



ADVANCE DIRECTIVES

What are Advance Directives?

“Advance Directive” is a general term that refers to your oral and written instructions about your future medical care, in the event that you become unable to speak for yourself. Each state regulates the use of advance directives differently. There are two types of advance directives: a living will and a medical power of attorney.

What is a Living Will?

A Living Will is a type of advance directive in which you put in writing your wishes about medical treatment should you be unable to communicate at the end of life. Your state law may define when the living will go into effect, and may limit the treatments to which the living will applies. Your right to accept or refuse treatment is protected by constitutional and common law.

What is a Medical Power of Attorney?

A Medical Power of Attorney is a document that enables you to appoint someone you trust to make decisions about your medical care if you cannot make those decisions yourself. This type of advance directive may also be called a “health care proxy” or “appointment of a health care agent.” The person you appoint may be called your health care agent, surrogate, attorney-in-fact, or proxy. In many states, the person you appoint through a medical power of attorney is authorized to speak for you any time you are unable to make your own medical decisions, not only at the end of life.

Why do I need an Advance Directive?

Advance directives give you a voice in decisions about your medical care when you are unconscious or too ill to communicate. As long as you are able to express your own decisions, your advance directives will not be used and you can accept or refuse any medical treatment. But if you become seriously ill, you may lose the ability to participate in decisions about your own treatment.

What laws govern the use of Advance Directives?

Both federal and state laws govern the use of advance directives. The federal law, the Patient Self-determination Act, requires health care facilities that receive Medicaid and Medicare funds to inform patients of their rights to execute advance directives. All 50 states and the District of Columbia have laws recognizing the use of advance directives. The booklet, “Questions and Answers: Advance Directives and End-of-Life Decisions,” available from Choice in Dying, offers more information about advance directives.

About Advance Directives

- **Who can make an advance directive?**
Any person age 18 or over who is of sound mind may make an advance directive.
- **Do I have to have an Advance Directive?**
No. You cannot be required to make an advance directive in order to get medical treatment, health insurance or for any other reason. It is purely a matter of personal choice.
- **Who makes my health care decisions if I can no longer do so and I have not made out an advance directive?**
Under Arkansas law, if a patient is a minor or an incapacitated adult with no declaration or health care proxy, then the declaration may be executed in the same form on the patient’s behalf by the first of the following individuals or category of individuals who exist and are reasonably available for consultation:
 - (a) A legal guardian of the patient, if one has been appointed;
 - (b) In the case of an unmarried patient under the age of eighteen (18), the parents of the patient;
 - (c) The patient’s spouse;
 - (d) The patient’s adult child or, if there is more than one (1), then a majority of the patient’s adult children participating in the decision;
 - (e) The parents of a patient over the age of eighteen (18);
 - (f) The patient’s adult sibling or, if there is more than one (1), then a majority of the patient’s adult siblings participating in the decision;
 - (g) Persons standing in loco parentis to the patient; or
 - (h) A majority of the patient’s adult heirs at law who participate in the decision.