

MEDICAL CARE DECISIONS AND ADVANCE DIRECTIVES: What You Should Know

Who decides about my medical care or treatment?

If you are 18 or older and are able to make and communicate health care decisions, you have the right to make decisions about your medical and mental health treatment. You should talk to your physician or other health care or mental health provider about any treatment or procedure so that you understand what will be done and why. You have the right to say yes or no to treatments recommended by your physician or mental health provider. If you want to control decisions about your medical and mental health care even if you become unable to make decisions or to express them yourself, you should be sure to tell your physician or mental health provider and your family and friends what you want, but you also should have an advance directive.

Advance Directive

WHAT IS AN ADVANCE DIRECTIVE?

An advance directive is a set of directions you give about the medical and mental health care you want if you ever lose the ability to make decisions for yourself. North

Carolina has three ways for you to make a formal advance directive. These include: *living wills*; *health care powers of attorney*; and *advance instructions for mental health treatment*.

DO I HAVE TO HAVE AN ADVANCE DIRECTIVE AND WHAT HAPPENS IF I DON'T?

Making an advance directive is your choice. If you become unable to make your own decisions, and you have no advance directive, your physician or mental health care provider will consult with someone close to you about your care. Discussing your wishes for medical and mental health treatment with your family and friends now is strongly encouraged, as this will help ensure that you get the level of treatment you want when you can no longer tell your physician or other health care or mental health providers what you want.

Living Will

WHAT IS A LIVING WILL?

In North Carolina, a *living will* is a legal document that tells others that you want to die a natural death if you:

- ☐ become incurably sick with an irreversible condition that will result in your death within a short period of time;
- ☐ are unconscious and your physician determines that it is highly unlikely you will regain consciousness; or
- ☐ have advanced dementia or a similar condition which results in a substantial cognitive loss and it is highly unlikely the condition can be reversed.

In a *living will*, you can direct your physician not to use certain life-prolonging treatments such as a breathing machine ("respirator" or "ventilator"), or to stop giving you food and water through a tube ("artificial nutrition or hydration" through feeding tubes and IVs).

A *living will* goes into effect only when your physician and one other physician determine that you meet one of the conditions specified in the *living will*. Discussing your wishes with family, friends, and your physician now is strongly encouraged so that they can help make sure that you get the level of care you want at the end of your life.

Health Care Power of Attorney

WHAT IS A HEALTH CARE POWER OF ATTORNEY?

A *health care power of attorney* is a legal document in which you can name a person(s) as your health care agent(s) to make medical and mental health decisions for you if you become unable to decide for yourself. You can say what medical or mental health treatments you would want and not want. You should choose an adult you trust to be your health care agent. Discuss your wishes with that person(s) before you put them in writing. Again, it is always helpful to discuss your wishes with your family, friends, and your physician or eligible psychologist. A *health care power of attorney* will go into effect when a physician states in writing that you are not able to make or to communicate your health care choices. If, due to moral or religious beliefs, you do not want a physician to make this determination, the law provides a process for a non-physician to do it.

Advance Instruction for Mental Health Treatment

WHAT IS AN ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT?

An *advance instruction for mental health treatment* is a legal document that tells physicians and mental health providers what mental health treatments you would want and what treatments you would not want, if you later become unable to decide for yourself. You also can name a person to make your mental health decisions at that time. Your *advance instruction for mental health treatment* can be a separate document or combined with a *health care power of attorney* or a *general power of attorney*. An *advance instruction for mental health* may be followed by a physician or mental health provider when your physician or an eligible psychologist determines **in writing** that you are no longer able to make or communicate mental health care decisions.

Other Questions

HOW DO I MAKE AN ADVANCE DIRECTIVE?

You must follow several rules when you make a formal *living will*, *health care power of attorney* or an *advance instruction for mental health treatment*. These rules are to protect you and ensure that your wishes are clear to the physician or mental health provider who

may be asked to carry them out. A *living will*, a *health care power of attorney* and an *advance instruction for mental health treatment* must be: (1) written; (2) signed by you while you are still able to make and communicate health care decisions; (3) witnessed by two qualified adults; and (4) notarized.

WHO IS A QUALIFIED WITNESS?

A qualified witness is a competent adult who sees you sign, is not a relative, and will not inherit anything from you upon your death. The witness cannot be your physician, a licensed employee of your physician or mental health providers, or any paid employee of a health care facility where you live or that is treating you.

ARE THERE FORMS I CAN USE TO MAKE AN ADVANCE DIRECTIVE?

Yes. Forms for *living wills*, *health care powers of attorney*, and *advance instructions for mental health treatment* may be obtained from the North Carolina Secretary of State website, at: www.secretary.state.nc.us/ahcdr. These forms meet all the rules for a formal advance directive. For more information, visit the website, or call 919-807-2167, or write to:

Advance Health Care Directive Registry
Department of the Secretary of State
PO Box 29622
Raleigh, NC 27626-0622

WHAT HAPPENS IF I CHANGE MY MIND?

- ❑ You can cancel your *living will* anytime by communicating your intent to cancel it in any way. You should inform your physician and those closest to you about your decision. It is also a good idea to destroy copies of it.
- ❑ You can cancel or change your *health care power of attorney* while you are able to make and communicate your decisions. You can do this by executing another one and telling your physician and each health care agent you named of your intent to cancel the previous one and make a new one, or by communicating your intent to cancel it to the named health care agents and the attending physician or eligible psychologist.
- ❑ You can cancel your *advance instruction for mental health treatment* while you are able to make and communicate your decisions by telling your physician or mental health provider that you want to cancel it.

WHO SHOULD I TALK TO ABOUT AN ADVANCE DIRECTIVE?

You should talk to those closest to you about an advance directive and your feelings about the health care you would like to receive. Your physician or health care provider can answer medical questions. A lawyer can answer questions about the law. A trusted advisor or clergy member might be able to help with more personal questions.

WHERE SHOULD I KEEP MY ADVANCE DIRECTIVE?

Keep a copy in a safe place where your family members can get it. Give copies to your family, your physician or mental health providers, your health care agent(s), and any family members or close friends who might be asked about your care should you become unable to make decisions. Always remember to take a copy of your Advance Directive with you for hospital admissions, emergency room visits, clinic visits for cardiac procedures, etc. so it can be put into your chart. Also, consider registering your advance directives with the North Carolina Advance Health Care Directive Registry: www.secretary.state.nc.us/ahcdr.

WHAT IF I HAVE AN ADVANCE DIRECTIVE FROM ANOTHER STATE?

A *living will* or *health care power of attorney* created outside North Carolina is valid in North Carolina if it appears to have been executed in accordance with the applicable requirements of the place where it was created or of this State.

WHERE CAN I GET MORE INFORMATION?

Contact your health care provider or attorney, or visit the North Carolina Department of the Secretary of State Advance Health Care Directive Registry website at: www.secretary.state.nc.us/ahcdr.

ARE THERE OTHER FORMS AVAILABLE THAT WILL HELP ENSURE MY HEALTH CARE DECISIONS ARE KNOWN AND FOLLOWED?

Other forms that you may want to be aware of include: *Authorization to Consent to Health Care for a Minor*, *Organ Donor Card*, *Portable Do Not Resuscitate (DNR) Orders*, and *Medical Orders for Scope of Treatment (MOST)*.

- ❑ An *authorization to consent to health care* for a **minor** is a legal document that allows parents with sole or joint legal custody of a minor (under 18) to authorize another adult to make certain health care decisions for their child or children in their absence. For more information, go to: **www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_32A/GS_32A-34.html**.
- ❑ An *Organ Donor Card* is a document that allows you to donate your organs. You can become an organ donor by expressing your desire to donate in your will, by authorizing the NC Division of Motor Vehicles to put an organ donor symbol on your driver's license or identification card, by completing an *organ donor card* or other document, or by authorizing that a statement or symbol be included on the NC Organ Donor Registry. You also may authorize an agent to make an anatomical gift of organs under a *health care power of attorney*. To make sure your wishes are honored, you should discuss organ donation with your family, friends, and health care providers so they know and can carry out your wishes. You can get an *organ donor card* from the North Carolina

Department of the Secretary of State Advance Health Care Directive Registry at: **www.secretary.state.nc.us/ahcdr**.

- ❑ A *Portable Do Not Resuscitate (DNR) Order* is a medical order that can be followed by emergency medical responders or other health care providers that tells them not to attempt cardiopulmonary resuscitation (CPR) if your heart and breathing stop (cardiopulmonary arrest). Because it is portable, it can be followed in different settings (for example, in your home, in a nursing home, or in a hospital). Since a *Portable DNR Order* is a physician or medical order it must be signed by your physician (in NC, physician assistants and nurse practitioners also may issue these orders). It is effective when it is completed and signed by your physician (or physician assistant or nurse practitioner). It can be cancelled by destroying or writing "void" on the original form. *Portable DNR Orders* must be obtained from your physician. For more information, be sure to talk to your physician or other health care provider.
- ❑ A *Medical Order for Scope of Treatment*, called a MOST form, like a *Portable DNR Order*, is a medical order that can be followed in different settings such as in

the home, nursing home, hospital, etc. A *MOST form* contains instructions for CPR and also addresses other end-of-life treatments that you may or may not want to receive. For example, a *MOST* can tell emergency medical responders and other health care providers what level of treatment you would like to receive, whether you would like to receive antibiotics, and artificial nutrition and hydration through tubes. While a *MOST* is a medical order that must be signed by your physician (or physician assistant or nurse practitioner), it also must be signed by you or, if you are not able to make or communicate your health care decisions, by someone who is legally recognized to speak for you. A *MOST* can be cancelled by destroying the original form or indicating on the form that it is void. A *MOST form* must be obtained from your physician. For more information, be sure to talk to your physician or other health care provider.

This document was developed by the North Carolina Division of Medical Assistance in cooperation with The Department of Human Resources Advisory Panel on Advance Directives 1991.
Revised 1999. Revised 2009

