

ADVANCE HEALTH CARE DIRECTIVES

What is an Advance Health Care Directive?

An advance health care directive is a record stating your wishes and instructions regarding important decisions for your medical care. If you are no longer able to make such decisions, your health care provider is required to refer to your advance health care directive.

Why Should I Have an Advance Health Care Directive?

As a patient, you have the right to be informed about your medical condition and alternative forms of treatment, participate in decisions concerning your care, and have your health care wishes respected. A directive protects your right to make decisions about your own medical care when you are unable to communicate these decisions yourself. It also provides guidance to your family and health care providers in the event that you become incapacitated and are unable to make your choices known. Although directives may be spoken or written, it is best to prepare a written directive consistent with Maine law so that your wishes are accurately and legally documented.

What Is Included in an Advance Health Care Directive?

A directive may consist of any or all of the following components: a power of attorney for health care, a living will, instructions regarding organ donation, and instructions regarding funeral and burial arrangements.

1. Power of Attorney for Health Care

A power of attorney for health care authorizes an agent of your choosing to make health care decisions for you. You do not give up the right to make your own decisions while you are able to do so. If you become incapacitated, the agent must make decisions in accordance with any instructions that you gave and wishes that you made known while you were competent. If you have not left specific instructions, the agent must consider your personal values and attempt to make decisions consistent with your best interest.

You may limit the kinds of decisions that your agent can make for you. If you do not place any limits on your agent's authority, the agent will have the general authority to make any and all health care decisions for you, including, among other things, choice of physician, whether to consent or withhold consent to any care or treatment, whether to place you in an institution, and whether you should be kept alive by artificial means in the event that you become terminally ill.

Before naming someone as your agent, you should first ask if he or she is willing and able to act as your agent. You should also discuss your expectations with that person to be sure that your wishes will be carried out. The person you choose as your agent should be someone who you trust, who you feel confident will honor your wishes, and who will

spend the time that is needed to aid in your medical care in the event that it becomes necessary. You may name other individuals as backup agents in case the agent you have chosen is unavailable to serve as your agent when it becomes necessary.

One purpose for creating an advance health care directive and designating an agent is to avoid the need for appointment of a guardian. However, you may consider including a provision in your directive that nominates your designated agent, or some other individual of your choosing, to serve as your guardian in the event that one is necessary. By doing so, you increase the likelihood that your chosen agent will be able to act for you even if unforeseen circumstances arise.

2. Living Will

A living will allows you to provide specific health care instructions for your agent and health care providers to follow. It allows you to express your wishes about end-of-life decisions in the event that you are in a terminal condition and can no longer communicate with your doctor. While certain people may want to prolong life regardless of the possibility of recovery, others may want to refuse medical measures if the chances of recovery are poor. Your living will may specify which life-prolonging measures you do or do not want your health care provider to use as part of your care. Examples of life-prolonging measures include cardiopulmonary resuscitation (CPR), the use of electric shock to restart your heart, tube feeding, respirators, and kidney dialysis. You may also indicate whether you would like to receive or refuse artificial nutrition and hydration and whether you would like to receive treatment for the relief of pain and discomfort even if it may hasten your death.

3. Organ Donation

You may also state whether you wish to have your organs donated at death, and for what purposes your organs may be used. For example, you may donate organs for the purpose of transplant or therapy for another person, or you may allow your organs to be used for research or education. If organ donation is important to you, you should discuss your wishes with your family so that there is no confusion after your death. You might also consider registering with the National Donate Life Registry at www.registerme.org. You may also indicate your intention to donate on your driver's license by visiting the Maine Secretary of State's website. Be sure that if you register both ways and then change your mind, you revise your intentions with both registries as well.

4. Funeral and Burial Arrangements

In your directive, you may also record your preferences regarding custody of your bodily remains, funeral services, and burial arrangements. Such preferences may include, for example, whether you would like to be cremated, where you would like to be buried, or where you would like your funeral to be held.

How Do I Create an Advance Health Care Directive?

Maine law requires that your directive be witnessed by two competent adults. It is best if those witnesses are not family members. Do not have the person you name as your agent sign as a witness. If you regularly travel out of state, you should also have your directive witnessed by a notary public to improve the likelihood that the directive will be honored in other states.

At Rudman Winchell and the Maine Elder Law Firm, we offer a form that can be used to create a directive. There are also several other forms that are available, including the Maine Hospital Association's Maine Health Care Advance Directive form, as well as the Five Wishes form, which has been determined to be consistent with the law in 42 states and the District of Columbia. There are also forms based on different religions.

What Do I Do After I Have Created My Advance Health Care Directive?

After you have completed your directive, you should provide a copy to all of your health care providers and to any facility at which you anticipate receiving any treatment in the future. You should also discuss the location and contents of your directive with your chosen agents. You should also consider discussing the contents of your directive with your family members and loved ones.

It is important to remember that the law relating to making and recording decisions regarding health care is subject to change. New legislation may change the law and may affect documents you have prepared. It is wise to review any written instructions you have made regarding health care every five years to affirm that the documents still reflect your wishes.

How Do I Revoke or Change My Advance Health Care Directive?

You have the right to revoke or replace your directive at any time, as long as you are still competent. You should write "canceled" or "revoked," with the date and your signature, across the original of any directive you wish to revoke or replace. Notify anyone to whom you gave the directive that you have canceled it, ask them to destroy their copies, and provide them with a copy of any new directive you make.

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

If you do not have a directive but you become unable to make your own decisions regarding your medical care, a surrogate will have some limited ability to make health care decisions on your behalf. The law provides a prioritized list of individuals who may act as your surrogate:

- your spouse or an adult who shares an emotional, physical, and financial relationship similar to that of a spouse;
- your parents;
- your adult children;
- your siblings; or
- your adult grandchildren or more distant relatives.

If you do not have any family members, your health care provider may consult a concerned adult outside your family who knows your wishes and values.

Similar to an agent, a surrogate must follow any directions or wishes you have expressed that are made known to the surrogate. If you have not left instructions and your wishes are unknown, the surrogate must make decisions in good faith based on your best interests.

Although family members in this position usually try to make the best decisions for a loved one, you should consider stating your wishes in a valid, written directive. By doing so, you can avoid the possibility that your family will disagree regarding your care, causing friction for them at a difficult time and possibly requiring them to go to court. At the very least, a directive can provide your family the peace of mind of knowing that your wishes are being carried out.

This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.

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