



Advance Directives

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INTRODUCTION

An advance directive is a personal, legal document that is created in preparation for use during a time when an individual is not able to express his or her own wishes concerning medical care should he or she become incapacitated.¹ The duration of the impairment may be very short or may extend to the end of life. The inability to take care of one's own needs may occur suddenly and unexpectedly or may be the result of an ongoing and worsening illness.² The document gives the patient a say in his or her medical care, even when he or she is unable to make his or her wishes known at the time. Every adult should consider preparing an advance directive, but each individual hopes that the document will never have to be referenced.

LEARNING OBJECTIVES

- Examine the legislation that governs the application of advance directives
- Compare and contrast the different types of advance directive
- Assess the benefits of an advance directive
- Explain the requirements and protocol for a DNR order
- Evaluate the differences between “durable power of attorney” and “limited power of attorney”

PATIENT SELF-DETERMINATION ACT OF 1990

The Patient Self-Determination Act (PSDA) of 1990 requires that health care facilities offering inpatient care, such as nursing homes and hospitals, as well as some home health agencies and health maintenance organizations (HMOs), pro-



vide information concerning advance directives by federal law. There are four basic components to the PSDA:

1. At the time of admission to the health care facility, each patient must be provided with information, in writing, about the way that the facility recognizes advance directives as well as a description of his or her rights to make health care decisions. The content of the written material is determined by each state.
2. A representative of the facility should ask the patient if he or she has prepared an advance directive and document his or her answer in the patient record. If an advance directive has been prepared, it is the patient's responsibility to ensure that a copy of the document is available to the health care facility.
3. The facility should provide educational resources to their patients and staff concerning advance directives.

4. The facility should not show prejudice to patients who have or do not have an advance directive, meaning that an advance directive is not required.³

PATIENT'S BILL OF RIGHTS

Another document that supports the use of the advance directive is the Patient's Bill of Rights that was developed by the American Hospital Association in 1973, and revised in 1992, to support the Patient Self-Determination Act. The fourth right pertains to the advance directive and is as follows:⁴

4. The patient has the right to have an advance directive (such as a living will, health care proxy, or durable power of attorney for health care) concerning treatment or designating a surrogate decision maker with the expectation that the hospital will honor the intent of that directive to the extent permitted by law and hospital policy. Health care institutions must advise patients of their rights under state law and hospital policy to make informed medical choices, ask if the patient has an advance directive, and include that information in patient records. The patient has the right to timely information about hospital policy that may limit its ability to implement fully a legally valid advance directive.⁴

The entire Patient's Bill of Rights document may be viewed on the American Hospital Association's Web site at http://www.patienttalk.info/AHA-Patient_Bill_of_Rights.htm.⁴

TYPES OF ADVANCE DIRECTIVE

Two main types of documentation should be considered when assembling an advance directive. The first type is the durable power of attorney for health care, which is used to indicate that a proxy or surrogate, such as a family member, close friend or other representative (such as an attorney) has been named to make health care decisions if the patient is not able to do so for him or her self. The durable power of attorney for health care is also known in some areas as a health care proxy or a medical power of attorney.

The second type is the living will, which is used to specify the type of care that should be given or withheld should the patient become unable to communicate those wishes in a time of serious illness or injury. In some states, the advance directive is a combination of the durable power of attorney for health care and the living will on one form. The durable power of attorney and living will forms typically include the following general elements. Keep in mind that each state has forms specific to that state and the laws of the state.⁵ Many sources are available for locating the documents specific to each state. The Web site of the United States Living Will Registry, which can be found at <http://www.usliving-willregistry.com/forms.shtml>, provides links to the necessary documents for all 50 states and the District of Columbia.⁶ Some states have translated the documents and made them available in several languages.⁷

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Prior to completion of a durable power of attorney for health care, the individual preparing the document should carefully consider who should be granted the power of attorney. The term durable means enduring or long lasting, so there is no expiration date assigned to the power of attorney. If there is an expiration date assigned to the power of attorney, it is referred to as limited.⁸ The designee should be someone who is trustworthy, who will have the best interest of the patient at heart, and who is willing to follow the directions of the patient as stated in the document. Ideally, the individual preparing the document should seek permission from the designee and the two should meet to discuss and agree on the contents of the durable power of attorney for health care.⁶ The following example represents the required elements for a durable power of attorney for health care in the state of California. The durable power of attorney is actually part one of the California advance directive.⁹

- The name and other vital information (such as birth date) of the individual for whom the document is created is listed.

- The name and contact information for the individual designated as the proxy is listed, and one or two alternate proxies may also be named. Contact information for the alternates must also be listed.
- A statement authorizing the proxy to make health care decisions for the individual is provided and any exceptions are noted.
- A statement designating whether the proxy has immediate or delayed authority to begin making health care decisions is included. If the authority is delayed, a date or set of conditions is provided. For example, the condition may be that the proxy will take over decision making when a conclusion is made by the patient's physician that he or she is no longer competent.
- The obligations of the proxy are listed, and any special instructions are provided. Typically, the instructions are included in the living will. There may also be a clause indicating the proxy's postmortem responsibilities and instructions that relate to such items as making organ donations, giving permission to conduct an autopsy and making arrangements for care or disposal of the remains.
- A statement may also be included that suggests that the proxy become the legal conservator if court action is necessary.
- The document must be signed by the patient, the proxy and the alternates, and be properly witnessed or notarized according to state law. Typically, the proxy is not allowed to sign as the witness.⁹

LIVING WILL

Prior to completion of a living will, the individual preparing the document should think carefully about the type of health care that he or she would like to receive should the need to implement the document arise. As difficult as it may be, the individual should also consider discussing his or her wishes with family members or close friends prior to or during preparation of the living will so that there are no surprises when the contents of the document are implemented. The document should be specific to the state in which the indi-

vidual resides.⁶ The following example represents the required elements for a living will in the state of California.⁹

- The name and other vital information (such as birth date) of the individual for whom the document is created is listed.
- Specific instructions for care to be given. For example, the living will may contain a clause similar to this one quoted from the California document: “I want my life prolonged as long as possible within the limits of generally-accepted health care standards.”⁹
- Specific instructions for care not to be given. For example, the living will may contain a clause similar to this one quoted from the California document:
*I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the risks and burdens of treatment would outweigh the expected benefits.*⁹
- Specific instructions for care to be retracted, if necessary, are provided, as well as a description of the circumstances that would necessitate implementation of retraction of care. For example, emergency care may be implemented, but if the situation is later deemed hopeless, then treatment that was initiated earlier would be removed.
- A clause may be included in the living will that describes how pain management should be handled.
- Other choices or instructions may be added to the living will.⁹ Additional instructions to consider include (however are not limited to):
 - Intravenous hydration and nutrition
 - Insertion of feeding tubes
 - Mechanical ventilation
 - Dialysis
 - Antibiotic treatment
 - Experimental treatment
 - Surgery
 - Pain management
 - Comfort/hospice care

- The living will may contain a clause with instructions for donation of anatomic structures, which may be as general as to state that any needed structure may be removed, or as specific as listing the structures. Donation of anatomic structures may be related to transplantation, therapy, research or educational purposes.
- The name and contact information for the individual designated as the primary care physician is listed, and one or two alternates may also be named. Contact information for the alternates must also be listed.
- The living will must be signed, dated and witnessed appropriately. Typically, the witness(es) must know the author (or receive proof of identity) of the living will but not be a close relative, not be named as a beneficiary to the estate, not be listed as the proxy and not be responsible for the care of the author.⁹

DO NOT RESUSCITATE

The do not resuscitate (DNR) order is a special type of advance directive that only applies to withholding administration of cardiopulmonary resuscitation (CPR) and advanced cardiac life support (ACLS) in the event of cardiac or respiratory arrest. Care to provide comfort and analgesia to the patient is not withheld. DNR orders are typically implemented by the patient (or his or her health care proxy) when he or she is terminally ill or is suffering from a condition that is not reversible.¹⁰ The DNR order may contain a clause that would allow administration of CPR in the event of choking or if the patient suffers trauma such as from a motor vehicle accident.²²

State laws that apply to DNR orders vary. In some states, DNR orders may apply only to patients confined to a health care facility such as a hospital or a skilled nursing facility. The DNR order must be signed by both the patient (or the health care proxy) and the physician. In some states, the document must also be notarized or contain the signatures of one or more witnesses. In other states, the properly-signed DNR order may apply to prehospital care administered by emergency responders. To alert first responders to his or her wishes the patient may wear an

alert bracelet or necklace containing information about the DNR order. In some states, a database listing patients with DNR orders is maintained and easily accessible by emergency personnel.¹⁰

The care providers must be aware of the DNR order, and in some states the DNR order must be signed by the provider. If a care provider assigned to the patient is not morally or professionally able to carry out the request to withhold this type of treatment, care of the patient must be transferred to a provider who will follow the order.¹⁰

In some states, the DNR order may be suspended during surgery and reinstated afterward. The premise is that a signed surgical consent constitutes permission to perform a life-saving act that supersedes the DNR order.¹¹

DURABLE POWER OF ATTORNEY

Durable power of attorney actually does not have to do with health care, but with all other types of decisions concerning legal matters. When preparing an advance directive that relates to health care, the individual should also consider who will be appointed to take care of his or her business, finances and property if he or she is unable to do so. The durable power of attorney grants the designated individual the power to act on behalf of the author.¹²

LAST WILL AND TESTAMENT

The last will and testament is another legal document that should be prepared in advance of need. The last will and testament provides specific instructions about what the author would like done with his or her estate after death occurs. Instructions for disposal or disbursement of real estate and personal property are included.¹³

EFFECTIVENESS AND AVAILABILITY OF DOCUMENTS

All legal documents are durable (unless otherwise specified), meaning that they are effective continuously from the date that they are originated and properly witnessed or notarized until they are revised or revoked by the author. A copy of a current document is just as effective as the original. Copies of the document should be readily available to the author's attorney, proxy, close family members, friends and health care providers.¹⁴

REVISION AND REVOCATION

All legal documents can be revised or revoked at any time, verbally or in writing. Written documentation is always preferred. The author may destroy the existing forms, update the existing forms, or create new ones. All parties should be



A DNR order applies to withholding CPR and ACLS.

informed of any changes and provided with copies of the most current documents.¹⁵

CONCLUSION

Advance directives are important because an individual's wishes concerning his or her medical care are known to the health care providers and the family members; which may make certain end-of-life decisions easier to make.¹⁶

The following four items are crucial in ensuring that all necessary documentation is completed.

1. Determine which forms will be utilized and obtain all necessary forms that are specific for the state of residence.
2. Determine who will be named as the health care proxy and discuss the responsibilities with that individual.
3. Complete the necessary forms and have them properly witnessed or notarized according to the state regulations.
4. Provide copies as needed to family, friends and medical care providers.¹⁵

The advance directive may be verbal, however a written document provides clear instructions and, if written clearly, does not allow for misinterpretation and misunderstanding. Legal documents may be revoked and revised at any time.

Lack of preparation of an advance directive may lead to unnecessary personal turmoil and legal action.

ABOUT THE AUTHOR

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