes concerning medical care. It should cover all the issues included in the MOST form, ideally with enough specifics that medical professionals, your designated HCPOA, and your family members have a good sense of your preferences. Typical issues that a living will addresses include resuscitation, mechanical ventilation, tube feeding, dialysis, antibiotics, palliative care and organ donation. Think of the living will as your instructions to the person you grant a health care POA; it should also be the basis for how your MOST form is filled out.

Remember, though, as in the case our client described to us, that when minutes count, it's the MOST form that will be used by EMTs or emergency-room doctors. Think of the living will as the detailed background instructions, which the MOST form summarizes on a single page.

Part of our responsibility as estate planners for our clients is to be sure we have either originals or copies of all of these documents, and those family members or other appropriate parties have them as well. As important as it is to have a will – to ensure that your property is managed correctly after you're gone – it may be even more important to have these documents, to ensure that you're treated as you prefer while you're alive.

Your estate planner, not just your physician, should be up to date on all of these important papers.

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