

Preparing Living Wills & Healthcare Powers of Attorney



THE BOARD OF PENSIONS
OF THE PRESBYTERIAN CHURCH (U.S.A.)

The Board of Pensions hopes this guide will encourage you to prepare a legal document designating a healthcare agent and instructing the agent and your physicians, family, and other loved ones what you wish for continued medical care if you become incompetent or terminally ill.

The laws of each state vary, particularly in the formalities for completion such as witnesses and notaries. The information contained in this booklet is general information and is not intended to constitute legal advice. Individuals and their counsel are encouraged to use the information contained in this booklet in preparing their own advance directives.

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OVERVIEW

Advance directive, living will, healthcare proxy, and durable power of attorney for healthcare are documents that legally designate the person(s) who will make medical decisions for you in the event you become unable to do so, and provide direction regarding future medical decisions for your designated person and your medical providers to follow. In this guide, we use the term “advance directive” as a generic term for the document. Advance directive is the term used by the federal government in the Patient Self-Determination Act of 1970 and in the Medicare and other healthcare statutes.

States have preprinted forms for their citizens to use. All 50 states recognize the authority of an advance directive and have many common requirements for the preparation of an advance directive. The National Hospice and Palliative Care Organization’s website — caringinfo.org — has advance directives and healthcare power of attorney forms for all 50 states (plus Washington D.C.) that meet each state’s legal requirements. Your state or county medical society or bar association can also refer you to community authorities on this subject or provide you with the name of your local area agency on aging.

Although an advance directive is a legal document, a lawyer is not required to prepare and execute one. However, it must be prepared properly or it will not be enforceable. You need to follow the laws of your state for the document to be enforceable.

An advance directive has two parts:

1. **healthcare power of attorney**, in which you designate the person(s) authorized to make healthcare decisions for you if you become unable to make them yourself
2. **living will**, in which you provide guidance as to the type of medical decisions you would like your healthcare agent and medical providers to make if you become unable to do so on your own

The advance directive may also include a section regarding donation of organs at death. Most states do not include organ donation provisions in their advance directive statutes, but completing this section will make your wishes regarding such donations known to your family and your agent.

PREPARING AN ADVANCE DIRECTIVE

Your willingness to think about and prepare an advance directive before the need for it arises helps to reassure all involved. Discussions with your family members and friends will help you share and clarify your thoughts, which may help bring more peace of mind to them if difficult decisions must be made.

Steps to prepare an advance directive

1. Consider the following:

Who will you designate as your healthcare agent?

This person should be someone you trust to make decisions for you and follow your instructions, as well as someone whose authority other family members respect.

What kind of medical care do you want at the end of your life? You should determine the medical decisions you want your agent to make if you become critically or terminally ill, or are in a vegetative state. This includes decisions about resuscitation, assisted breathing, and intravenous nourishment.

2. Discuss these questions and your decisions with your family, friends, minister, and others. Be sure the person(s) designated as your agent is willing to take on the responsibility and follow the instructions set forth in your advance directive.
3. Prepare the legal document and sign it in front of the required witness(es).
4. Distribute copies of the document to the appropriate people so that it will be readily available if needed.

APPOINTING YOUR HEALTHCARE AGENT

Who can serve as an agent?

The agent must be age 18 or older and have the capacity to make decisions for you. You should appoint a person with whom you have discussed your wishes and whom you trust to carry them out. Many states prohibit a treating healthcare provider or an employee of a residential care facility from serving as your agent. Some states do not allow a conservator or guardian of your finances to serve.

You should name an alternate agent in the event your primary agent is unable or unwilling to serve. While many people name their spouse, another person may need to make decisions for both of you if neither of you is able to carry out your advance directives. You can name multiple alternate agents.

What if I want to change the healthcare agent I designate or my instructions after I have signed my advance directive?

You have the right to cancel the authority of your agent(s), revoke your advance directive, or change or update an existing document at any time. Be sure to destroy the existing document and notify in writing the persons who have copies that you have done so.

When is my agent authorized to act?

The directive is effective upon, and only during, any period in which you are unable to make or communicate a medical care decision. Some states have a procedure for determining when that occurs (for example, two doctors must confirm your condition). In other states, the decision is left to the healthcare provider and the healthcare agent.

What are the signing requirements?

States have different requirements, but as a general rule, your advance directive should be signed in the presence of two disinterested witnesses and a notary public. A disinterested witness is someone who is not a family member and not directly responsible for your medical care or payment. Your friends, neighbors, congregation members, or coworkers can serve as witnesses.

DISTRIBUTING YOUR ADVANCE DIRECTIVE

You should provide a copy of your advance directive to the people who will most likely be contacted in a medical emergency:

- your family doctor
- your designated agent(s)
- family members
- your minister
- your lawyer

Also advise them of an easy-to-find location where you keep an additional copy and the original.

This guide also includes a wallet card through which you can advise anyone attending to you in an emergency that you have signed an advance directive and how to locate it.

HEALTHCARE INSTRUCTIONS

The following guidance was prepared from materials developed by the Legal Counsel for the Elderly department of the American Association of Retired Persons (AARP) and is used with its permission. A glossary of referenced terms follows.

What is the difference between withholding and withdrawing medical treatment?

If a sudden illness or injury occurs or an ongoing condition worsens, medical intervention might be required to sustain your life. You might prefer that treatment be withheld (in other words, not started) because it is a painful burden and would only extend your life briefly. Withdrawing treatment refers to situations in which life-sustaining interventions have already been started and you wish to *stop* the medical procedures that are sustaining life.

The decision not to start life-sustaining treatment may seem different from *stopping* treatment after a doctor has determined that you will not recover. However, legally and ethically, there is no difference. You have the right to have life-sustaining treatment either withheld or withdrawn. You may wish to talk to your doctor about a “trial of treatment” — that is, starting a treatment and stopping it later.

What are some of the medical issues I should know about?

Quality of life — Evaluations of quality of life are subjective and personal. What is an acceptable quality of life to someone else may be a fate “worse than death” to you. This guide contains general information on the three most common conditions people address in their advance directives. You may want to discuss these conditions with your doctor and then decide which, if any, you wish to cover in your advance directive.

Medical interventions that sustain life — Should you become incapacitated by any of the conditions noted below, it may be necessary to use certain medical treatments to keep you alive. An advance directive allows you to refuse certain types of life-sustaining treatment. This guide describes some of the common types of life-sustaining treatments you may wish to include in your advance directive. Your doctor can offer more detailed information and discuss the options with you.

Comfort care — No matter what life-sustaining treatment you choose to limit, you can still receive medical care to relieve pain and ensure your physical and emotional comfort. This is a very important issue to discuss with your doctor. There is some overlap between medical interventions to sustain life and those designed to offer comfort care. For example, treatment of infections with antibiotics may relieve discomfort and prolong life.

What general medical conditions affect quality of life and might be covered in an advance directive?

When considering an advance directive, many people discuss four general types of medical conditions.

- 1. Persistent vegetative state** — Patients in this condition may live for long periods of time as long as they are fed and given water artificially. Some time may be necessary for the doctor to actually make this diagnosis. Discussions with your doctor concerning your existence in this condition can be very meaningful on the issue of the quality of life you wish to experience.
- 2. Irreversible coma** — One issue to discuss with your doctor is when a coma will be considered “irreversible.” Your doctor will exercise discretion and professional expertise to determine when a coma is irreversible. This may not always be a clear-cut decision and some people note in their advance directives a time period after which they wish to have certain treatments withheld if they do not recover consciousness. The likelihood of recovering from a coma depends on the person’s age and the reason for the coma.

- 3. Conscious but unable to communicate** — The patient may be seriously mentally impaired, such as a patient with advanced Alzheimer’s disease. A patient may be seriously physically ill, such as suffering the physical deterioration that may follow a major stroke. There may be a drug-induced inability to communicate, such as that experienced by some cancer patients receiving extremely strong pain medication.

- 4. Near death** — The patient may die soon even with aggressive treatment.

If I suffer from one of these conditions, what types of medical treatments or interventions might I wish to consider limiting?

The most common types are as follows:

Respirator use (also called a ventilator) — For patients suffering severe problems with breathing or a complete failure of the lungs, the respirator can take over the role of the chest muscles to allow the patient to breathe. A respirator can get more oxygen into the lungs than normal breathing can. A tube is placed down the throat into the wind pipe. With the tube in place, it is not possible to talk or eat. Even for a patient with irreversible diseases or paralysis affecting breathing, mechanical ventilation offers the possibility for prolonged life. The need for a respirator may be permanent or temporary.

Cardiopulmonary resuscitation (CPR) — Several medical devices and procedures can be used to restore and maintain blood circulation and breathing in a person whose heart and/or breathing has stopped. These can include pumping on the chest, artificial breathing, and sometimes medications and/or electric shock. When a person’s heart stops beating or beats so poorly that blood circulation is not enough to supply the brain with oxygen and nutrients, the brain is irreversibly damaged within minutes. Spontaneous breathing cannot be recovered and death follows quickly. CPR offers a way to reverse the immediate threat to life. There is medical evidence that CPR for certain chronically ill people (especially if the person is elderly) is almost never successful. Successful attempts at CPR may still result

in brain damage or other injuries. After CPR, the patient may need a respirator for a few days or even permanently. CPR can be administered by non-doctors and is required to be used by ambulance medics or other healthcare workers who respond to emergencies.

Kidney dialysis — This is a procedure to remove impurities from blood in patients whose kidneys have failed. Healthy kidneys regulate the body's water and salts and remove the excess (as urine). They also produce and release hormones into the blood stream that control vital functions such as blood pressure and red blood cell production. Dialysis offers an effective artificial way to perform some kidney functions. Kidney dialysis is also important for removing excess fluid.

The blood is pumped out of the patient's body into a dialyzer where the impurities are removed, then returned to the patient's body. Some people remain on dialysis for years.

Certain medications — Medications, such as those used in chemotherapy or antibiotics, may be necessary to sustain life. Antibiotics are used to treat various infections. For elderly patients, the most common types of life-threatening infections include pneumonia, urinary tract infections, and infected decubitus ulcers (bed or pressure sores). These treatments are usually effective in treating infections, but they cannot cure underlying diseases and disabling conditions that are common among elderly patients. Untreated infections such as some types of pneumonia can bring a fairly comfortable death within a short time. Your preference regarding antibiotics may depend on whether the antibiotics can cure an acute, mild infection and return you to a stable condition or whether they only slow down an inevitable deterioration of your condition. Treatment facilities may sometimes require the use of antibiotics to protect other patients.

Artificial nutrition and hydration — Food and water can be administered by tube to patients unable to take them orally. People who are physically unable to swallow food and fluids by mouth are at obvious risk of malnutrition, dehydration, and death. Tube feeding can be provided through a tube that is put down the nose to the stomach. A tube may also be surgically inserted through the belly wall to the stomach or small intestines, or intravenous tubes may be inserted through the skin into a blood vessel.

You must state your wishes if you want tube feeding to be withheld or withdrawn. Changes in the law are likely over the next few years. The U.S. Supreme Court has treated nutrition and hydration (tube feeding) as if they were any other types of life-sustaining medical intervention. However, some state laws restrict the agent's power to decide to withhold or withdraw artificial nutrition and hydration.

Some people fear that withdrawing nutrition and hydration will cause the patient to suffer. The prevailing medical opinion is that unless a patient could take food and water by mouth, there is an anesthetizing effect caused by dehydration and inadequate nutrition. For a person in a persistent vegetative state, there is no discomfort.

For a terminally ill person, because there is often a reduction in intake of food and water as death approaches, any discomfort is unlikely and may be relieved by rubbing the lips with glycerin or placing crushed ice on the lips to relieve dryness. Medications may also be given in addition for palliative care.

What should I think about when I list a specific medical treatment in my advance directive?

If you state that you do not wish to have a certain type of intervention, you limit your doctor's treatment options. Under some circumstances, listing a specific intervention may interfere with a doctor's ability to respond to the overall intent of your advance directive. For example, you may refuse one type of intervention that is necessary for another type of intervention to be effective. You should discuss such specific choices with your physician. Some advocates worry that a directive that specifically limits some types of intervention may leave the door open for other interventions (some of which may be new) that will have the same impact in terms of prolonging the dying process. A doctor can provide guidance in how to effectively write this section of your advance directive. You should review your advance directive periodically if you specify certain medical interventions you do not want. Another option is to limit a specific medical intervention and "any similar treatments."

GLOSSARY

Advance directive: Generic term for legal documents (such as a living will or healthcare power of attorney) that state your preferences for medical treatment in the event you become unable to make your own decisions.

Cardiopulmonary resuscitation (CPR): Various medical technologies used to restore and maintain blood circulation and breathing in a person who has experienced cardiac and/or respiratory arrest.

Coma: A sleep-like (eyes closed) condition resulting from impairment of the brain stem. Often used to include all possible degrees of impaired consciousness or unresponsiveness with the absence of eye opening.

Comfort care: Treatment or care that does not restore health but relieves pain or eases (but does not reverse) the dying process. Some comfort care treatments may also prolong life.

Execute: Following the guidelines set in the law for completing a document that is legally enforceable. This may include procedures such as having witnesses to your signature.

Incapacitated person: A person who lacks the ability to understand and appreciate the nature and consequences of a healthcare decision. The person is unable to assess the significant benefits and harms of any proposed treatment or any reasonable alternatives.

Life-sustaining treatment: Drugs, medical devices, or procedures that can keep someone alive who would otherwise die within a short (though usually uncertain) time.

Living will: A document signed by an individual that expresses his or her intentions regarding medical treatment during the final stages of life. Similar to a health declaration.

Palliative care: Treatment that enhances comfort and improves the quality of an individual's life during the last phase of life.

Persistent vegetative state (PVS): A state of permanent unconsciousness that is irreversible. It may take one to six months or more to confirm a PVS diagnosis. The centers in the brain that control thinking, speaking, hunger, and thirst are destroyed in patients in PVS. PVS patients do retain reflexes such as random eye or muscle movements, yawning, and response to touch or sound. However, they do not feel pain. It includes patients with the appearance of wakefulness but excludes those who are more deeply comatose with eyes closed. Generally, PVS is not considered a terminal condition, and a PVS patient may live for years with the assistance of medical equipment/treatment.

Principal: A person who signs a healthcare power of attorney and grants to an agent the authority to take action when he or she is unable to do so. You must sign the advance directive while still capable of making your own healthcare decisions.

Respirator: Also called a ventilator, it refers to a mechanical device that uses a tube through the nose or throat to assist breathing. "Ventilator" is the term preferred by healthcare professionals.

Terminal condition: Different state laws define a "terminal" condition differently. For example, the law in California defines it as "an incurable and irreversible condition that without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death within a relatively short time."

Cut out and complete this card and put it in your wallet.

NOTICE TO HEALTHCARE PROVIDERS

I have executed an advance medical directive and appointed:

Agent's Name

Agent's Address

Agent's Phone Numbers

FOLD

FOLD

as my agent to make health and personal care decisions for me if I am unable to do so. He/she has a copy of my signed advance directive.

Signature

Date

Print Your Name

USE RULE ON OTHER SIDE AS A GUIDE TO CUT OUT CARD

**NOTICE TO
HEALTHCARE
PROVIDERS**





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