

ADVANCE DIRECTIVES

THE PATIENT'S RIGHT TO MAKE HEALTH CARE DECISIONS UNDER THE LAW IN NEBRASKA

A federal law requires the Nebraska Department of Social Services to prepare a written description of Nebraska's law concerning Advance Directives. The federal law also requires Medicaid-participating hospitals, nursing facilities, providers of home health care or personal care services, hospice programs, and health maintenance organizations to give this description to adult patients. The following material is a general description of Nebraska's law concerning Advance Directives.

In Nebraska, adults who are capable of making health care decisions generally have the right to say yes or no to medical treatment. As a result, you have the right to prepare a document, known as an "Advance Directive". The document says in advance what kind of treatment you do or do not want under special, serious medical conditions—conditions that would prevent you from telling your doctor how you want to be treated. For example, if you were taken to a hospital in a coma, would you want the hospital's medical staff to know your specific wishes about the kind of medical treatment that you do and do not want to receive?

The information in this description can help you understand your right to make decisions in advance of treatment. Because this is an important matter, you may wish to talk to family, close friends or personal advisors, your doctor, and your attorney before deciding whether you want an Advance Directive.

1. WHAT IS AN ADVANCE DIRECTIVE?

An advance directive is a written statement which reliably shows that you have made a particular health care decision or have appointed another person to make that decision on your behalf. The two most common forms of Advance Directives are –

- A "Living Will"; and
- A "Power of Attorney for Health Care".
- However, an Advance Directive can take other forms or be called other things.

An Advance Directive allows you to state your choices for health care **or** to name someone to make those choices for you if you become unable to make decisions about your medical treatment. In short, an Advance Directive can enable you to make decisions about your future medical treatment. You can say "Yes" to treatment you want or say "No" to treatment you do not want.

2. WHAT IS A LIVING WILL?

A Living Will generally states the kind of medical care you want or do not want if you become unable to make your own decisions. It is called a "Living Will" because it takes

effect while you are still living. The Nebraska Legislature has adopted laws governing living wills. This law is known as the Rights of the Terminally Ill Act. An adult of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the individual or another person at the individual's direction and witnessed by two adults or a notary. No more than one witness to a declaration can be an administrator or employee of a health care provider who is caring for or treating the individual. An employee of a life or health insurance provider cannot be a witness for the individual. Under the law, life-sustaining treatment cannot be withheld or withdrawn under a declaration from an individual who is pregnant if it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment. A Living Will should clearly state your choice with regard to health care.

3. WHAT IS A POWER OF ATTORNEY FOR HEALTH CARE?

A "Power of Attorney for Health Care" is a legal paper naming another person, such as a husband, wife, daughter, son, or close friend as your "agent" or "representative" to make medical decisions for you if you should become unable to make them for yourself. Your agent, or representative, is guided by your instructions, and you can provide instructions about any treatment you do or don't want. In general, the power of attorney can give to the agent or representative the same powers an individual may have or could enforce on his/her own behalf. Nebraska has laws on Powers of Attorney for Health Care which allow an agent to make medical decisions for the person giving the power of attorney.

A power of attorney for health care must be in writing; identify yourself, your agent, and your successor agent, if any; specifically authorize the agent to make health care decisions on behalf of yourself in the event you are incapable; show the date of its execution; and be witnessed and signed by two adults, each of whom witnesses the signing and dating of the power of attorney for health care by you or your acknowledgment of the signature and date, or be signed and acknowledged by you before a notary public who is not the attorney in fact or successor attorney in fact. Your power of attorney for health care can grant authority for health care decisions as described in the law. However, the authority to consent to withholding or withdrawing a life-sustaining procedure or artificially administered nutrition or hydration is effective only when –

1. You are suffering from a terminal condition or are in a persistent vegetative state;
AND
2. Your power of attorney for health care explicitly grants the authority to your agent or your intention to withhold or withdraw life-sustaining procedures or artificially administered nutrition or hydration is established by clear and convincing evidence. Clear and convincing evidence may be a living will, clearly documented medical record, refusal to consent to treatment, or other evidence.

4. MUST A HEALTH CARE PROVIDER FOLLOW AN ADVANCE DIRECTIVE?

The federal law requires hospitals, nursing facilities, home health agencies, hospice programs and health maintenance organizations (HMO's) to have written policies concerning Advance Directives. The health care provider you choose must inform you in writing of its written policy regarding Advance Directives. Therefore, you should review and discuss the provider's policy on following your Advance Directive with the provider and others.

Your health care provider must follow your Advance Directive unless the health care provider has informed you that it is unwilling to do so. If the health care provider is unwilling to follow your living will, the health care provider or physician must assist in transferring your care to another provider who is willing to follow your living will. If the health care provider is unwilling to follow your power of attorney for health care, your agent or representative must make arrangements to transfer you to another provider who is willing to follow your power of attorney for health care.

5. WHEN DO ADVANCE DIRECTIVES TAKE EFFECT?

Your Advance Directive generally takes effect only after you no longer can make personal decisions. As long as you can make personal decisions on your own behalf, your health care givers will rely on you, not on your Advance Directive.

6. DO I HAVE TO WRITE AN ADVANCE DIRECTIVE?

No. It is entirely up to you whether you want to prepare an Advance Directive. Questions may arise about the kind of medical treatment that you do and do not want to receive. An Advance Directive may help to solve these important questions. Your health care provider cannot require you to have an Advance Directive as a condition of receiving care; nor can your health care provider prohibit you from having an Advance Directive.

7. CAN I CHANGE MY MIND AFTER I WRITE AN ADVANCE DIRECTIVE?

Yes. To change or cancel an Advance Directive, simply destroy the original or take some other action to notify those who might rely on your Advance Directive that you are changing it or no longer want to have it effective. If you have given the Advance Directive to your doctor, notify your doctor of your change of mind. If you have given it to another health care provider, such as a hospital, nursing home, or home health agency, or a relative, notify them that you have changed your mind. If you have written a new document, you should give a copy of the new document to your doctors, other health care providers, and anyone else who may be involved in your care.

8. DO I HAVE TO HAVE A WRITTEN DOCUMENT TO EXPRESS MY WISHES TO MY DOCTOR?

No. If you are able to communicate your wishes to your doctor, they will carry more weight than an Advance Directive. But if you state your wishes in a written document, your doctor will know what you want if you are not able to make decisions and communicate them on your own behalf.

9. WHAT CHOICES SHOULD I INCLUDE IN MY ADVANCE DIRECTIVE?

If you choose to write an Advance Directive, the content of the Advance Directive is entirely your own choice. If you have questions, you may talk with family members, close personal advisors, your doctor, your attorney, or others who could help you understand your choices. Your Advance Directive should be personal to you and should reflect your own personal choices.

10. IF I EXECUTED AN ADVANCE DIRECTIVE IN ANOTHER STATE, WILL IT BE FOLLOWED IN NEBRASKA?

If you have executed an Advance Directive in another state and it is valid under the laws of that state or of Nebraska, it is valid in Nebraska.

11. WHAT SHOULD I DO WITH MY ADVANCE DIRECTIVE IF I CHOOSE TO HAVE ONE?

Make sure that someone, such as a family member, knows that you have an Advance Directive and knows where it is located. You might also consider the following:

- If you have a power of attorney for health care, give a copy or the original to your "agent" or "representative".
- Tell your health care provider that you have an Advance Directive and ask the provider to make it a part of your medical record.
- Keep a second copy of your Advance Directive in a safe place where it can be found easily if it is needed.
- Keep a small card in your purse or wallet that states that you have an Advance Directive and where it is located and who your "agent" or "representative is, if you have named one.

This paper provides general information about Advance Directives. It is not intended to provide specific advice in a particular case. If you have additional questions about your legal rights, you should seek the professional advice of a lawyer.