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## **LEGACIES: Entrusting Life and Death Decisions**

If you don't write a will, your loved ones will pay for it after you're gone.

But if you don't have a health-care proxy and a living will, they're likely to suffer for it while you're alive and so are you.

A good estate plan doesn't just dispose of your property after you die. It also addresses lifetime issues you and your family will face if you become incapacitated - something that can happen to 30-year-olds as well as to 80-year-olds. That's why, regardless of age, everyone should have a durable power-of-attorney, a health-care proxy and a living will.

My last column discussed powers-of-attorney. So in this column and the next, let's talk about health-care proxies and living wills, which are sometimes called "advance directives."

A few decades ago, these documents didn't exist. It was understood that if you were comatose, your family would make your medical decisions. It's not that simple anymore. Without your "advance directives" to support their decisions, your family may be forced into an emotionally and financially draining battle for the right to make medical decisions on your behalf.

This new reality is epitomized in the Supreme Court's 1990 "Cruzan" decision: A 1983 car accident had left Nancy Cruzan in a vegetative state. Her parents asked that she be taken off an artificial feeding machine. The hospital, backed by the state of Missouri, rejected their request. The U.S. Supreme Court upheld Missouri's decision, because there was no clear and convincing evidence of what Nancy Cruzan would have wanted.

**Living will.** This document states which medical treatments including life-sustaining measures you do and do not want.

**Health-care proxy.** This gives another person the legal right to make health-care decisions when you're incapacitated. Unlike a living will, a health-care proxy doesn't have to state your wishes. "It just says that your agent knows what they are and is authorized to act for you," says Stephen J. Silverberg, an estate and elder-care lawyer at Certilman, Balin in East Meadow.

**Using both.** New York State has a health-care proxy law; it doesn't have a living will statute. Nevertheless, lawyers say it's important for New Yorkers to have both documents. "A living will is backup," explains Bernard A. Krooks, a partner at Littman Krooks in Manhattan and president of the National Academy of Elder Law Attorneys. "Let's say I'm in an accident while traveling. An Arkansas hospital may not honor a New York health-care proxy." But living wills are recognized by case law in most places.

Silverberg agrees. "You want a living will in case anyone gives the agent you named in your health-care proxy a hard time," he says. "If your agent is challenged, the living will is written proof 'clear and convincing evidence' of what you want."

**As backup.** By the same token, a health-care proxy can be crucial support for a living will. As an example, Krooks cites a Westchester case in which a hospital refused a husband's request to

terminate his wife's life support, despite the instructions in her living will. "The hospital's lawyers argued that it wasn't crystal clear that she would have wanted termination of life support to apply in this case," says Krooks. Her husband had no health-care proxy authorizing him to make the decision. "His wife lived six more months in the hospital, at a cost of \$250,000," Krooks says, "and the hospital is now suing him for payment."

Advance directives are revocable you can change your mind. And of course, these documents don't come into play unless doctors certify that you're incapacitated. Many of us aren't sure what we'd want in such a dire situation and, of course, we can't know what medical treatments may be available in the future.

That's what's attractive about a health-care proxy: You don't have to anticipate every contingency; instead, you leave the ultimate decision to a person you trust. But how to choose that person? I'll write about that in my next column.

More About Living Wills And Proxies

Partnership for Caring, a nonprofit organization, stays abreast of state and federal legislation and significant court cases that are related to end-of-life care. For more information, go to [www.partnershipforcaring.org](http://www.partnershipforcaring.org).

For advance directive documents that are tailored to each state's legal requirements, along with instructions for completing them, call 800-989-9455, or write to Partnership for Caring Publications, 1620 Eye St., NW, Suite 202, Washington, D.C., 20006. A set of state-specific printed documents costs \$10.

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