

# HEALTH CARE ADVANCE DIRECTIVES

## INTRODUCTION

You have the right to make decisions about the health care you get now and in the future. An **advance directive** is a written statement you prepare to communicate your wishes about medical treatment for when you are unable to make your wishes known because of illness or injury. The decision to make an advance directive is a personal one and should only be made after careful consideration. You may wish to discuss your decisions with your family, friends, pastor, lawyer and /or your physician.

Federal law requires that you be told of your right to make an advance directive when you are admitted to a health-care facility. While state laws vary, each state provides you with protection to decide who you want to make your medical decisions in the event you are no longer able to make them for yourself.

There are various forms of advance directives to include: (1) living will; (2) health care power of attorney/ health care surrogate designation; (3) an anatomical donation, 4) mental health treatment preference declaration and 5) a do not resuscitate order (DNR). The following are descriptions of advance directives available to you.

## DESCRIPTIONS

### Living Will –

A **living will** tells your health-care professional whether you want death-delaying procedures used if you have a terminal condition and are unable to state your wishes. A living will may include one or more, or all of the following:

- Directions that life-prolonging treatment not be provided, or once started, that such treatment be stopped.
- Directions that food (nutrition) and water (hydration) not be provide through artificial means, such as tubes, or once started, that they may be stopped.
- A choice of one or more persons to act as your surrogate and make decisions for you, and
- Directions that all or any part of your body be donated.

A living will, unlike a health care/medical power of attorney, only applies if you have a terminal condition. A terminal condition means an incurable and irreversible condition such that death is imminent and the application of any death delaying procedures serves only to prolong the dying process.

### Health Care/medical power of attorney/surrogate designation –

**A healthcare surrogate is a person you appoint in your living will directive or in another written document to make decisions for you if you are not able to speak for yourself.**

The **health care/medical power of attorney** lets you choose someone to make health-care decisions for you in the future, if you are no longer able to make these decisions for yourself. You are called the “principal” in the power of attorney form and the person you choose to make decisions is called your “agent.” Your agent would make health-care decisions for you if you were no longer able to make these decisions for yourself. So long as you are able to make these decisions, you will have the power to do so. You may give your agent specific directions about the health care you do or do not want.

The power of your agent to make health-care decisions on your behalf is broad. Your agent would be required to follow any specific instructions you give regarding care you want provided or withheld. For example, you can say whether you want all life-sustaining treatments provided in all events; whether and when you want life-sustaining treatment ended; instructions regarding refusal of certain types of treatments on religious or other personal grounds; and instructions regarding anatomical gifts and disposal of remains. Unless otherwise indicated, the health care/medical power of attorney will continue in effect from the time it is signed until your death. You can cancel your power of attorney at any time, either by telling someone or by canceling it in writing. You can name a backup agent to act if the first one cannot or will not take action. If you want to change your power of attorney, you must do so in writing.

### **Anatomical (Organ) Donation –**

An anatomical donation is a document that indicates your wish to donate, at death, all or part of your body. This can be an organ or tissue donation to persons in need, or donation of your body for training of health care workers. You can indicate your choice to be an organ donor by designating it on your driver's license or state identification card (at your nearest driver's license office), signing a uniform donor form, or expressing your wish in a living will.

### **Mental Health Treatment Preference Declaration -**

**An advance directive for mental health treatment is a legal document you can prepare to express your wishes about treatment you do or don't want to receive if you become mentally ill.** A mental health treatment preference declaration lets you say if you want to receive electroconvulsive treatment (ECT) or psychotropic medicine when you have a mental illness and are unable to make these decisions for yourself. It also allows you to say whether you wish to be admitted to a mental health facility (subject to state law).

You can write your wishes and/or choose someone to make your mental health decisions for you. In the declaration, you are called the "principal" and the person you choose is called an "attorney-in-fact". The attorney-in-fact must make decisions consistent with any desires you express in your declaration unless a court orders differently or an emergency threatens your life or death.

### **Do Not Resuscitate Order (DNR) -**

In addition, to all of the above options, you can also ask your physician to work with you to prepare a do not resuscitate order. A **do not resuscitate order** (DNR order) is a medical treatment order that says cardiopulmonary resuscitation (CPR) will not be used if your heart and/or breathing stops. You may choose to discuss with your health-care professional and/or attorney these different types of advance directives as well as a DNR order. After reviewing information regarding advance directives and a DNR order, you may decide to make more than one selection. For example, you could make a health care power of attorney and a living will.

If you have one or more advance directives and/or a DNR order, tell your health-care professional and provide them with a copy. You may also want to provide a copy to family members, and you should provide a copy to those you appoint to make these decisions for you.

## What happens if you don't have an advance directive?

Under state law, a health care “surrogate” may be chosen for you if you cannot make health-care decisions for yourself and you do not have an advance directive. A health care surrogate may be one of the following persons (subject to state law): guardian of the person, spouse, any adult child(ren), either parent, any adult brother or sister, any adult grandchild(ren), a close friend, or guardian of the estate.

The surrogate can make all health-care decisions for you, with certain exceptions. A health care surrogate cannot tell your health-care professional to withdraw or withhold life-sustaining treatment unless you have a “qualifying condition,” which is a terminal condition, permanent unconsciousness, or an incurable or irreversible condition. A “terminal condition” is an incurable or irreversible injury for which there is no reasonable prospect of cure or recovery, death is imminent and life-sustaining treatment will only prolong the dying process. “Permanent unconsciousness” means a condition that, to a high degree of medical certainty, will last permanently, without improvement; there is no thought, purposeful social interaction or sensory awareness present; and providing life-sustaining treatment will only have minimal medical benefit. An “incurable or irreversible condition” means an illness or injury for which there is no reasonable prospect for cure or recovery that ultimately will cause the patient’s death that imposes severe pain or an inhumane burden on the patient, and for which life-sustaining treatment will have minimal medical benefit.

A health care surrogate, other than a court-appointed guardian, may not be able to consent to certain mental health treatments, including treatment by electroconvulsive therapy (ECT), psychotropic medication or admission to a mental health facility. A health care surrogate can petition a court to allow these mental health services.

### Next steps

You may want to talk with your family, your health-care professional, your attorney, and any agent or attorney-in-fact that you appoint, about your decision to make one or more advance directives or a DNR order. If they know what health care you want, they will find it easier to follow your wishes. If you cancel or change an advance directive or a DNR order in the future, remember to tell these same people about the change or cancellation.

No health-care facility, health-care professional or insurer can make you execute an advance directive or DNR Order as a condition of providing treatment or insurance. It is entirely your decision. If a health-care facility, health-care professional or insurer objects to following your advance directive or DNR order then they must tell you or the individual responsible for making your health-care decisions. They must continue to provide care until you or your decision maker can transfer you to another health-care provider who will follow your advance directive or DNR order.

Various organizations also make advance directive forms available. One such document is “Five Wishes” that includes a living will and a health care surrogate designation. “Five Wishes” gives you the opportunity to specify if you want tube feeding, assistance with breathing, pain medication, and other details that might bring you comfort such as what kind of music you might like to hear, among other things.

You can find out more at:

**Aging with Dignity**  
[www.AgingWithDignity.org](http://www.AgingWithDignity.org)  
**(888) -594-7437**

Another resource:

**American Association of Retired Persons (AARP)**  
**[www.aarp.org](http://www.aarp.org) – type “advance directives” in the website’s search engine**

### **How to obtain state specific information**

Listed below, for your convenience, are helpful websites to obtain additional information specific to your state and state specific forms that you may complete in the event you decide.

#### **Texas:**

Texas Department of Aging and Disability Services  
[http://www.dads.state.tx.us/news\\_info/publications/handbooks/advancedirectives.html](http://www.dads.state.tx.us/news_info/publications/handbooks/advancedirectives.html)

Texas Department of Aging and Disability Services planning booklet  
<http://www.dads.state.tx.us/qualitymatters/qcp/advancecare/thinkingaheadbooklet.pdf>

#### **Florida**

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0765/0765.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0765/0765.html)

#### **South Carolina**

<http://aging.sc.gov/legal/Pages/AdvanceDirectives.aspx>

The information provided here is for informational purposes only. It is not intended to provide nor should you consider that it provides legal or any other advice. You should contact the appropriate professional(s) and consultant(s) to assess your specific needs and circumstances and to render such advice accordingly.

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