

Title: Do Living Wills Work?

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A recent study released in the July 2004 issue of *Annals of Internal Medicine*¹ indicates that people with living wills are less likely to die in a hospital than those without living wills. The authors studied a representative sample of elderly people to learn whether having a living will influenced their end-of-life treatment. The findings showed that those with living wills more often died outside of the hospital, had life-sustaining treatments withheld and received adequate pain medication.

A living will generally states that the signer does not want certain measures used to artificially prolong his or her life. The document, provided by state law, directs the signer's family and doctors to cease using life-sustaining treatment methods if there is no hope of recovery. A living will does not determine medical treatment in situations that do not affect continued life, such as routine medical treatment and non life-threatening medical conditions. In order for the living will to take effect, the person must be unable to communicate with others and the person's condition must be terminal in the sense that the person will never again regain the ability to live more than a very low-quality existence.

Surveys show that Americans generally favor the idea of completing living wills. The document is commonly prepared for clients by estate planning attorneys along with other documents, such as wills and revocable living trusts. Several studies suggest that over one-half of dying persons over the age of 70 completed a living will prior to their death. However, only 20% of all American adults have a living will.

The recent study completed by the Center for Bioethics and Health Law at the University of Pittsburgh examined the association between living wills and location of death. The findings provide a significant statistical difference between those with living

wills and those without them. The research is consistent with previous studies which found that people who died at home or in a nursing home were more likely to have a living will than those who died in a hospital.

Prior studies have questioned the effectiveness of living wills. Some commentators also question the validity of the University of Pittsburgh study by noting that persons having a living will are more likely to have stronger preferences for dying at home. The study did not address whether the living wills specifically mentioned hospitalization. In addition, surviving family members of the decedents in the study indicated that the living will instructions applied to the actual situation only 86% of the time and that the document was consulted only 70% of the time.

Local estate planning attorneys provide anecdotal evidence that the majority of clients prefer not to be taken to a hospital if at all avoidable when they are terminally ill. This preference may affect a decision whether to move an elderly loved one from home or nursing home care to a hospital. Some commentators question whether the living will actually makes a difference in this decision. However, the presence of a living will is generally known by the signer's family prior to final illness, which can have an impact on the decision making process regarding end-of-life treatment by the signer's family.

Most living wills are signed along with durable health care powers of attorney, which generally name a spouse or child to act as an agent for the signer when he or she is unable to make health care decisions. The living will acts as a declaration to the agent regarding end-of-life medical treatment preferences. Whether the signer's intentions are carried out usually depend on the agent's decisions. The University of Pittsburgh study suggests that agents for health care decisions interpret living wills that indicate limiting treatment as implicit instructions to avoid hospitalization. This interpretation increases the likelihood of the signer's wishes being carried out. The presence of a living will without an appointed agent often leads to confusion because many living wills fail to provide useful instructions for doctors. In addition, a living will alone may not be enough to overcome a hospital's moral and technological instincts to provide life-sustaining treatment.

¹ **Degenholtz HB, Rhee Y, Arnold RM.** Brief Communication: The Relationship between Having a Living Will and Dying in Place. *Ann Intern Med.* 2004;141:113-7.

The living will is clearly an important document for those who prefer to avoid end-of-life treatment that is directed primarily to prolonging life while neglecting the quality of life. However, the living will is not a substitute for clearly communicating one's medical treatment preferences to loved ones. Although the act of signing a living will does not by itself require your family and health care providers to withhold treatment when you are terminally ill, the document combined with sufficient prior discussion can make a difference in end-of-life treatment.

We suggest retaining an estate planning attorney to assist with preparation and signing of both health care powers of attorney and living wills. The attorney can make sure both documents meet state law requirements and correctly reflect the signer's wishes. Forms purchased at stores and via the Internet often fail to meet these minimum standards. It is preferable to rely on a local attorney's form, which has typically been used successfully with other clients, rather than risk the unnecessary frustration and confusion of a badly prepared document when end-of-life decisions must be made. In addition, a qualified attorney can help a client think through various choices, including whether he or she prefers to avoid hospital admission when there is no hope of recovery.