When preparing your estate plan, a crucial – but often overlooked – part of the process is planning for your health care in the event of incapacity. If you get sick or injured and are unable to make decisions about your own medical treatment, you will need someone to make these decisions for you. While planning for incapacity is a relatively straightforward process, if you don't have a plan in place, your loved ones could face extraordinarily challenging circumstances down the road. Planning ahead provides critical certainty for you and your family, and it is more than worth the time and effort involved.

Four Types of Health Care Directives

Texas law recognizes four primary types of advance health care directives: (i) the Directive to Physicians and Family or Surrogates; (ii) the Medical Power of Attorney, (iii) the Out-of-Hospital Do Not Resuscitate Form; and, (iv) the Declaration for Mental Health Treatment.

1. Directive to Physicians and Family or Surrogates

This health care directive is what is commonly known as a "living will." It provides specific instructions regarding your wishes for life-saving treatment and other forms of medical care in the event that you become incapacitated due to illness or injury.

2. Medical Power of Attorney

With a Medical Power of Attorney, you can designate someone you trust to make heath care-related decisions on your behalf. Generally, individuals will use Medical Powers of Attorney in conjunction with Directives to Physicians and Family or Surrogates to provide specific instructions to the extent possible while also ensuring that they will have someone acting in their best interests should unforeseen circumstances arise.

3. Out-of-Hospital Do Not Resuscitate Form

If you do not wish to receive life-saving treatment should you suffer a potentially-fatal injury or illness, you can include an Out-of-Hospital Do Not Resuscitate Form

(or “DNR”) in your estate plan. By signing this form, you direct your medical providers not to perform or provide cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, or artificial ventilation for purposes of resuscitation.

4. Declaration for Mental Health Treatment

A Declaration for Mental Health Treatment is similar to a living will, but is specific to the provision of psychoactive medication, convulsive therapy and emergency mental health treatment.

When preparing your health care directives and powers of attorney, there are a variety of considerations you should keep in mind that may not be immediately apparent. As a result, while forms are available online from the Texas Department of Health and Human Services, it is important that you complete these forms with the help of an experienced estate planning attorney. Some of the types of issues you will likely want to address include:

- How comprehensive do you want your living will to be?
- Who do you want to make decisions on your behalf in the event of incapacity? What if he or she is unavailable to do so?
- Should you establish a durable power of attorney so that someone else can manage your finances if you are unable to do so? If so, should this be the same person who makes decisions about your medical care?

Contact Us for More Information

If you have questions about incorporating advance health care directives into your estate plan, or if you need help dealing with a situation involving an incapacitated loved one, we encourage you to contact us for a free initial consultation. To speak with one of our McKinney estate planning lawyers in confidence, please call (214) 726-1450 or send us a message online today.