

Health & Other Personal Care Decisions

It is a good idea to think about who you want to make health and other personal care decisions for you if you could not make these decisions yourself. Anyone could lose this ability, even for a short time.





This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.

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A **personal directive** lets you choose someone to make health and other personal care decisions for you if you cannot make them yourself. You can set out your instructions, wishes, values and beliefs about personal care in the future.

If you think ahead about what kinds of care you might want, you have a better chance of getting that care. You can also make it easier for the people who make those decisions for you.

Advance planning is important for all stages of life. Personal directives help to make sure the decisions you would want are made when you cannot make them yourself, even for a short time. They are also intended for permanent incapacity, such as a brain injury where you may live in the community for many years with assistance. They are also intended for use at the end of your life. A personal directive helps you get the level of comfort and care you want.

This chapter can help you start to answer some of your questions about personal directives, health and other personal care decision-making.

If you wish you can make your personal directive online at legalinfo.org/personaldirective. Or you can download written instructions for writing a personal directive, and a personal directive form, at www.legalinfo.org/wills-and-estates-law/health-care. You can also find information about personal directives on the Nova Scotia Department of Justice website at www.novascotia.ca/just/pda, and in the resource list at the end of this chapter.

Making your personal directive is part of being ready for the future. Two other documents are also important: your will and your enduring power of attorney. See the chapters on *Wills* and *Powers of Attorney* for information about those documents.

What are personal care decisions?

Personal care decisions are decisions about what a person will eat or drink, where they will live, what they will wear, what activities they will do, and what support they will need to live. It also includes what **health care** treatment they get, such as tests, procedures, or services to keep them healthy.

What is health care?

Health care is any examination, procedure, service, or treatment that is done for a health-related purpose, including a therapeutic, preventative, palliative, or diagnostic purpose. It includes a course of health care or a care plan.

Personal directives and delegates

What is a personal directive?

A **personal directive** is a legal document that lets you name another person to make personal care decisions for you when you cannot do that for yourself. This person is called a **delegate**. You may hear them referred to as a delegate, proxy, substitute decision maker, surrogate, or statutory decision maker. In your personal directive you can set out your instructions, wishes, values and beliefs about personal care in the future.

Your personal directive will be used only when you cannot make your own personal care decisions. For example, if you were in a coma. That is called “losing capacity.”

Your personal directive must be in writing, and you must sign it. A person who is **not** your delegate or their spouse must witness your signature and must be there with you when you sign.

A personal directive is one of the greatest gifts you can give yourself and those who care about you. It can help to make sure that you get the care you want. It can help the people who care about you by letting them know what kinds of care you want. Writing things down helps make sure what you want is clear to everyone.

The people who will most likely make your personal care decisions when you cannot are the people who care most about you — your family and friends. But family members may not know what care you want. A personal directive helps address this problem. As well, if family members disagree about care choices, having your wishes written down can let health care workers care for you as you want to be cared for.

You should make a personal directive while you can still make decisions for yourself. You cannot know how and when illness or an accident will take away your ability to make personal care decisions for yourself.



Who makes health and other personal care decisions for me if I cannot?



Everyone in Nova Scotia has the right to make decisions for themselves about health and other personal care, as long as they have the capacity to do so. Capacity is the ability to understand information that you need to make a personal care or medical decision. It is also the ability to understand what can happen as a result of making a decision or not making a decision.

You can prepare for a time when you may not be able to make health or other personal care decisions for yourself by writing a personal directive while you are well. In your personal directive you may name a delegate to make personal care decisions for you. Your personal directive will be used only when you cannot make your own personal care decisions.

If you have not named a delegate to make health care decisions for you, your health care provider will ask a “statutory decision maker” to make certain personal care decisions for you. A statutory decision maker is someone chosen under the law rather than someone you choose. To find a statutory decision maker, your health care provider will start at the top of the list below and work their way down until they find someone who can fill this role:

- your spouse (including legally married, common law, registered domestic partner)
- your child,
- a parent,
- a person who stands in the place of a parent,
- a brother or sister,
- a grandparent,
- a grandchild,
- an aunt or uncle,
- a niece or nephew, and then
- other relatives.

A statutory decision maker must be an adult who has been in personal contact with you over the past year and who is willing to make decisions on your behalf. They would have the power to make many decisions for you, including accepting an offer to place you in a continuing care home or to receive home care services.

There is another way that someone could be named to make health or other personal care decisions for you when you cannot do it. A relative or friend can apply to court to be named as your representative. The court might allow them to give consent to health care for you when you do not have a valid personal directive. Before naming a representative, a judge must find that you are not able to consent and that the best thing for you is to have a representative. For more information, see the Adult Capacity and Decision-making chapter in this book.

In very unusual cases there is no delegate, representative, or other person who can make a decision for you. In these cases the Nova Scotia Public Trustee may be asked to do so, and might agree to take

on this task. The Public Trustee is a government office that manages the affairs of some people who cannot do it for themselves. Contact the Nova Scotia Public Trustee for more information or see the Public Trustee's website at www.novascotia.ca/just/pto.

Naming someone to make personal care decisions for you

A personal directive lets you name someone you trust, your delegate, to make health and other personal care decisions for you.

You may name any person to be your delegate who is:

- 19 years of age or older (unless they are your spouse) and
- able to make important decisions.

Your delegate does not have to be related to you.

The law allows you to name more than one person to act as delegates for you. But in most cases it is best to name only one delegate. If you name more than one delegate, you must clearly give each delegate authority for different matters. This makes sure that only one person can make decisions in any area and avoids conflicts between decision-makers. For example, you can name your spouse to make all health care decisions for you and name your sister to make all decisions about continuing care home placement. You cannot name your spouse and sister to both make all health and other personal care decisions for you.

You can also name a person or people who you do not want to be asked to make health and other personal care decisions for you.

Talk with your delegate about your wishes for your health and other personal care. Here are a few questions to think about in choosing a delegate:

- Do I trust this person to make health and other personal care decisions for me?
- Will this person respect my values and beliefs and act on my instructions and wishes, not on their own?
- Does this person know me well enough to make decisions for me?
- Can this person communicate clearly?
- Can this person make difficult decisions in stressful situations?
- Will this person speak for me if I cannot make health and other personal care decisions for myself?

You may also name another delegate who can make decisions about your personal care if your delegate cannot act for any reason, even for a short time. This person is called an alternate delegate.

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For example, your delegate could be travelling in another country or unavailable for some other reason. In that case, your alternate delegate could make decisions for you. Your delegate could make decisions for you once they returned to the country or they could be reached. You may also name more alternate delegates to make decisions in case your first alternate cannot. An alternate delegate must be at least 19 years old (unless they are your spouse) and able to make important decisions.

The people giving you health care would need to respect any instructions in your personal directive if they could not reach your delegate or alternate delegate.

You can choose not to name a delegate in your personal directive. You can just leave a statement of your instructions, wishes, beliefs, and values about your personal care, directions on who to consult about your care or who to notify about your circumstances.

But what if you do not name a delegate and do not leave instructions or wishes that are clear and related to a decision that must be made? Your care providers will turn to a statutory decision maker to make certain personal care decisions for you. See the list of who can be a statutory decision maker under the question: “Who makes health and other personal care decisions for me if I cannot?”

Your personal directive could include instructions for your care, directions on who to consult about your care or who to notify about your circumstances, and how a delegate may be compensated for taking on this role.

Your delegate must follow any instructions or wishes you may have written in your personal directive. However, they can also consider any conversations with you since you wrote your personal directive. If the delegate believes that certain medical advances or technologies would have changed your instructions if you had known about them, they should think about this when making decisions about your care.

If you do not leave any instructions or wishes, your delegate must make decisions according to the values and beliefs written in your personal directive. If you do not leave any instructions, wishes, values, or beliefs in your personal directive, your delegate must make decisions according to what they believe would be your instructions, wishes, values, or beliefs. If they cannot do that, they must make decisions according to what they believe to be your best interests.



Giving delegates power to choose a replacement delegate

In your personal directive you may allow your delegates to give their responsibilities for your personal care decisions to someone else. This is called **sub-delegating** their authority to another person. That person will have all the power your delegates give them. Your delegates may sub-delegate only if you say in your personal directive that they may do so.

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How specific should my health care instructions be?

Your directive should be clear and detailed. Include the types of treatments you would agree to and those you would not agree to. Try to avoid broad statements that might reduce the options available for your treatment. For example, if you say you do not want to be given any medication, you might be ruling out a simple treatment that could ease your pain or help you overcome minor ailments during your illness.

Think about what you want your health care providers, delegate or statutory decision-maker to do, and in what situations. Think about what comfort measures or comfort care you would want — for example, drugs for managing pain, oxygen for shortness of breath.

Write down your values and beliefs in your personal directive as a way to assist in interpreting instructions and to help your delegate.

Think about including anything else that could help others know your instructions or wishes about other personal care.

There are some resources listed at the end of this chapter under “Where can I get more information” that will help you to think about and express your instructions, wishes, values and beliefs in your personal directive.

Are there people you want your delegate to talk with when making personal care decisions?

You can say in your personal directive that your delegate must talk with other people when making personal care decisions for you. You can do this by naming the people your delegate should talk with. Instructing your delegate to talk with other people when making care decisions for you can help in two ways.

First, people who knew you when you could make decisions may know about your instructions, values, beliefs, and wishes.

Second, family members who have not been named as delegates may take comfort in being asked about personal care decisions.

Paying delegates to make decisions

Nova Scotia law says that delegates **cannot** be paid to make decisions for you unless you say in your personal directive that you want to pay them. You must also say in what cases you want to pay your delegates; this is called the “terms.”

Repaying your delegates’ expenses

If you want your delegate to be repaid for any out-of-pocket expenses (costs they pay for, like parking) they must pay while acting as your delegate, you should say that in your personal directive. Even if you do not say so in your personal directive, your delegates can be repaid for reasonable costs while acting as your delegates. However, the law is not completely clear about this. To be sure that your delegates can be repaid for their reasonable out-of-pocket costs, you should say so in your personal directive.

Involving people in your capacity assessment

Your personal directive takes effect only when you can no longer make personal care decisions for yourself. This is called “losing capacity.”

You have capacity when you can:

- understand information you need to make a personal care decision, and
- appreciate what could happen if you make or do not make a decision.

To decide if you have capacity, a health care professional will assess (or test) your ability to make decisions. This might include talking with people who know you well.

In your personal directive you may wish to name people for the health care provider to talk to when they assess your capacity. The people you name may be able to give information that helps the person who is assessing your capacity. It also helps the people who care about you to feel included in your care.

You may also wish to give instructions about who must be told when you lose capacity to make personal care decisions. You can also say who must not be told.

Do I need a lawyer to prepare a personal directive?

You don't have to talk to a lawyer when you write your personal directive, but it is a good idea. Your lawyer can make sure that your directive meets all the legal requirements and says clearly what you want it to say. Lawyers charge a fee based on the amount you want them to do, and how complex the work is. You should discuss fees with the lawyer before you decide to hire them.

If possible, speak with your health care providers to be sure you have full information about your own health when writing your directive. This will help you understand what lies ahead so you can write about the medical care you want or do not want. Your health care provider can explain the different ways to treat medical conditions and can give the best instructions for your needs. Without medical advice, your instructions might not give the results you want.

What should I do if a hospital or a care facility asks me to sign a standard personal directive form?

Some health care and residential care facilities use standard personal directives when patients or residents are admitted. These directives may include instructions that you would not want. For example, they might include a do-not-resuscitate order.

You do **not** have to sign this standard form. Also, a hospital or health care facility in Nova Scotia cannot refuse to treat you or admit you just because you refuse to sign their directive. The [Personal Directives Act](#) says it is against the law for these facilities to demand a personal directive.

If you get a standard form, review it with your health care provider (your doctor or nurse) before you decide whether to sign it. You might also show it to a lawyer. Do not sign a standard directive form if it would not give you the health care results you want. Instead, talk with your family about your health care wishes. You may want to write your own personal directive if you don't already have one.

Many facilities will ask you if you have a personal directive. If you have one, give the facility a copy for its files.



Where should I keep my personal directive?

- Keep your signed and witnessed original personal directive in a safe place. Tell your delegate or close family members where it is. Make sure they can reach it easily. You may want to keep it in a marked folder in a place such as top of the fridge, kitchen cupboard, or a desk so it can be found quickly in an emergency. It is a good idea to keep it in a firesafe box.
- Give a copy to your delegate(s) if you named any.
- Give copies to other trusted, close family members and friends.
- Give a copy to your doctor if you have one, and to other people who will be caring for you.
- If you are going into a hospital or a continuing care home, take a copy with you.
- If you are traveling, take a copy with you. Many provinces and territories and US states will honour your wishes. Some will follow the rules in place in their province or territory or state.

Do not put your directive in a safe deposit box that is in your name only. If you do, your delegate may not be able to get to it when it is needed. Although people who have been given copies of your directive may not need the original, your delegate should be able to get the original directive if needed.

For example, you could be in hospital and staff might not be able to find the copy you provided. A health care provider who does not know you might need to see the original. Keep a list of people who have copies of your personal directive with the original. Some people like to put their delegate's contact information in the document.

How often should I review my personal directive?

You should look at your personal directive from time to time. Update your personal directive when you make important life changes, like a common law relationship, marriage, remarriage, separation or divorce.

In fact, it's a good idea to look at it again each time you experience one of the 5 Ds:

- a new **decade** of life
- the **death** of a loved one
- a **divorce** or separation
- a new **diagnosis** or
- a significant **decline** in health.

Ask yourself if it still reflects your instructions, wishes, beliefs, and values. Think about your delegate, if you have named one: are they still the person you want to make decisions for you? Are they still willing and able to make decisions for you if you cannot make them yourself? Update it if your delegate or alternate dies or becomes unable to make important decisions.

Medical treatments change regularly as research improves them. You might want to mention new treatment methods and technology. If you have a specific illness or condition, review your directive more frequently to make sure you keep up to date on treatments.

Organizations that deal with diseases (like cancer, AIDS, or Alzheimer's disease) have good information about new treatments and care. They can also give you support and help you and your family cope with the illness.

You can ask your doctor, medical specialist or health care provider for more information, or you can go online. If you get information online, check to be sure that it comes from a reliable source.

You can make a new personal directive or change your personal directive any time you want, as long as you have capacity. Make any changes in writing. Add the date you changed your directive, and have witnesses sign the document to show they know that you made the changes. Your witnesses should not be your delegate or delegate's spouse.

If you make a new personal directive or simply make changes, destroy all the old copies. Give copies of your new or updated personal directive to the people who already had a copy – your delegates, family members and health care providers. Ask them to destroy the old copies.

How can I cancel a personal directive?

You can **revoke**, or cancel, your personal directive at any time, as long as you have capacity. You can declare your intention to cancel your personal directive in writing, and have it signed and witnessed. You can also destroy all copies of the old directive and write a new directive if you want to.

Tell your doctor, hospital, or health care facility that you revoked your personal directive. Get back any copies you gave them. They need to know that you have changed your mind, whether or not you make a new directive. You should also tell your delegate and your family members.

You do not have to write a new directive to cancel the old one. If you decide to make a new directive, then include in it a paragraph that ends (revokes) the old directive. Give a copy of your new directive to your delegates, doctor, and family members.

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Your personal directive will be used to guide personal care decisions only when you cannot make those decisions yourself. That is called “losing capacity.”

Your personal directive can no longer be used when:

- you have capacity again
- you die
- you cancel the personal directive
- a court decides it is no longer in effect.

Will my personal directive be valid outside Nova Scotia?

There are legal requirements for directives to be valid in Nova Scotia. The law about directives is not the same outside the province. If you are outside Nova Scotia and you cannot consent, your directive might not be followed. It would have to meet the requirements in the province or country you are visiting.

Before travelling, review your directive and get advice from your lawyer. That will help to make sure that your directive will be followed if you cannot consent to treatment while travelling. If you plan to live outside Nova Scotia for some time, you may want to write another directive that will be valid where you are living.

Where can I get more information?

Make your Personal Directive online: (Legal Information Society of Nova Scotia) If you wish you can make your personal directive for free online at [legalinfo.org/personaldirective](https://www.legalinfo.org/personaldirective). Or you can download instructions for writing a personal directive, and a personal directive form, at www.legalinfo.org/wills-and-estates-law/health-care. Read the Legal Information Society of Nova Scotia’s [Personal Directives Reflection Guide](#) before you start.

- **Nova Scotia Department of Justice, Personal Directives**, including a free information booklet, instructions for writing a personal directive, and a sample form: www.novascotia.ca/just/pda/
- **Advance Care Planning Canada:** Free resources and tools on advance care planning to help you create your individualized plan: www.advancecareplanning.ca/
- **Legislation:** *Personal Directives Act*, S.N.S.2008, c.8 (<https://nslegislature.ca/sites/default/files/legc/statutes/persdir.htm>)
- **Regulations:** *Personal Directives Regulations*, NS Reg 31/2010 (<https://novascotia.ca/just/regulations/regs/pdpersdir.htm>)

- **Government of Canada website about medical assistance in dying:** www.canada.ca/en/health-canada/services/medical-assistance-dying.html
- **Government of Canada information about changes to the law about medical assistance in dying** that came into force on March 17, 2021: <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>
- **End-of-life care in Nova Scotia:** call 8-1-1 to speak to a registered nurse or go to 811.novascotia.ca/
- **Medical assistance in dying in Nova Scotia:** you can speak with your primary care provider or a specialist, or contact the Nova Scotia Health MAID Access and Resource Team at 902-491-5892 (Halifax area) or toll free at 1-833-903-6243, or visit www.nshealth.ca/about-us/medical-assistance-dying
- **Dying with Dignity Canada:** www.dyingwithdignity.ca
- **Caregiving Benefits:** Contact Service Canada at 1-800-206-7218 for information about Employment Insurance Caregiver benefits to help you take time away from work to provide care or support to a critically ill or injured person or someone needing end-of-life care. Website: www.canada.ca/en/services/benefits/ei/caregiving.html
- **Nova Scotia Caregiving Leaves:** Contact Nova Scotia Labour Standards at 1-888-315-0110 for information about unpaid leaves from work under Nova Scotia's Labour Standards Code, including Critically Ill Adult and Child Care Leaves, Compassionate Care Leave: novascotia.ca/lae/employmentrights/leaves.asp
- **Nova Scotia Hospice Palliative Care Association:** nshpca.ca
- **Canadian Hospice Palliative Care Association:** www.chpca.ca
- **Health Law Institute, Dalhousie University:** End of Life Law and Policy in Canada: eol.law.dal.ca
- **A lawyer in private practice** who focuses on estate planning work, including wills, powers of attorney, and personal directives. See the Legal Information Society of Nova Scotia website at www.legalinfo.org for information about ways to find a lawyer.

Legal Information Society of Nova Scotia (LISNS)

Legal Information Line: 902-455-3135 or 1-800-665-9779

Email: questions@legalinfo.org

www.legalinfo.org