

Advance Directives

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



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INTRODUCTION

A new federal law required 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 homes, home health agencies, hospice programs, and health maintenance organizations to distribute this description to adult patients, effective December 1, 1991. 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 or to whom you have appointed to make those decisions. 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 document can help you understand your right to make decisions in advance of treatment. This is an important matter and you may wish to talk to your family, close friends or personal advisors, your doctor, and your attorney before deciding whether you want an Advance Directive.

QUESTIONS & ANSWERS

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 Directive are:

- A "Living Will"
- A "Durable 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 choices for you, if you become unable to make decisions about your medical treatment. In short, an Advance Directive can help you make decisions about your future medical treatment. You can say "Yes" to treatment you want or say "No" to treatment you do not want.

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 not adopted any particular laws or form of Living Will; however, Living Wills are not prohibited in Nebraska. A Living Will should clearly state your choice with regard to health care.

What is a Durable Power of Attorney for Health Care?

A "Durable 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 about any treatment you do or do not want. In general, a power of attorney can give to the agent or representative the same powers an individual may have or could enforce on his/her behalf. Nebraska has laws on Durable Powers of Attorney, which allow an agent to make medical decisions for the person giving the power of attorney.

Must a Health Care Provider Follow an Advance Directive?

Our health care providers have a policy concerning Advance Directives. It is the patients responsibility to discuss their specific Advanced Directive wishes with their health care provider.

The federal law regarding Advance Directives only requires health care providers, unless they object on the basis of conscience, to follow state laws or court decisions which recognize Advance Directives.

When Do Advance Directives Take Effect?

Your Advance Directive would take 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 Directives.

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, or others who could help you understand your choices. Your Advance Directive should be personal to you and should reflect your own personal choices. Boone County Health Center has forms available upon request.

If I Have An Advance Directive In One State, Will It Be Followed in a Different State?

The laws are unclear about honoring an Advance Directive in one State if it was written in a different State. However, because an Advance Directive tells your wishes regarding medical care, it may be honored wherever you are, if it is made known. If, however, you spend a great deal of time in more than one state, you may wish to consider having your Advance Directive meet the laws of both states, as much as possible.

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. 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. The written document will also be sent with you to another hospital if you are transferred.

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 those important questions, and will relieve your loved ones of the burden of trying to guess what you want.

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.

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 Durable Power of Attorney, give a copy or the original to your "agent" or "representative".
- Ask your doctor to make your Advance Directive 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.

Keep a small card in your purse or wallet, which states that you have an Advance Directive and where it is located and who your "agent" or "representative" is, if you have named one.

For more information, speak to our Social Worker 402-395-3109 or Case Manager 402-395-3216.

This paper provides general information about Advance Directives. It is not designed 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.