

Advance Directive

If you couldn't make healthcare decisions for yourself, would someone know your wishes? An advance directive makes sure your wishes are known and respected. Talk with your family, your friends, your doctor. Know the options and decide what's right for you. Then . . . put it in writing.

What are advance directives?

Advance directives are legal documents written before you become terminally ill or incapacitated. The documents are prepared to speak for you when you are unable to make healthcare decisions for yourself. The documents state your choices about treatments, or designate someone to make those choices for you. Through advance directives, you can make legally valid decisions about your future medical treatment.

What is a durable power of attorney for healthcare?

A durable power of attorney for healthcare is a signed, dated and witnessed legal document naming another person to make medical decisions for you if you are unable to make them for yourself at any time, not just at the end of life. You can include instructions about any treatment you want or wish to avoid, such as surgery or artificial nutrition and hydration. The majority of states have specific laws allowing a healthcare power of attorney and provide suggested forms.

Is a living will the same as a power of attorney for healthcare?

Both are forms of an advance directive, however, unlike a power of attorney for healthcare, a living will does not give you the opportunity to designate a healthcare agent, someone to make decisions for you. In addition, a living will only focuses on your wishes for no life-prolonging interventions if you are terminal or in a persistent vegetative state. Many states have their own living will forms, each with different requirements. Both a living will and a power of attorney for healthcare require the forms be signed, dated and witnessed (witnessing requirements may vary by state). Both documents should be discussed and shared with your provider, family and clergy, and you should ask your provider to make it a part of your permanent medical record. Although you do not need a lawyer to draw up these documents, you may wish to discuss it with a lawyer and leave a copy with the family lawyer.

Why can't my spouse or adult child automatically make decisions for me?

Although some states explicitly recognize the spouse, children, or other relatives as automatic decision-makers when an individual is incapacitated, others do not. Even though physicians and other health care providers may discuss treatment with relatives, and often take their decisions as consent, this is not explicitly protected by law in all states. If the physician or hospital is unsure about a decision, or if your family disagrees about a decision, and these concerns cannot be resolved, they may have to turn to the courts for guidance.

Whom can I choose to be my health care agent?

Select someone with whom you feel comfortable discussing your health care wishes and who can take an active and responsible role in your care if you become incapacitated. Your health care agent may not be your health care provider (such as your doctor), his/her employee, or an employee of your health care facility (hospital, nursing home, home health care agency), or a spouse of anyone listed above, unless any of the above is also a relative of yours. For example, if your spouse is a nurse, she/he could be your agent.

Where should I keep my Power of Attorney for Healthcare document after it is completed?

Photocopies and facsimile copies are legally valid. It is suggested that you have copies made and distribute them as follows:

- a. The original to your physician(s).
- b. Copies to your health care agent and alternate agent.
- c. Upon admission, a copy for your records at your hospital, nursing home, or other health care facility.
- d. A copy to your attorney.
- e. Keep a copy for yourself, and in the margin note the names of the people to whom you've given a copy of the document.

What is the legal status of advance directives?

While laws differ somewhat from state to state, all states legally recognize some form of advance medical directive. Even if a particular instruction in an advance directive may not be enforceable under some circumstances, it is better to make all of your wishes known rather than not express them at all.

What if I draw up a living will or healthcare power of attorney and then change my mind?

You may change or revoke these documents at any time. Any alterations and any written revocation should be signed and dated and copies should be given to your family, provider and other appropriate people. Even without an official written change, your orally expressed direction to your provider generally has priority over any statement made in a living will or power of attorney as long as you are able to decide for yourself and can communicate your wishes. If you wish to revoke an advance directive at any time, you should notify your primary care provider, family, clergy and others who might need to know.

When does the Power of Attorney for Healthcare expire?

The document goes into effect immediately after it is signed and witnessed. It remains in effect indefinitely unless you designate an expiration date or complete a new document.

How can I know in advance which procedures I would want or not want to prolong my life?

Although it isn't possible to specify every possible procedure under every possible circumstance, it is possible to decide what kind of treatment you would want in most situations. There are certain common conditions (terminal, irreversible brain damage and dementing illnesses) and treatments commonly used in end-of-life situations (CPR, ventilators, artificial nutrition and hydration, dialysis and antibiotics) that can be discussed in advance. To help clarify your wishes, it helps to discuss the following topics with your family, friends, providers and others your view on death, what if you were totally dependent on others for care, financial concerns, what conditions would make life intolerable and how artificial life-support would affect the dying process. If you have questions about the kinds of procedures that are often used when illness is severe and recovery unlikely, ask your provider. It is never too early to start this decision-making process, and you should not postpone it until you face serious illness. Patients need to play an active role in determining their own healthcare decisions.

What if I fill out an advance directive in one state and am hospitalized in a different state?

The majority of states have reciprocity provisions. Even in those states that do not explicitly address the issue, there is a common law and constitutional right to accept or refuse treatment that may be broader than the rights identified under the state law. Because an advance directive is an expression of your intent regarding your medical care, it will influence that care no matter where you are hospitalized. However, if you spend a great deal of time in more than one state, you may wish to consider executing an advance directive in those states.

If a comatose or mentally incompetent patient doesn't have a living will or durable power of attorney, who decides whether to withdraw treatment?

If there is no advance directive by the patient, the decision is left to the patient's family, provider and hospital, and ultimately a judge. Usually the family, provider and hospital can reach an agreement without resorting to the courts, often with the help of a hospital ethics committee. However, many times the individual who has the authority to make the decision is not the person the patient would have chosen. There also may be more restrictions on a surrogate than an appointed agent.

Where can I get living will and healthcare power of attorney forms?

Through their web site www.caringinfo.org, the National Hospice and Palliative Care Organization (NHPCO) offers free, state-specific advance directives and advice for communicating wishes to family and close friends. The site is focused around learning, implementing, voicing and engaging in the care you receive at the end of life. Information is also available from the American Hospital Association (www.putitinwriting.org), the AARP (www.aarp.org), Aging with Dignity (www.agingwithdignity.org), your state or local Office on Aging, your local bar association and many local civic and service organizations.