

ADVANCED DIRECTIVES AND LIVING WILLS

This information is being provided to you for reference only and is not intended to provide legal advice.

The Patient Self Determination Act was passed by Congress in 1990. The instrument for this Act and similar acts in individual states is called an Advance Directive. Health care institutions are required to tell patients about their rights under the law to make decisions about their health care – the right to accept or refuse care and the right to make Advance Directives about their health care were included in those Acts. It is emphasized that this information is provided as general information only and it is necessary for the patient to find out about the legal differences regarding the legal rights in the state where you live.

WHAT IS AN ADVANCE DIRECTIVE?

An advance directive tells your doctor what kind of care you would like to have if you become unable to make medical decisions (if you are in a coma, for example). If you are admitted to the hospital, the hospital staff will probably talk to you about advance directives.

A good advance directive describes the kind of treatment you would want depending on how sick you are. For example, the directives would describe what kind of care you want if you have an illness that you are unlikely to recover from, or if you are permanently unconscious. Advance directives usually tell your doctor that you don't want certain kinds of treatment. However, they can also say that you want a certain treatment no matter how ill you are.

Advance directives can take many forms. Laws about advance directives are different in each state. You should be aware of the laws in your state.

WHAT IS A LIVING WILL?

A living will is one type of advance directive. It only comes into effect when you are terminally ill. Being terminally ill generally means that you have less than six months to live. In a living will, you can describe the kind of treatment you want in certain situations. A living will doesn't let you select someone to make decisions for you.

WHAT IS A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

A durable power of attorney (DPA) for health care is another kind of advance directive. A DPA states whom you have chosen to make health care decisions for you. It becomes active any time you are unconscious or unable to make medical decisions. A DPA is generally more useful than a living will. But a DPA may not be a good choice if you don't have another person you trust to make these decisions for you.

Living wills and DPAs are legal in most states. Even if they aren't officially recognized by the law in your state, they can still guide your loved ones and doctor if you are unable to make decisions about your medical care. Ask your doctor, lawyer or state representative about the law in your state.

SHOULD I HAVE AN ADVANCE DIRECTIVE?

Most advance directives are written by older or seriously ill people. For example, someone with terminal cancer might write that she does not want to be put on a respirator if she stops breathing. This action can reduce her suffering, increase her peace of mind and increase her control over her death. However, even if you are in good health, you might want to consider writing an advance directive. An accident or serious illness can happen suddenly, and if you already have a signed advance directive, your wishes are more likely to be followed.

HOW CAN I WRITE AN ADVANCE DIRECTIVE?

You can write an advance directive in several ways:

- Use a form provided by your doctor.
- Write your wishes down by yourself.
- Call your state senator or state representative to get a form.
- Call a lawyer.
- Use a computer software package for legal documents.

Advance directives and living wills do not have to be complicated legal documents. They can be short, simple statements about what you want done or not done if you can't speak for yourself. Remember, anything you write by yourself or with a computer software package should follow your state laws. You may also want to have what you have written reviewed by your doctor or a lawyer to make sure your directives are understood exactly as you intended. When you are satisfied with your directives, the orders should be notarized if possible, and copies should be given to your family and your doctor.

CAN I CHANGE MY ADVANCE DIRECTIVE?

You may change or cancel your advance directive at any time, as long as you are considered of sound mind to do so. Being of sound mind means that you are still able to think rationally and communicate your wishes in a clear manner. Again, your changes must be made, signed and notarized according to the laws in your state. Make sure that your doctor and any family members who knew about your directives are also aware that you have changed them.

If you do not have time to put your changes in writing, you can make them known while you are in the hospital. Tell your doctor and any family or friends present exactly what you want to happen. Usually, wishes that are made in person will be followed in place of the ones made earlier in writing. Be sure your instructions are clearly understood by everyone you have told.

You can obtain up to date Montana information about advance directives, along with statutory forms, if they exist in your state, from:

Legal Counsel for the Elderly (LEC)
American Association of Retired Persons
P. O. Box 96474
Washington, DC 20090-6474

LCE has state- specific guidebooks about advance directives. If you want to order a booklet, send \$5.00 per booklet (for shipping and handling) to the above address.

Or you may contact [Montana's End-of-Life Registry Department of Justice, Helena, Montana: phone 1-866-675-3314 or online at \[www.EndofLife.gov\]\(http://www.EndofLife.gov\)](#) ; the American Association of Retired Persons (AARP) at 1-800-441-2277; or your attorney

What is a Health Care Advance Directive?

A health care advance directive is a document in which you give instructions about your health if, in the future, you cannot speak for yourself. You can give someone you name (your “agent” or “proxy”) the power to make health care decisions for you. You also can give instructions about the kind of health care you do or do not want.

In a Traditional Living Will, you state your wishes about life-sustaining medical treatments if you are terminally ill. In a Health Care Power of Attorney, you appoint someone else to make medical treatment decisions for you if you cannot make them for yourself.

Every state and the District of Columbia have laws that permit individuals to sign documents stating their wishes about health care decisions when they cannot speak for themselves. The specifics of these laws vary, but the principle of listening to the patient's wishes is the same everywhere. The law gives weight to any form of written directive. If the courts become involved, they usually try to follow the patient's stated values and preferences, especially if they are in written form. A Health Care Advance Directive may be the most convincing evidence of your wishes you can create.