



## **Introduction to Health Care Advance Directives**

### **What Is A Health Care Advance Directive?**

A health care advance directive is a document in which you give instructions about your health care if, in the future, you cannot speak for your self. 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 yourself. The Health Care Advance Directive in this document combines and expands the traditional Living Will and Health Care Power of Attorney into a single, comprehensive document.

### **Why Is It Useful?**

Unlike most Living Wills, a Health Care Advance Directive is not limited to cases of terminal illness. If you cannot make or communicate decisions because of a temporary or permanent illness or injury, a Health Care Advance Directive helps to keep control over health care decisions that are important to you. In your Health Care Advance Directive, you state your wishes about any aspect of your health care, including decisions about life-sustaining treatment and choose a person to make and communicate these decisions for you. Appointing an agent is particularly important. At the time a decision needs to be made, your agent can participate in the discussions and weigh the pros and cons of treatment decisions based on you wishes. Your agent can decide for you whenever you cannot decide for yourself, even if your decision-making ability is only temporarily affected. Unless you formally appoint someone to decide for you, many health care providers and institutions will make critical decisions for you that might not be based on your wishes. In some situations, a court may have to appoint a guardian unless you have an advance directive. An advance directive also can relieve family stress. By expressing your wishes in advance, you help family or friends who might otherwise struggle to decide on their own what you would want done.

### **Are Health Care Advance Directives Legally Valid In Every State?**

Yes. Every state and the District of Columbia has laws that permit individuals to sign documents stating what their wishes are about their health care decisions when they cannot speak for themselves. The specifics of these laws vary, but the basic principle of listening to the patient's wishes is the same everywhere. The law gives great 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.

### **What Does A Health Care Advance Directive Say?**

*There are two parts to the Health Care Advance Directive in this document. You can complete either or both parts of the Health Care Advance Directive.*

The most important part of the advance directive is the appointment of someone (your agent) to make health care decisions for you if you cannot decide for yourself. You can define how much or how little authority you want your agent to have. You also can name persons to act as alternate agents if your primary named person cannot act for you, and disqualify specific persons whom you do not want to make decisions for you. If there is no one whom you trust fully to serve as your agent, then you should not name an agent. Instead, you can rely on the second part of the Advance Directive to make your wishes known.

In the second part of the Advance Directive, you can provide specific instructions about your health care treatment. You can also include a statement about donating your organs. Your instructions in the second part provide evidence of your wishes that your agent or anyone providing you with medical care should follow.

### **How Do I Make a Health Care Advance Directive?**

The process for creating a Health care Advance Directive depends on where you live. Most states have laws that provide special forms and signing procedures. Most states also have special witnessing requirements and restrictions on whom you can appoint as your agent (such as prohibiting a health care provider from being your agent). Follow these rules carefully. Typically, states require two witnesses. Some have special witnessing requirements if you live in a nursing home or similar facility. Even where witnesses are not required, consider using them anyway to reinforce the deliberate nature of your act and to increase the likelihood that care providers in other states will accept the document. Check the rules in your state.

### **If I Change My Mind, Can I Cancel Or Change A Health Care Advance Directive?**

Yes, you can cancel or change your Health Care Advance Directive by telling your agent or health care provider in writing of your decision to do so. Destroying all copies of the old one and creating a new one is the best way. Make sure you give a copy of the new one to your physician and anyone else who received the old one.

### **What Do I Need to Consider Before Making A Health Care Advance Directive?**

There are at least four important questions to ask yourself:

#### *First – What Are My Goals For Medical Treatment?*

The Health Care Advance Directive may determine what happens to you over a period of disability or at the very final stage of your life. You can help others respect your wishes if you take some steps now to make your treatment preferences clear. While it is impossible to anticipate all of the different medical decisions that may come up, you can make your preferences clear by stating your goals for medical treatment. What do you want treatment to accomplish? Is it enough that treatment could prolong your life, whatever your quality of life? Or, if life-sustaining treatment could not restore consciousness or your ability to communicate with family members or friends, would you rather stop treatment? Once you have stated your goals of treatment, your family and physicians can make medical decisions for you on the basis of your goals. If treatment would help achieve one of your goals, the treatment would be provided. If treatment would not help achieve one of your goals, the treatment would not be provided. In formulating your goals of treatment, it is often helpful to consider your wishes about different end-of-life treatments and then asking yourself why do you feel that way. If you would not want to be kept alive by a ventilator, what is it about being on a ventilator that troubles you? Is it the loss of mobility, the lack of independence, or some other factor? Would it matter if you needed a ventilator for only a few days rather than many months? The answers to these kinds of questions will reflect important values that you hold and that will help you shape your goals of treatment.

Another way to become clear about your goals of treatment is to create a “Values History.” In doing a Values History, you examine your values and attitudes, discuss them with loved ones or advisors and write down your responses to questions such as:

- How do you feel about your current health?
- How important is independence and self sufficiency in your life?
- How do you imagine handling illness, disability, dying and death?
- How might your personal relationships affect medical decision-making, especially near the end of life?
- What role should doctors and other health professionals play in such decisions?
- What kind of living environment is important to you if you become seriously ill or disabled?
- Should the financial obligation to your family be a part of the decision-making process?
- What role do religious beliefs play in decisions about your health care?
- What are your thoughts about life in general in its final stages: your hopes and fears, enjoyments and sorrows?

One you have identified your values, you can use them to decide what you want medical treatment to accomplish.

#### Second – Who Should Be My Agent?

Choosing your agent is the most important part of this process. Your agent will have great power over your health and personal care if you cannot make your own decisions. Normally, no one oversees or monitors your agent’s decisions. Choose one person to serve as your agent to avoid disagreements. If you appoint two or more agents to serve together and they disagree, your medical care givers will have no clear direction. If possible, appoint at least one alternate agent in case your primary agent is not available. Speak to the person (and alternate agent) you wish to appoint beforehand to explain your desires. Confirm their willingness to act for you and their understanding of your wishes. Also be aware that some states will not let certain persons (such as your doctor) act as your agent. If you can think of no one you trust to carry out this responsibility, then do not name an agent. Make sure, however, that you provide instructions that will guide your doctor or a court-appointed decision-maker.

#### Third – How Specific Should I Be?

A Health Care Advance Directive does not have to give directions or guidelines for our agent. However, if you have specific wishes or preferences, it is important to spell them out in the document itself. Also discuss them with your agent and health care providers. These discussions will help ensure that your wishes, values and preferences will be respected. Make sure to think about your wishes regarding artificial feeding (Nutrition and hydration), since people sometimes have very different views on this topic. At the same time, be aware that you cannot cover all the basis. It is impossible to predict all the circumstances you may face. Simple statements like “I never want to be placed on a ventilator” may not reflect your true wishes. You might want ventilator assistance if it were temporary and you then could resume your normal activities. No matter how much direction you provide, your agent will still need considerable discretion and flexibility. Write instructions carefully so they do not restrict the authority of your agent in ways you did not intend.

#### Fourth – How Can I Make Sure That Health Care Providers Will Follow My Advance Directive?

Regardless of the laws about advance directives in your state, some physicians, hospitals or other health care providers may have personal views or values that do not agree with your stated desires. As a result, they may not want to follow your Health Care Advance Directive. Most state laws give doctors the right to refuse to honor your advance directive on conscience grounds. However, they generally must help you find a doctor or hospital that will honor your directive. The best way to avoid this problem is to talk to your physician and other health care providers ahead of time. Make sure they understand the document and your wishes and they have no objections. If there are objections, work them out, or change physicians. Once you sign a Health Care Advance Directive, be sure to give a copy of it to your doctor and to your agent, close relatives and anyone else who may be involved in your care.

#### **What Happens If I Do Not Have An Advance Directive?**

If you do not have an advance directive and you cannot make health care decisions, some state laws give decision-making power to default decision-makers or “surrogates.” These surrogates, who are usually family members in order of kinship, can make some or all health care decisions. Some states authorize a “close friend” to make decisions, but usually only when family members are unavailable. Even without such statutes, most doctors and health facilities routinely consult family, as long as there are close family members available and there is no disagreement. However, problems can arise because family members may not know what the patient would want in a given situation. They also may disagree about the best course of action. Disagreement can easily undermine family consent. A hospital physician or specialist who does not know you well may become your decision-maker, or a court proceeding may be necessary to resolve disagreement. In these situations, decisions about your health care may not reflect your wishes or may be made by persons you would not choose. Family members and persons close to you may go through needless agony in making life and death decisions without your guidance. It is far better to make your wishes known and appoint an agent ahead of time through a Health Care Advance Directive.

#### **Who Can Help Me Create A Health Care Advance Directive?**

You do not need a lawyer to make a Health Care Advance Directive. However, a lawyer can be helpful if your family situation is uncertain or complex, or you expect problems to arise. Start by talking to someone who knows you well and can help you state your values and wishes considering your family and medical history. Your doctor is an important participant in creating your Health Care Advance Directive. Discuss the kinds of medical problems you face, based on your current health and health history. Your doctor can help you understand the treatment choices your agent may face. Share your ideas for instructions with your doctor to make sure medical care providers can understand them.

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

- LCE has state-specified guidebooks about advance directives. **Legal Counsel for the Elderly (LCE)**  
**American Association of Retired Persons**  
**P.O. Box 96474 \* Washington, DC 20090-6474**
- Choice in Dying, Inc., a non-profit educational organization, is located at 200 Varick Street, New York, NY 10014-4810. Phone: 1-800-989-WILL.
- Hospital associations, medical societies or bar associations in your state or county, or your local area agency on aging (AAA) may provide forms for your state.

If your state has a statutory form, remember that preprinted forms may not meet all or your needs. Take the time to consider all the possibilities and seek advice so that the document you develop meets your special needs. If you want legal help, contact your state or local Office on Aging. These offices usually are quite familiar with health care issues and local resources for legal assistance. You can also contact the bar association for your state or locality. Its lawyer referral service may be able to refer you to an attorney who handles this type of matter. Finally, organizations that deal with planning for incapacity, such as your local Alzheimer’s Association chapter, may be able to provide advice or referrals.