

LIVING WILLS, HEALTH CARE SURROGATES AND ADVANCE DIRECTIVES: FAQs

The Florida Legislature has recognized that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment or procedures which would only prolong life when a terminal condition exists. This right, however, is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession. To ensure that this right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature has established a procedure within Florida Statutes Chapter 765 allowing a person to plan for incapacity, and if desired, to designate another person to act on his or her behalf and make necessary medical decisions upon such incapacity.

What Is a terminal condition?

A terminal condition is an irreversible illness that will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely. In most states, a terminal illness is one in which the patient will die “shortly” regardless of whether medical treatment is continued. However, state definitions vary. Examples of conditions include advanced cancers, head injuries, multiple organ failures, or massive heart attacks and strokes.

What Is a Life-Sustaining Medical Treatment?

State definitions vary; however, in general, life-sustaining medical treatment is anything mechanical or artificial that sustains, restores, or substitutes for a vital body function and that would prolong the dying process for a terminally ill patient. Life-sustaining medical treatment may include the following:

- cardiopulmonary resuscitation (CPR)
- artificial respiration (mouth-to-mouth breathing, manual ventilation, a ventilator or respirator--a machine that pushes air into your lungs)
- medications to artificially alter blood pressure and heart function
- artificial nutrition/hydration
- Dialysis
- certain surgical procedures (amputation, feeding tube placement, removal of tumor, organ transplant)

Nutrition/hydration (food and water) are not usually defined as life-sustaining unless they are provided by a feeding tube or intravenous line. Medications or procedures necessary to provide comfort or ease pain are not usually considered life-sustaining procedures but, rather, as comfort measures. In some states, tube feedings and intravenous fluids are considered comfort measures.

When Should I Make an Advance Health Care Directive?

The time to make an advance directive is before you are in a situation in which you would need one. In other words, before you become too sick to make your own choices and decisions about what medical care you want to receive or refuse. Young people as well as older people should consider making an advance directive. Advance directives can be changed or revoked and should be re-visited if you have been diagnosed with a serious illness.

What Happens When I Have an Advance Health Care Directive?

If you have an advance directive and cannot make your own medical decisions, these decisions will be made for you according to the types of medical care you specified in your advance directive and/or by the person you chose as your surrogate. However, it is important to make sure that your family, health care providers, and others who might be contacted know that you have an advance directive. They also need to have a copy of the directive so that it can be used in your medical treatment.

How Will My Doctor Know That I Have an Advance Health Care Directive?

If you have any type of advance directive, tell people close to you that you have one and where it is kept. Give copies of your advance directive to your proxy or surrogate agent, family members, and friends who would be contacted if you become seriously ill. Do not keep your advance directive locked up where no one can find it. It is up to you, your surrogate agent, or a family member to give a copy of your advance directive to your doctor and hospital.

Federal law requires hospitals, nursing homes, and other health care agencies to ask at the time of admission whether or not you have an advance directive and advance directive forms are also available at hospitals. If you are unable to answer the question or if the advance directive is not available, it may not be included in your medical record.

And it may not be used to guide your care according to your wishes. Waiting to fill out an advance directive form until you are hospitalized is also not a good idea because you may not be able to complete the form when you are admitted. Even if you are, these forms are very general in nature and may not provide all of your wishes.

Must My Doctor Respect My Wishes As Written in My Advance Health Care Directive?

No. If a doctor or health care facility objects to your advance directive based on reasons of conscience, state law permits the doctor or agency to refuse to honor it. Health care providers must notify you of such policies at the time you are admitted. If a refusal occurs, the doctor and agency should help you or your agent transfer your care to a doctor who will honor the directive.

Will My Advance Health Care Directive Be Used If I Am Taken to an Emergency Room?

Your advance directive is valid in an emergency room only if the health care providers there know about it. In serious emergency situations, it may not be possible for health care workers to know that you have an advance directive before emergency medical care is delivered. If a family member or friend calls Emergency Medical Services at a time you cannot speak for yourself, your advance directive may not be honored. See the information about the non-hospital DNAR in the section "Types of Advance Directives." This is another reason that it is important for your family to know your wishes before such a situation happens.

What Happens If I Do Not Have an Advance Health Care Directive?

It is estimated that a little more than a quarter of US adults have advance directives. If you do not have an advance directive, you may receive medical care that you do not want. If there is no advance directive, the doctor may ask your family about your treatment. Generally, state agency laws require that the spouse (unless legally separated) is asked first, followed by adult children, parents, and adult brothers and sisters. However, some states do not have such laws requiring consultation with family members. It is not uncommon for family members (especially distant ones) not to know what you would want. In addition, family members may disagree on certain aspects of your care, which may result in delays or your not getting the care you want. It is also unlikely that a close friend will be consulted without an advance directive naming that person as a surrogate. In some situations, a court may appoint a legal guardian to make health care decisions if you do not have an advance directive. This is why it is important to express your wishes in a written advance directive ahead of time and to discuss your wishes with your doctor and those close to you.

Do I Need a Lawyer to Write My Advance Health Care Directive?

Although a lawyer can be helpful to you, you do not need a lawyer to write your advance directive. Some states have required forms, and all states have specific requirements. Sample forms and directives that meet your state's requirements may also be available. For more information on getting a state form for advanced directives, you can consult the Additional Resources section or visit www.lastactspartnership.org on the Internet.

Can I Have an Advance Health Care Directive in More Than One State?

Most states have specific rules about what is recognized as a valid advance health care directive. Some states recognize an out-of-state directive if it meets the legal requirements of the state in which you want to use it. If you want to use an advance directive in a state other than that in which you signed it, or if you want to have an advance directive in more than one state, it is a good idea to check with an attorney in order to avoid potential problems.

Does Having an Advance Health Care Directive Affect My Life Insurance?

No. No one, including health insurance companies, can require you to have or prevent you from having an advance directive. Having an advance directive will not affect any terms of your life insurance.

Does Having an Advance Health Care Directive Affect My Care?

Having or not having an advance directive will not affect the quality of your care. Treatment and comfort measures continue to be offered. You have not given up your right to make any decisions about your care when you are able to do so. The advance directive only takes effect in situations where you cannot speak for yourself. At that point, certain cure measures may be withheld if that is requested in your advance directive. In addition, any competent individual can change or revoke his or her advance health care directive.

Can I Have a Living Will and a Power of Attorney for Health Care?

Yes. You can have a living will and a durable power of attorney for health care at the same time. Generally you can provide additional instructions in your advance health care directive for situations to which the living will does not apply. It is important to ensure that these documents are consistent so that there will be no confusion concerning your wishes when you are unable to make them known yourself. Some states also permit you to have a single, combined advance directive document. However, it is important to check your state's requirements to determine what is legally accepted in your state.

Can I Change My Mind About What Is Written in My Advance Health Care Directive?

Yes. Once you make an advance directive, you may change or revoke it at any time while you are competent to do so. If possible, changes should be signed, dated, and witnessed. You should inform your proxy or surrogate agent, family, and doctor if you change or cancel your advance directive. You should also destroy the old advance directive so there is no confusion on the part of your agent should you need it. Some states require that you notify your doctor in writing when you make changes to your advance directive.

Is My Advance Health Care Directive Valid If I Am at Home?

Someone who is dying but who is not a patient in a health care agency may face problems in having an advance directive honored in an emergency. Some states have addressed this issue by allowing 911 emergency medical service (EMS) providers to refrain from resuscitating terminally ill patients who are certified as having a "do not resuscitate" order written by a doctor. Some states require that homebound patients who want their advance directives honored have a special orange DNAR form (see Types of Advance Directives section) or wear a special bracelet that indicates "do not resuscitate." This is something that you should ask your local doctor and EMS about.

What Is a "Do Not Resuscitate" Order?

Do Not Resuscitate, or DNR, is an order written by a doctor telling the health care team taking care of you that CPR is not to be used if your heart or breathing suddenly stops. Advance directives often include instructions not to start CPR, but this may be difficult to honor in emergencies when no one is aware that you have an advance directive. Any time you are admitted to any hospital or facility, be sure that your doctor and nurses know if you do not want CPR.

What Are "End-of-Life Decisions?"

End-of-life decisions are those decisions you can make about how you wish to be cared for and treated when you are dying. End-of-life decisions can include whether to accept or refuse life-sustaining treatments. An advance health care directive is one way to communicate to others your decisions based on your values and priorities while you are still able to do so.

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