



HEALTH CARE DIRECTIVES RESEARCH GUIDE

A Legal Research Guide for North Dakota Health Care Directives

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts.

The information provided in this research guide ISN'T a complete statement of the law. This information is intended as a starting point for your legal research into Health Care Directives. This information isn't intended for legal advice and can't replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

The self-represented individual must make ALL decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references doesn't mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. **Use at your own risk.**

NO HEALTH CARE DIRECTIVE FORMS AVAILABLE

The North Dakota Legal Self Help Center and the North Dakota Court System **don't** have forms or instructions available specifically for Health Care Directives.

If you represent yourself, you'll need to create your own legal documents.

If you decide to create your own Health Care Directive, you may find the following resources of interest:

- **The North Dakota State Legislature** included a suggested Health Care Directive form when they enacted [North Dakota Century Code Chapter 23-06.5: Health Care Directives](#). Chapter 23-06.5 is available at ndlegis.gov/cencode/t23c06-5.html
 - The form included in Chapter 23-06.5 isn't a printable form. You'll need to create your own document by copying and pasting the text from the Chapter 23-06.5 suggested form into a word processing program, such as MS Word, WordPerfect, Google Docs, or Open Office.
- **Legal Services of North Dakota** may have Health Care Directive forms available to North Dakota residents who meet the income requirements for free legal assistance.
 - Legal Services of North Dakota publishes an informational brochure about Health Care Directives on their webpage at legalassist.org.

- **Health care providers** may have Health Care Directive forms available for their patients. Contact your health care provider and ask if they have forms available.
- **Many public and academic libraries have subscriptions to forms services**, which are available to library patrons. You may wish to contact your local public or academic library and ask if they have access to any legal forms services that include North Dakota living will, healthcare directive or durable power of attorney for health care forms.
 - If you decide to use a form available through a forms service, you'll need to independently determine if the Health Care Directive form is legally sufficient for North Dakota and suitable for your circumstances.
 - Review [Chapter 23-06.5 of the North Dakota Century Code](#) to help you determine if the form is legally sufficient for North Dakota.

CAUTION! **Avoid using forms from other states!** Each state has their own health care directive laws. Another state's form may not comply with North Dakota's laws.

Center staff can't tell you if a Health Care Directive form is legally sufficient for North Dakota or suitable for you. This requires legal advice, which isn't available from the Center under any circumstances.

If you're interested in finding a lawyer to prepare your Health Care Directive, go to Page 9 for all of the lawyer resources available through the North Dakota Legal Self Help Center.

If you'd like to learn more about finding a lawyer to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

DEFINITIONS OF COMMONLY USED HEALTH CARE DIRECTIVE TERMS

Agent: An adult to whom authority to make health care decisions is delegated under a Health Care Directive for the individual granting the power.

Attending Physician: The physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

Capacity to Make Health Care Decisions: The ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.

Health Care Decision: Consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:

- a. Selection and discharge of health care providers and institutions;
- b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;
- c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
- d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.

Health Care Directive: A written document that complies with [Chapter 23-06.5 of the North Dakota Century Code](#) and includes one or more health care instructions, a power of attorney for health care, or both.

Health Care Instruction: An individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.

Health Care Provider: An individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.

Long-term Care Facility or Long-Term Care Services Provider: A long-term care facility as defined in [Section 50-10.1-01 of the North Dakota Century Code](#).

Principal: An adult individual who has executed a Health Care Directive.

Witness: Someone who sees the principal (person making the Health Care Directive) sign and execute the Health Care Directive.

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OVERVIEW OF HEALTH CARE DIRECTIVES

What is a Health Care Directive?

A Health Care Directive, also referred to as a Health Care Power of Attorney, is a written document executed by an adult (the principal) to appoint someone (the agent) to make health care decisions for them when they become unable to make those decisions for themselves.

What does legal capacity to make a Health Care Directive mean?

This means you (the principal) must have the ability to understand and appreciate the nature and consequences of your health care decisions, including the significant benefits and harms of, and ability to communicate your health care decisions.

Are there requirements I must follow so my Health Care Directive is legal in North Dakota?

YES, to be legally sufficient in North Dakota, a Health Care Directive must:

1. Be in writing;
2. Be dated;
3. State your name;
4. Be signed by you (the principal). If you aren't able to sign, it must be signed by another person authorized by you to sign on your behalf;
5. Contain verification of your signature or the signature of the person authorized by you to sign on your behalf. This is done by either one notary public or two witnesses; **AND**
6. Include a health care instruction or a power of attorney for health care, or both.

Are there restrictions on who can act as my agent?

YES, first and most importantly, your agent **MUST** be an adult (18 years of age or older).

A person **CAN'T** act as your agent while serving in one the following capacities:

1. Your health care provider;
2. A nonrelative of yours who is an employee of your health care provider;
3. Your long-term care services provider; or
4. A nonrelative of yours who is an employee of your long-term care services provider.

What are the requirements for verification of my signature?

A Health Care Directive must be signed by you **and** your signature must be verified by one notary public **OR** at least two or more witnesses who are at least eighteen years of age.

Review [Section 23-06.5-05\(2\) of the North Dakota Century Code](#) for all of the requirements.

Are there restrictions on who can witness my Health Care Directive?

YES, review [Section 23-06.5-05\(2\) of the North Dakota Century Code](#) for the restrictions.

How does the person I appointed agree to act as my agent?

The person you appointed as your agent must accept the appointment in writing. Generally, the written acceptance of the agent is part of the Health Care Directive document.

When does my Health Care Directive become effective so my agent can act for me?

A Health Care Directive becomes effective only when you lack the capacity to make health care decisions. Your attending physician certifies, in writing, that you lack the capacity to make health care decisions. This notice is filed in your medical record.

The certified notice by your attending physician is no longer effective upon a determination that you've recovered capacity.

However, in the Health Care Directive document, you **can** direct that your agent is able to make health care decisions for you even if you retain capacity to make health care decisions. In that case, the Health Care Directive is in effect as stated in your Health Care Directive under any conditions you may impose.

If my spouse is my agent and we get divorced, are they still my agent?

Divorce automatically ends the appointment of your spouse as your agent, unless your Health Care Directive specifically says your spouse remains your agent even if you divorce.

Can I revoke my Health Care Directive?

YES, you can revoke your Health Care Directive:

1. By notifying your agent or health care or long-term care services provider orally or in writing, or by any other act evidencing a specific intent to revoke the directive; or
2. By executing a new Health Care Directive.

Where should I keep my Health Care Directive?

Keep your Health Care Directive in a safe, accessible place.

Be sure the agent you named in your Health Care Directive (the person you appointed to make your health care decisions) knows where it is.

You may wish to give your agent a copy or copies of your Health Care Directive.

You may also wish to give your health care provider(s) a copy or copies of your Health Care Directive.

NOTE: According to [Section 23-06.5-13 of the North Dakota Century Code](#), a copy of a Health Care Directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and **must** be given the same effect as an original.

Do I file my Health Care Directive with a North Dakota State District Court?

NO, Health Care Directives aren't filed with a North Dakota State District Court.

The Clerk of District Court will only accept your Health Care Directive for filing if it's part of a court case, such as a case to establish a guardianship of an adult.

Can I register my Health Care Directive?

YES, if you would like to register your Health Care Directive, you may do so through the North Dakota Health Information Network (NDIHN) Health Care Directive Registry.

Information may be found at ndhin.nd.gov, by calling 1-855-761-0534, or by emailing at NDHIN@nd.gov. Registration is available at nd.gov/hdir/login.

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LEGAL RESEARCH RESOURCES

NORTH DAKOTA STATUTES

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is available online at ndlegis.gov/general-information/north-dakota-century-code.)

[North Dakota Century Code Chapter 23-06.5](#) contains laws relating to Health Care Directives.

- See [N.D.C.C. Section 23-06.5-04](#) for restrictions on who can act as agent.
- See [N.D.C.C. Section 23-06.5-05](#) for Health Care Directive requirements for signatures and witnesses.
- See [N.D.C.C. Section 23-06.5-06](#) for acceptance of appointment and withdrawal.
- See [N.D.C.C. Section 23-06.5-07](#) for revocation of a Health Care Directive.
- See [N.D.C.C. Section 23-06.5-13](#) for presumptions and application of a Health Care Directive.
- See [N.D.C.C. Section 23-06.5-17](#) for the optional Health Care Directive form.

[North Dakota Century Code Chapter 50-10.1](#) contains laws relating to Long-Term Care Ombudsmen.

- See [N.D.C.C. Section 50-10.1-01](#) for the definition of long-term care facility.

NORTH DAKOTA CASE LAW

(When the decision of a case is appealed from a North Dakota state district court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues. Supreme Court case law is available online at ndcourts.gov/supreme-court/opinions.)

Case law is a useful legal research tool for determining what a law means.

You may search for keywords within North Dakota Supreme Court case law. Go to ndcourts.gov/supreme-court/opinions and enter the keywords into the “Enter query” text box. Then, click on the “Search” button. North Dakota Supreme Court opinions containing your keywords will be listed on the page.

You may also use the print version of the North Dakota Century Code. Short summaries of case law are located after the text of each Section of the Century Code. To view the full text of the opinion, go to ndcourts.gov/supreme-court/opinions and enter the case name or case citation.

LAWS CONSTANTLY CHANGE

To determine how a law applies to your situation, review the applicable law or laws, court rules, administrative rules and rulings, and case law.

If you need assistance determining whether specific laws, rules or case law apply to your situation, or determining how they apply to your situation, consult a lawyer licensed to practice in North Dakota who has agreed to represent you.

Only a lawyer who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your circumstances.

LIBRARY RESOURCES (Not all legal resources are available online.)

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (polaris.odinlibrary.org)

If the book is available for interlibrary loan through ODIN, ask the library staff of your local North Dakota library how to request the book.

Following is a selection of library resources on ODIN that may be of interest to you:

Encyclopedia of Everyday Law, Shae Irving, J.D. & the editors of NOLO, NOLO 2017.

Estate Planning Basics, Denis Clifford, NOLO 2017.

Finding the Answer to Legal Questions, Virginia M. Tucker and Marc Lampson, Second Edition, 2018.

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

OTHER LEGAL RESEARCH RESOURCES

How to Research a Legal Problem: A Guide for Non-Lawyers, American Association of Law Libraries. (aallnet.org)

LAWYER RESOURCES

Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is legalassist.org.

The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is sband.org.

For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at ndcourts.gov/Lawyers. You can narrow your search by name or location.