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Cat# 1473
PO10405
Rev 01

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Having your Say: Advance Directives



A Consumer's Guide

Experience shows that a catastrophic medical event, such as an accident or a stroke, can leave a person incapacitated and unable to make decisions or to communicate with others. That leaves treatment decisions concerning what is in your best interest up to family members, significant others, health care providers or the judicial system. In order to avoid this difficult situation, all adults — not just adults with chronic diseases or other medical conditions — should plan for their future health care treatment preferences and complete an Advance Directive document that specifies personal preferences regarding acceptable and unacceptable medical treatments.

There is a fairly easy way to stay in control — to “Have Your Say” — about these events that are often fraught with emotions. An Advance Directive document can provide specific guidance regarding a person's treatment preferences in a situation such as an irreversible coma following a debilitating stroke.



Two types of Advance Directives

There are two legal forms of an Advance Directive: 1) a Living Will; and, 2) a Medical Power of Attorney (which may also be called a “durable power of attorney for health care” or “health care proxy”).

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 or to communicate your preferences. It is best to complete an Advance Directive as part of a strategy for financial planning, retirement or long term health care. Preparation avoids having to deal with this matter in the event of unexpected serious illness or debilitation.

Living Will

A Living Will generally states the kind of medical care you prefer (or do not want) if you become unable to make your own decision or cannot communicate. It is called a “Living Will” because it takes effect while you are still living.

Most states have their own Living Will forms, each somewhat different. It may also be possible to complete and sign a preprinted Living Will form available in your own community, draw up your own form, or simply write a statement of your preferences for treatment. Generally a Living Will needs to be signed in the presence of two witnesses, and in

Typically, a person may not know what medical treatments he or she may prefer or reject. The advantage of preparing an Advance Directive is that the process serves as a guide for those who may need to make informed decisions regarding major treatments such as tube feeding or ventilator care. You decide in different scenarios how you wish to be treated and even “if” you wish to be treated. Since an Advance Directive prescribes your care plan if you are incapacitated, it may be wise to involve family, significant others, a religious advisor, your physician, other medical professionals or an attorney (however, an attorney may not be required to complete this document).



Each state government may regulate the preparation of an Advance Directive differently. This makes it important to work within a state’s framework to ensure that health care providers, including nursing facilities and assisted living residences, honor your choices regarding, for example, situations involving permanent coma, persistent vegetative state, brain death, and comfort care.

some states it must also be notarized. You may also wish to speak to an attorney, your physician, health care or long term health care provider to be certain the Living Will is properly prepared to ensure that your wishes are understood and followed. An Advance Directive should be completed prior to there being any question about competency of the individual, as when diseases such as Alzheimer's or other dementias are present.

Medical Power of Attorney

A Medical Power of Attorney is a signed, dated, and witnessed document — some states require notarization too — naming another person, such as a husband, wife, daughter, son, or significant other as your “agent” or “proxy” to make medical decisions for you if you are no longer capable of making them or unable to communicate your preferences. You can include instructions about any treatment you wish to avoid.



In selecting your health care agent, it is important to communicate with this person in advance and that they agree to the designation; they could be the ones making treatment decisions for you if future medical situations require it. The agent needs to have reached majority age for your jurisdiction, and not be a health care provider that is treating you. Be sure to verify any other exclusion in your state.

Note that a Medical Power of Attorney and the more commonly known “Power of Attorney” — often referred to as Non-Durable Power of Attorney — are not the same. Power of Attorney allows a person to act on matters you specify, such as financial matters. Generally speaking, the person holding the Power of Attorney cannot also be designated as the Medical Power of Attorney. Again, this information needs to be confirmed for your state.

Living Will vs. Medical Power of Attorney

It might be best to have a Living Will and appointing a health care agent or proxy. However, in some states, laws may make it better to have one or the other. It may also be possible to combine both documents into a single document that describes treatment choices in a variety of situations — you might want to seek medical advice about these situations and choices — and names your health care agent.



Designating a health care agent as part of a Medical Power of Attorney provides more flexibility for future decisions unanticipated in a Living Will. A health care agent, along with a written Living Will, can provide guidance in the absence of

the health care agent or support decisions made by the health care agent based on knowledge of your wishes.

Modifying an Advance Directive

You may modify, update or even cancel an Advance Directive at any time in accordance with state law. Any change or cancellation should be written, signed, and dated in accordance with state law, and copies should be given to your doctor or to others to whom you may have given copies of the original documents. Be sure to notify your health care agent of any changes. Some states allow an Advance Directive to be changed by oral statement but, if possible, it is always preferable to put your changes in writing.

If you change or cancel an Advance Directive while you are in any health care setting, the provider of those services should be advised of your decision with new documents to replace any outdated ones.

Even without a change in writing, your wishes stated verbally to your doctor may carry more weight than a Living Will or Medical Power of Attorney, as long as you are competent to make decisions and can communicate your wishes. Again, be sure to clearly express your wishes and be sure that they are understood. It is always better if there are witnesses to your statements.



Retrieving the Advance Directive

Make sure that someone, such as a close family member, legal advisor etc., knows that you have an Advance Directive and knows where it is located. In the case of a health care proxy be sure that person has a current copy. You should also consider the following:

- If you spend a great deal of time in more than one state, you should consider having an Advance Directive in each state. Be sure to keep a copy in each location that you reside.
- If you have an Advance Directive — that is, a Living Will or Medical Power of Attorney — give a copy to your health care agent or health care proxy among others.
- Give your physician and the long term health care facility (e.g. a nursing facility or assisted living residence), or other health care provider, a copy of your Advance Directive and advise them to make it part of your permanent medical record.
- Keep a second copy of your Advance Directive in a safe place where it can be found easily if it is needed. However, do not keep in a safe deposit box as that is not easily accessible to others.
- Keep a small card on your person that states that you have an Advance Directive, where it is located, and who your agent or proxy is if you have one.

Under federal law, when you are admitted to most health care settings you will be asked if you have an Advance Directive. If so, the facility will want a copy as part of your medical record.

Finally, as you've read in this pamphlet, an Advance Directive may prevent anguish and turmoil within families and provide clear guidance to health care and long term care providers. An Advance Directive should be considered an essential component of future planning just as much as financial planning, life or disability insurance or drawing up a will.

Additional information on Advance Directives

For more information, contact personnel at a nursing facility, assisted living center, or residential care facility. Hospitals and other health care providers should also have information.

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Complete a Web search for “Advance Directives” as there are several commercial sites that provide forms by state.

Titles in This Series Include:

- *A Consumer's Guide To Nursing Facilities*
- *A Consumer's Guide To Assisted Living And Residential Care*
- *Understanding Long Term Care Insurance*
- *Paying For Long Term Care*
- *Caring For Someone With Alzheimer's*
- *Having The Conversation About Long Term Care*
- *Living In A Nursing Facility: Myths And Realities*
- *Tips On Visiting Friends and Relatives*
- *Consider A Career in Long Term Care*

To order:

1-800-628-8140

www.LongTermCareLiving.com

This booklet is intended to provide general information regarding this topic. The reader is encouraged to seek advice on specific information from a professional with knowledge regarding the legal requirements for Advance Directives in your state.