

Health Care Directives

A guide to giving instructions
about future health care decisions



Public Legal Education
and Information Service
of New Brunswick

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This guide provides information about health care directives. The legislation governing health care directives in New Brunswick is called the *Enduring Powers of Attorney Act*. It came into effect on July 1, 2020. Before that, health care directives were governed by the *Advance Health Care Directives Act*. The *Enduring Powers of Attorney Act* also governs enduring powers of attorney (EPAs). Information about EPAs is provided in a separate publication.

This guide addresses the commonly asked questions about health care directives. It does not contain a complete statement of the law in this area. Anyone needing specific advice on their situation should consult a lawyer.

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A. Introduction

What is the purpose of this guide?

The purpose of this guide is to provide information about *health care directives*. A health care directive is a legal document that you can use to prepare for the possibility that you may lose your *capacity* (your ability to make your own decisions) in the future. It allows you to give instructions about future health care decisions.

A health care directive is an important part of planning for the future. It can help to ensure that your health care preferences are respected in the event that you lose your capacity, whether due to an accident, an

illness, dementia or another cause. It can also give you and your loved ones peace of mind.

It's never too early to plan ahead by making a health care directive. A loss of capacity can happen at any time and without warning.

Most of the information in this guide is aimed at people who would like to know about what a health care directive is and how you make one. The guide also includes information for people who made a health care directive under the old legislation or in another province or country (see *Validity of existing health care directives*, page 10).

Form for making a health care directive

At the end of this guide there is an optional form you can use to make a health care directive in New Brunswick. Before you fill out the form, you should read the guide. You can find a fillable and printable version of the form on the PLEIS-NB website:

[Health Care Directive](#)

Are there other legal tools I can use to prepare for a possible loss of capacity?

Along with a health care directive, another legal tool you can use is an *enduring power of attorney* (EPA). An EPA allows you to appoint a person or persons, known as your *attorney(s)*, to make decisions on your behalf when you no longer have the capacity to do so.

In an EPA, you can appoint an *attorney for personal care* – someone who will make decisions about your health care and other personal care matters. You can also appoint an *attorney for property* – someone who will make decisions about your property and finances.

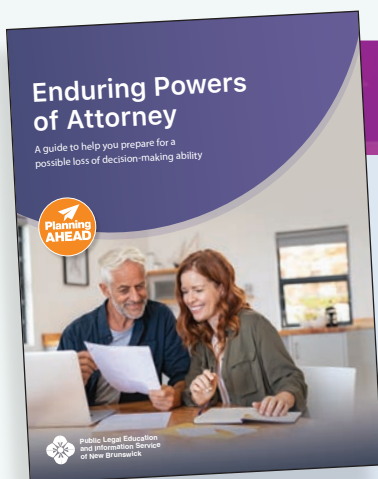
In New Brunswick, health care directives and EPAs are both governed by the same legislation, which is called the *Enduring Powers of Attorney Act*.

What is capacity?

Throughout this guide, there are references to *capacity*. For example, the guide explains that you need capacity in order to make or revoke (cancel) a health care directive, and that your health care directive will be used if you do not have the capacity to make a decision.

Capacity is the ability to make your own decisions. You have capacity if, when you are making decisions, you are able to understand the relevant information and appreciate the consequences that may arise as a result of the decisions (the “reasonably foreseeable” consequences). In other words, you have capacity if you can **understand and assess the options** when you are making decisions.

It’s important to keep in mind that capacity is not “all or nothing”. You could have the capacity to make some kinds of decisions but not others.



Guide on EPAs

You can find more information about EPAs in the PLEIS-NB guide called ***Enduring Powers of Attorney***. Also, you can find

information on related topics in the “Planning Ahead” section of the PLEIS-NB website.

Know your options

This guide and the guide on EPAs are intended to help you become familiar with the legal tools you can use to plan for a time when you may no longer be able to make your own decisions. You have a number of options. If you wish, you can make both a health care directive and an EPA. Or you can make only a health care directive or only an EPA. Or you may decide not to make either document. The decision is up to you.

B. General information

What is a health care directive?

A health care directive is a document that you can create to give instructions about health care decisions that someone may have to make on your behalf if you lose your capacity. For example, you can use a health care directive to give instructions about what kinds of medical procedures you would or would not want in certain situations.

Who can make a health care directive?

Anyone who has the capacity to make decisions about a health care directive can make one. In other words, you can make a health care directive if you can understand and assess the options regarding the instructions you are giving.

What are the benefits of making a health care directive?

A health care directive can give you peace of mind by giving you some control over the kind of health care you will receive if you lose your capacity. It allows you to provide guidance on how decisions will be made on your behalf, and to request or refuse certain treatments or procedures.

A health care directive can also give peace of mind to the people involved in making decisions on your behalf.

Health care directives are easy to make, and they are easy to re-do if you change your mind about something.

Can I appoint someone in my health care directive as my decision-maker?

No, you *cannot* use a health care directive to appoint someone to make health care decisions on your behalf. Although this was possible under the old legislation (the *Advance Health Care Directives Act*), it is not permitted under the current legislation (the *Enduring Powers of Attorney Act*). If you want to do this, you can appoint an attorney for personal care in an enduring power of attorney (EPA).

Do I need to have an attorney for personal care in order to make a health care directive?

It is not necessary. You can make a health care directive whether or not you have an attorney for personal care. If you have an attorney for personal care, they will follow the instructions in your health care directive when making decisions on your behalf. If you don't have an attorney for personal care, the health care provider will follow the instructions in your health care directive.

What kinds of instructions can I give in a health care directive?

The instructions in your health care directive can be about any health care decision that may be made on your behalf when you lack capacity. Often, people give instructions about the health care they would like to receive when they are nearing the end of their life.

Your instructions can be general or specific. For example, you could give:

- a general instruction about what someone should consider when making a health care decision on your behalf;

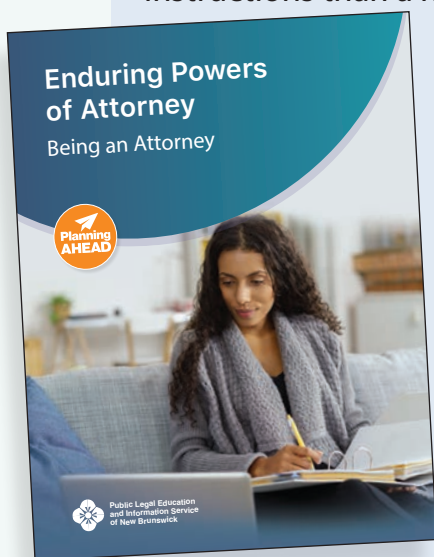
- a specific instruction about whether you would or wouldn't want a particular procedure or treatment.

If you give an instruction about a particular procedure or treatment, be sure to describe the *situations* in which you would or wouldn't want the procedure or treatment. Otherwise, the person making a decision on your behalf may not know whether you intended the instruction to be followed in the situation you are facing.

Should I appoint an attorney for personal care?

Though you aren't required to have an attorney for personal care in order to make a health care directive, you may want to consider appointing one, because someone who knows you will be more likely to understand your instructions than a health care provider will. And if there is a situation that your instructions don't cover, your attorney for personal care will be in a good position to make the decision that you would have wanted.

Before you appoint someone as your attorney for personal care, you should talk to them and make sure they understand the role and duties of an attorney and are willing to accept the responsibility. To help you do this, PLEIS-NB has created a guide called ***Enduring Powers of Attorney: Being an Attorney***. It is a good idea to give a copy of that guide to the person you are hoping to appoint.





Should I discuss my health care directive with my doctor?

It is a good idea to speak to your doctor or nurse practitioner (if you have one) before making your health care directive. They may be able to help you understand what kinds of procedures and treatments health care providers are likely to suggest for you if you are injured or ill and unable to make your own decisions. If you currently have a medical condition, they may be able to tell you about future treatment options. This may help you decide what instructions to include in your health care directive.

How will my health care directive be used?

Your health care directive will be used by your attorney for personal care or by a health care provider when a decision must be made about your health care and you do not have the capacity to make the decision.

If this happens, the health care provider is required to make a reasonable effort to find out if you have an attorney for personal care and/or a health care directive.

If you have an attorney for personal care, the health care provider will get them to make the decision. When your attorney for personal care makes the decision, they must follow any relevant instructions in your health care directive. The health care provider must then follow the decision made by your attorney for personal care.

If you don't have an attorney for personal care, or they are not available to make the decision, the health care provider must follow any relevant instructions in your health care directive.

Do health care providers always have to follow the decision of my attorney for personal care or my instructions?

Generally, health care providers must follow the decision of your attorney for personal care or the instructions in your health care directive. However, they are not required to do so in the following situations:

- The decision or instructions require the health care provider to do something that they would not be required to do even if a patient with capacity had asked them to do it. For example, your instructions ask for a procedure that is medically inappropriate.
- Your attorney for personal care did not make the decision properly. For example, they did not follow the instructions in your health care directive.

Can I request medical assistance in dying in my health care directive?

No, you cannot request medical assistance in dying in your health care directive. At this time, medical assistance in dying can only be provided to someone who still has the capacity to make decisions about their health care or someone who made arrangements with a doctor or nurse practitioner before losing that capacity. It cannot be provided based on a request in a health care directive or a request made by an attorney for personal care.

Health care is anything done for a health-related purpose (including a therapeutic, preventive, palliative, diagnostic, or cosmetic purpose), and includes a course of treatment.

A **health care decision** is any decision relating to health care, including a decision to *consent*, *refuse consent*, or *withdraw consent*.

Medical assistance in dying is when a person with a serious and incurable medical condition asks a doctor or nurse practitioner to give them a drug that will bring about their death.

C. Making a health care directive

How do I make a health care directive?

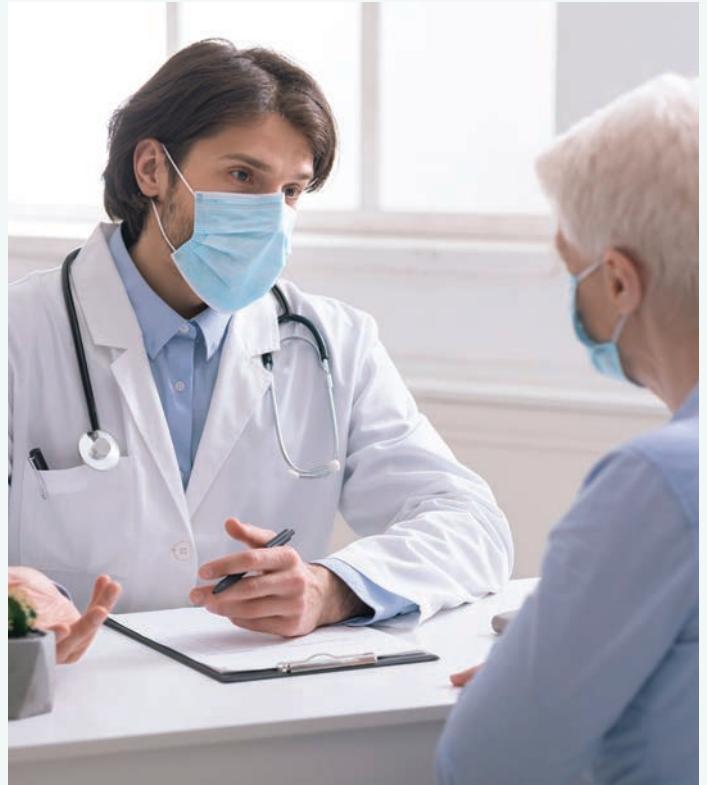
You can make a health care directive by creating a document that sets out your health care instructions. A health care directive must be a written document, but there is no particular form required by legislation.

There is a form at the end of this guide that you can use if you wish. A fillable and printable version of that form is available on the PLEIS-NB website. You can also use a form from the internet or another source. However, you should be aware that such forms may reflect the law of another province or country and may not meet the requirements of the New Brunswick legislation.

For example, some provinces allow you to appoint someone to make decisions on your behalf in a health care directive. This is not permitted under the New Brunswick legislation.

What are the requirements for a valid health care directive?

To be valid, your health care directive must be a written document and you must have the capacity to make it. In other words, you must be able to understand and assess the options regarding the instructions you are giving.



A health care directive is valid even if it is not signed and dated, and it does not require witnesses. However, it is a good idea to sign and date your health care directive, and you can have witnesses if you wish.

Do I need help from a lawyer to make a health care directive?

You do not need help from a lawyer to make a health care directive. However, if a lawyer is helping you make an EPA, it is a good idea to ask them for advice about your health care directive.

After completing my health care directive, what should I do with it?

When you have completed your health care directive, you should keep the original in a safe place. You should keep a copy of it in a place where it's easy to find, such as on your refrigerator or your bedside table, so that someone can find it in an emergency.

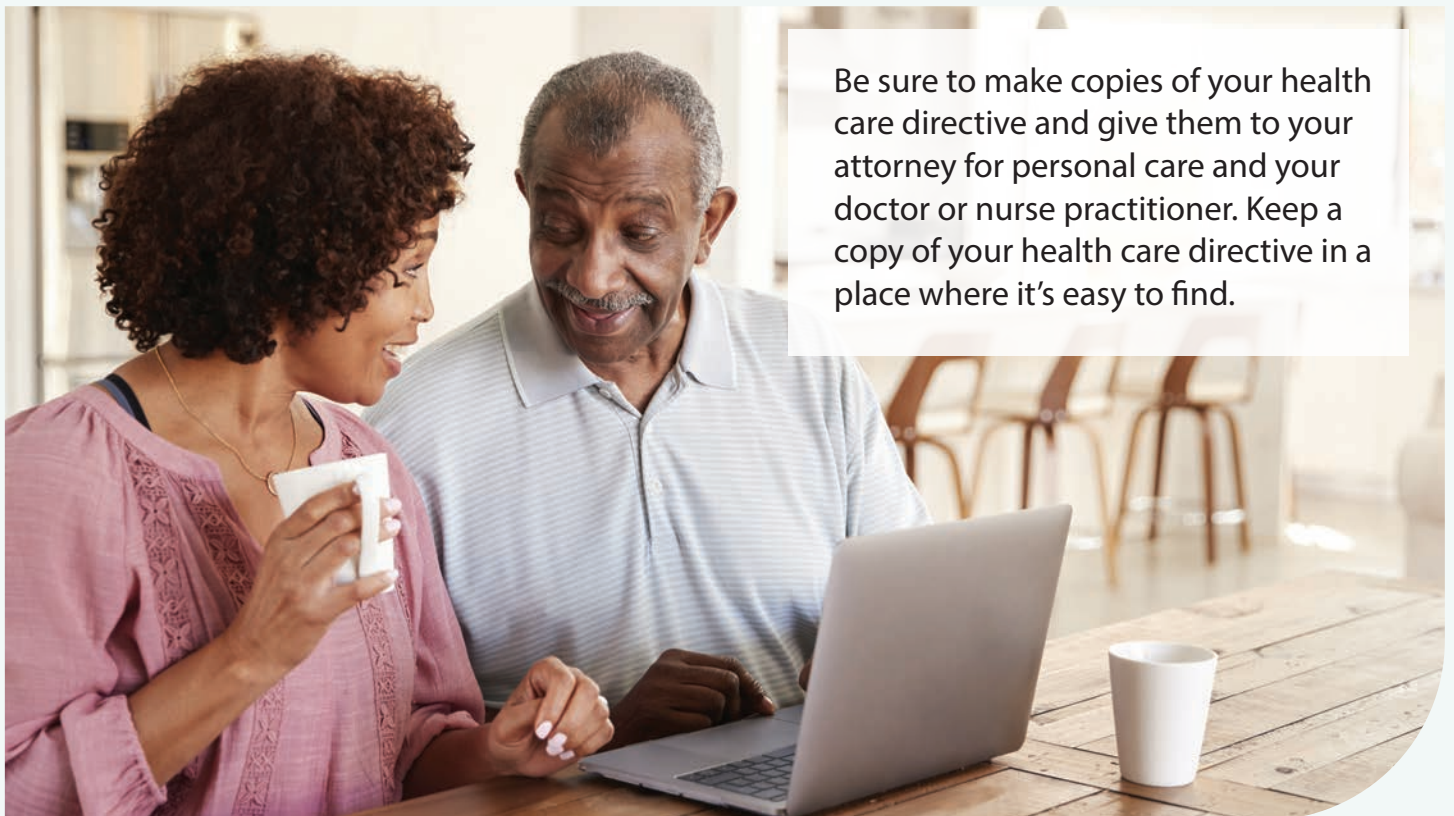
You should give a copy of your health care directive to:

- your attorney for personal care (if you have one);

- any other family member or friend who is likely to deal with health care providers on your behalf;
- your doctor or nurse practitioner (if you have one).

You should take a copy of your health care directive with you if you go to the hospital or if you are travelling.

It is important to discuss your health care directive with your attorney for personal care and your family or friends. This can help them understand your instructions and make the decisions that you would have wanted.



Be sure to make copies of your health care directive and give them to your attorney for personal care and your doctor or nurse practitioner. Keep a copy of your health care directive in a place where it's easy to find.

D. Revoking and changing a health care directive

Can I revoke my health care directive?

Yes, you can revoke (cancel) your health care directive, as long as you have the capacity to do so. It is a good idea to do this in writing. For example, you could make a new health care directive that includes a statement that you are revoking your old one. If you don't want to make a new health care directive, you could just write a note stating that you are revoking your health care directive.

Who should I notify if I revoke my health care directive?

If you revoke your health care directive, you should notify everyone who has a copy of it, and you should give them a copy of your new health care directive (if you made a new one).

If I make a new health care directive should I revoke my old one?

If you make a new health care directive you should revoke your old one. If you don't, they will both be in effect at the same time. The person making a decision on your behalf will be required to follow your most recent instructions, so they will have to figure out which parts of the two health care directives are different from each other and follow the new one on those parts. This will likely be difficult to do, especially if it's not clear which document is the most recent.

Can I change my health care directive?

Yes, you can change your health care directive, as long as you have the capacity to do so. You can add, remove or change instructions. However, it's a good idea to replace your health care directive instead of changing it, to prevent confusion. If you do change your health care directive, you should give a copy of the updated version to anyone who has a copy of the original.

Can signing a hospital form change my health care directive?

Some hospital forms may have instructions regarding health care that are different from the instructions you provided in your health care directive. If you sign a form like this, the instructions in it become your most recent instructions, and your attorney for personal care or health care provider will have to follow them. As a result, you should be cautious about signing hospital forms. Before you do so, be sure to thoroughly read the documents you are asked to sign.

Don't sign hospital forms before you have read them thoroughly to determine if they might change the instructions in your health care directive.

E. Validity of existing health care directives

I made a health care directive before July 1, 2020. Do I need to replace it?

The legislation in New Brunswick on health care directives changed on July 1, 2020, when the *Enduring Powers of Attorney Act* came into effect. If you made a valid health care directive before that date, it is still valid despite the changes to the legislation.

If your health care directive appoints a “proxy” (decision-maker), it is now considered an EPA for personal care rather than a health care directive, and the person you appointed as your proxy is now considered your attorney for personal care. This person will have authority to make health care decisions on your behalf, but not other personal care decisions.

Do I need a New Brunswick health care directive if I have one from somewhere else?

If you have a health care directive from another province or country, it is valid in New Brunswick provided that it is a written document and you had the capacity to make it. You don't need to make a New Brunswick health care directive.



If you have a health care directive from another province or country and it appoints a decision-maker, such as a proxy, it is considered an EPA for personal care in New Brunswick. It is valid in New Brunswick if it was valid in the place where you made it.

Is my living will considered a valid health care directive?

If you have a “living will” (a document with instructions about your end-of-life health care) or any other document with health care instructions for when you lack capacity, it is considered a health care directive and it is valid provided that you had the capacity to make it. You don't need to replace it with a new health care directive.

Health care instructions *(continued)*

Revocation *(optional)*

I revoke all of my previous health care directives.

Signature

Date