



## NH Senate Bill 74 makes significant changes to advance directives for health care decisions

By: Elise H. Salek

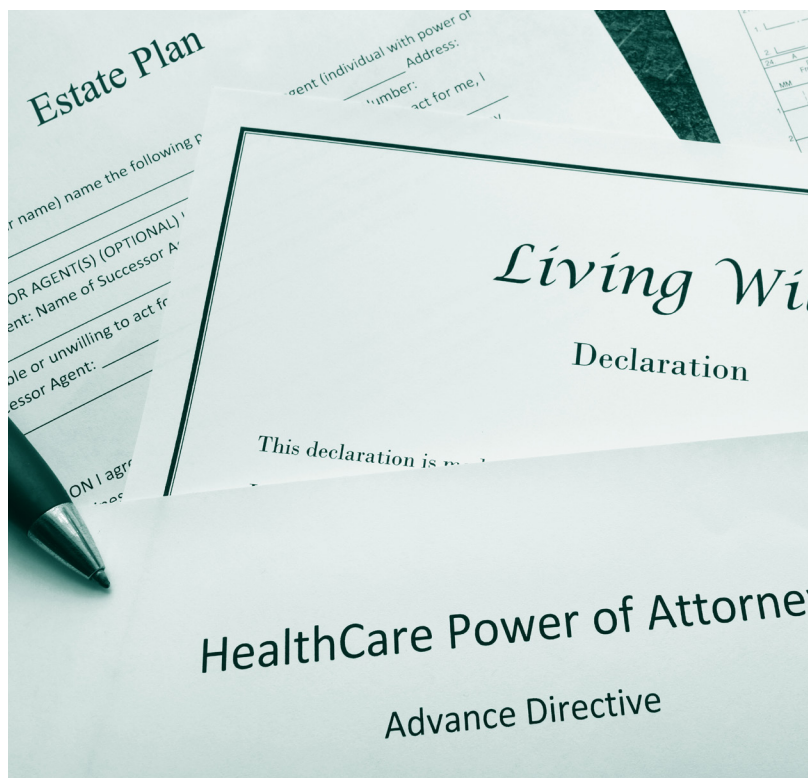
NH Senate Bill 74 was recently signed into law. SB-74 makes significant changes to state law relative to advance directives for health care decisions. The bill amends NH RSA 137-J and seeks to simplify and clarify the process by which a person may execute a health care advance directive by combining in one form the durable power of attorney for health care and a living will.

The amendments are extensive and much of the language in the RSA was changed or updated. Advanced directives that were in place prior to July 30th, 2021 are still valid, but going forward the changes made in SB-74 will affect how estate plans and health care advanced directive documents are written. The full bill is linked [here](#)

### Here are some of the notable changes to RSA 137-J

#### Defines “Attending Practitioner”

The term Attending Physician, PA or APRN was replaced with Attending Practitioner. “Attending Practitioner” means the physician, physician assistant, or advanced practice registered nurse, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician, physician assistant, or advanced practice registered nurse shares that responsibility, any one of those physicians, physician assistants, or advanced practice registered nurses may act as the attending practitioner under the provisions of the chapter.



#### Defines “POLST” (Physician Orders for Life-Sustaining Treatment)

“POLST” means a form that contains a set of emergency medical orders signed by an attending practitioner. This order set may contain DNR orders, and, although it may be completed in any state under similar title, the DNR and all other orders shall conform to New Hampshire law.

### Redefines “Near Death” as “Actively Dying.”

The term Near Death was replaced with Actively Dying – “Actively Dying” means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining treatment would, to a reasonable degree of medical certainty only postpone the moment of death to another imminent moment, as certified in the principal’s medical record by 2 physicians, or a physician and another attending practitioner who is not under the supervision of the certifying physician.

### Further defines the role of a surrogate

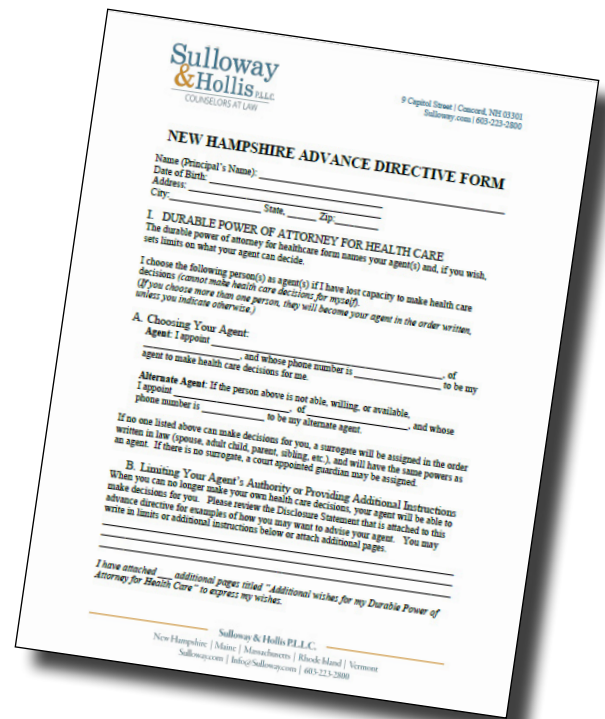
“Surrogate decision-maker” or “surrogate” means an adult individual who has health care decision-making capacity, is available upon reasonable inquiry, is willing to make health care decisions on behalf of a patient who lacks health care decision-making capacity, and is identified by the attending practitioner in accordance with the provisions of this chapter as the person who is to make those decisions in accordance with the provisions of the chapter.

### Further defines the term “Advance Directive”

“Advance directive” means a [directive] document allowing a person to give directions and guidance about future medical

care [or] and to designate another person to make medical decisions if [he or she] the principal should lose the capacity to make health care decisions. The term “advance [directives] directive” shall include [living wills and] a durable [powers] power of attorney for health care and a living will.

The attorneys at Sulloway & Hollis are here to assist if you have questions regarding these changes or would like to have us review your documents and recommend necessary changes, please give us a call at (603) 223-2800 or send an email to [Info@sulloway.com](mailto:Info@sulloway.com)



### Elise H. Salek

Elise Salek is Chair of the Sulloway & Hollis Tax, Trusts and Estates Practice Group which provides a full range of legal services. She is a member of the firm and has practiced with Sulloway & Hollis since 1996. She is located in our Concord, New Hampshire office and can be reached at 603-223-2800 or Email: [esalek@sulloway.com](mailto:esalek@sulloway.com)

[View Bio](#)