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ELDER LAW MINUTE

In the course of my practice, I routinely review clients' Wills, Powers of Attorneys and Health Care Directives. Surprisingly, very few clients have executed the new Advance Directive for Health Care ("ADHC") which was created by the Georgia Advance Directive for Health Care Act effective July 1, 2007. See O.C.G.A. § 31-32-1 *et seq.*

The ADHC is intended to combine the Living Will and the Durable Power of Attorney for Health Care into one comprehensive document. A sample document can be found at O.C.G.A. § 31-32-4.

The new law clarifies that any Living Will or Durable Power of Attorney for Health Care created prior to July 1, 2007, continues to be valid. It also states that forms other than the statutory form are acceptable, and that health care documents executed under the laws of another state will be treated as a valid ADHC provided that the form is valid in the state where it was created.

The ADHC must be witnessed by two people who are at least age 18. Interestingly, the two witnesses do not have to be together when they witness the document. Nor, do they have to be present when the declarant signs the ADHC.

The witness cannot be the health care agent, a person who will benefit financially from the declarant's death or a person involved directly in the declarant's health care. No more than one of the two witnesses can work for the facility where the declarant is receiving treatment.

Marriage subsequent to the execution of an ADHC revokes the designation of an agent other than the declarant's new spouse. And, divorce subsequent to execution revokes the designation of the declarant's former spouse as the health care agent.

Unlike the old Living Will and Durable Power of Attorney, you no longer need a competency opinion from a physician if the declarant signs the ADHC in a hospital or nursing home.

The bottom line is that if you are creating a new health care document in Georgia, it should be an ADHC. But if you are satisfied with your old documents, they continue to be valid.

Member of the National Academy of Elder Law Attorneys