

Any questions you may have about advance directives that are not answered here should be talked over with your doctor, lawyer, family, or health care giver.

This brochure was developed by The Hospital & Healthsystem Association of Pennsylvania's Task Force on Advance Directives.

Complaints concerning non-compliance with the advance directive requirements may be filed with the Department of Health by calling 1-800-254-5164.

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A G U I D E T O



Advance Directives

In 1990, the Congress passed and the President signed into law the Patient Self-Determination Act. This law states that hospitals and other places providing health care must tell patients about something called **ADVANCE DIRECTIVES**.

This brochure tells you about your rights under this law and gives you facts about what advance directives are, how to make an advance directive, and what you need to consider in making one. There is also a section that answers common questions about advance directives.

This brochure also describes provisions of current Pennsylvania law (Acts 24 and 152 of 1992 and Act 102 of 1994).

There are several terms that you may need to understand as you prepare an advance directive. The definitions below should help you understand some of the forms of medical treatment you will be making choices about.

INCOMPETENT — The lack of sufficient capacity for a person to make or communicate decisions concerning himself either due to physical or mental impairment.

PERMANENTLY UNCONSCIOUS — A condition in which a patient is determined to be in a state of total loss of consciousness that cannot be reversed.

TERMINAL CONDITION — An incurable and irreversible medical condition in an advanced state that will result in death.

LIFE-SUSTAINING TREATMENT — A medical intervention given to a patient that prolongs life and delays death.

CARDIOPULMONARY RESUSCITATION (CPR) — A method used to restore stopped breathing and/or heartbeat.

RESPIRATORS — Machines used to assist or keep a patient breathing.

FEEDING TUBES — Tubes inserted through the nose, mouth, stomach, etc., to feed patients who are no longer capable of eating normally.

INTRAVENOUS THERAPY (I.V. THERAPY) — Provides nutrition and water and/or medication through a thin tube placed in a vein.

BRAIN DEATH — Complete stopping of all function of the brain that cannot be reversed. A brain-dead person is not in a coma, but is, in fact, dead.

DO NOT RESUSCITATE (DNR) — A doctor's order that alerts other health care givers that the patient or family, in consultation with the doctor, does not want the patient to be given CPR.

SURROGATE — The appointment of another person to act on your behalf. May also be referred to as agent.

GLOSSARY

WHAT IS AN ADVANCE DIRECTIVE?

Advance directives are a means for you to tell your health care givers about the care you wish to receive—or *not* receive—should you ever become unable to tell them of your wishes. There are two forms of advance directives. One is called a living will. The other is known as a “power of attorney for health care decisions” or may also be called “appointment of a surrogate for health care decisions.”

WHY SHOULD I CONSIDER HAVING AN ADVANCE DIRECTIVE?

By law, health care providers must provide necessary medical care to all individuals within their care. They are relieved of this duty only if they can demonstrate that the care goes against a person’s wishes. If you have preferences about the health care you want to receive in the event you are not able to express your wishes, you may want to write a living will, a power of attorney for health care decisions, or both.

WHAT IS A LIVING WILL?

A living will is a legal paper in which you *spell out your desire for care*. A living will goes into effect only if you have a terminal medical condition or are in a state of permanent unconsciousness, and your doctor determines you are incompetent to make medical decisions.

ARE LIVING WILLS LEGAL IN ALL STATES?

Most states have laws that say living wills are legal. Most of these laws contain a form that you can use. Many doctors will honor living wills even in a state without a living will law.

IS A LIVING WILL THE SAME THING AS A LAST WILL AND TESTAMENT?

A living will is not a last will and testament. A last will and testament tells your survivors what to do with your property after you die.

WHAT IS A POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?

A power of attorney for health care decisions *allows you to say who can make decisions* about your health care if you are not able to make such decisions yourself. The person you authorize to make decisions is called your “agent.” All powers of attorney are presumed to be durable, unless specifically provided otherwise.

DOES A POWER OF ATTORNEY FOR HEALTH CARE DECISIONS MEAN I HAVE TO APPOINT A LAWYER TO MAKE HEALTH CARE DECISIONS FOR ME?

No. You are allowed to appoint anyone you wish. You should appoint someone you know, trust, and with whom you can talk over your wishes.

DO I NEED TO HAVE BOTH A LIVING WILL AND A POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?

While it may be a good idea to have both a living will and a power of attorney for health care decisions, you do not need to have either of these documents, or you may have one or the other. If you want to designate specific treatment that you do or do not want, you may want to write a living will, even if you have named an agent to make decisions for you. Pennsylvania courts have not decided if the law permits an agent to refuse treatment on your behalf.

ARE THERE TIMES WHEN MY ADVANCE DIRECTIVE MAY NOT BE FOLLOWED?

Pennsylvania law generally does not permit a doctor or other health care provider to honor the living will of a pregnant woman who has directed that she not be kept alive. However, if you are pregnant, your living will may be honored if your doctor determines that life-sustaining treatment will: (1) not maintain you in a manner that will allow for the continued development and birth of your unborn child; (2) physically harm you; or (3) cause you pain that cannot be relieved by medication. If your living will is not honored because you are pregnant, the Commonwealth must pay for your care.

WHERE CAN I GET THE FORMS TO COMPLETE AN ADVANCE DIRECTIVE?

Examples of an advance directive may be available through your doctor, hospital, or from local groups such as the offices of the American Association of Retired Persons, the local Bar Association, or County Area Agency on Aging offices.

MUST I HAVE A LAWYER TO WRITE A LIVING WILL OR A POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?

No. However, if you want a power of attorney for health care decisions, there are some legal rules that a lawyer will know best how to handle. In all cases, you and two adult witnesses must sign your advance directive.

WHAT SHOULD I PUT IN MY ADVANCE DIRECTIVE?

The most important thing is to express your wishes or give permission to your agent to make decisions for you about receiving or not receiving certain forms of medical treatment that would keep you alive. You may also wish to indicate your wishes regarding organ and tissue donation.

MAY I NAME CERTAIN TREATMENTS THAT I DO NOT WANT?

If you want to name certain treatments that you would not want, you may do so. For instance, one treatment that is very important for you to make your wishes known about is feeding tubes.

WHAT DOES MY DOCTOR HAVE TO TELL ME ABOUT MY CARE AND TREATMENT?

Your doctor should tell you about the risks and benefits of any medical procedure or course of treatment that he or she is recommending. You also should be told about possible side effects and any alternatives to the proposed procedure or course of treatment. You may accept or reject your doctor's advice, and you may seek a second opinion.

WHERE SHOULD I KEEP MY ADVANCE DIRECTIVE AND WHO SHOULD KNOW ABOUT IT?

Give a copy of your advance directive to your family doctor, lawyer, family, and to those people you have named to make decisions for you if you are unable to make them. You also should bring a copy with you when you are being admitted to a hospital, nursing home, or other health care facility. Make sure that when there are changes to your advance directive, all old copies are destroyed.

DO I NEED AN ADVANCE DIRECTIVE NOW?

No. You do not have to sign an advance directive to be admitted to the hospital or other health care facility.

IF I CHOOSE NOT TO MAKE AN ADVANCE DIRECTIVE, WHO MAKES TREATMENT DECISIONS FOR ME?

As long as you are able, you and your doctor together will decide about your care. If you are unable to communicate your wishes or to make decisions, your doctor will discuss this with your family. If you have no family, a court order may be required to decide your care.

I SPEND SEVERAL MONTHS A YEAR IN ONE STATE AND SEVERAL MONTHS IN ANOTHER. DO I NEED AN ADVANCE DIRECTIVE FOR EACH STATE?

You should know the law in each state in which you live. It may be necessary to have more than one advance directive to meet the legal rules in each state.

WHAT IF I CHANGE MY MIND ABOUT MY ADVANCE DIRECTIVE?

An advance directive is only effective when you are unable to express your wishes. It may be changed or cancelled by you at any time. It is a good idea to review your advance directive periodically to make sure it is still in agreement with your wishes.

WHAT IF A PERSON I NAME TO MAKE DECISIONS FOR ME DIES BEFORE I DO?

It is always a good idea to name a second person to make decisions in case your first choice is not available, for whatever reason.

WHAT IF MY DOCTOR DOES NOT WANT TO FOLLOW MY ADVANCE DIRECTIVE?

It is very important that you talk to your doctor about this question while you are able to do so. If he or she indicates a problem in following your wishes, you have the right to change doctors.

WHAT IF I HAVE EXPRESSED MY WISHES ABOUT TREATMENT ORALLY, BUT I HAVE NOT PUT MY WISHES IN WRITING?

Oral directions that you have given to your physician or your family will sometimes be followed by health care providers, depending on how detailed and recent these instructions were. If you want to be certain your wishes are followed, it is best to put them in writing.