

NEBRASKA



Legal Documents
To Assure Future Health Care Choices

ADVANCE DIRECTIVES

YOUR RIGHT TO MAKE HEALTH CARE DECISIONS UNDER THE LAW IN NEBRASKA

I. INTRODUCTION

Nebraska and federal law give every competent adult, 19 years or older, the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject or discontinue. If you do not want to receive certain types of treatment or you wish to name someone to make health care decisions for you, you have the right to make these desires known to your doctor, hospital or other health care providers, and in general, have these rights respected. You also have the right to be told about the nature of your illness in terms that you can understand, the general nature of the proposed treatments, the risks of failing to undergo these treatments and any alternative treatments or procedures that may be available to you.

However, there may be times when you cannot make your wishes known to your doctor or other health care providers. For example, if you were taken to a hospital in a coma, would you want the hospital's medical staff to know what your specific wishes are about the medical care that you want or do not want to receive.

This booklet describes what Nebraska and federal law have to say about your rights to inform your health care providers about medical care and treatment you want, or do not want, and about your right to select another person to make these decisions for you, if you are physically or mentally unable to make them yourself.

To make these difficult issues easier to understand, we have presented the information in the form of questions and answers. Because this is an important matter, we urge you to talk to your spouse, family, close friends, personal advisor, your doctor and your attorney before deciding whether or not you want an advance directive.

QUESTIONS AND ANSWERS

GENERAL INFORMATION ABOUT ADVANCE DIRECTIVES

What are "Advance Directives"?

Advance directives are documents which state your choices about medical treatment or name someone to make decisions about your medical treatment if you are unable to make these decisions or choices yourself. They are called "advance" directives because they are signed in advance to let your doctor and other health care providers know your wishes concerning medical treatment. Through advance directives, you can make legally valid decisions about your future medical care.

Nebraska law recognizes 2 types of advance directives:

- 1) A Living Will Declaration.
- 2) A Power of Attorney for Health Care.

Do I have to have an Advance Directive?

No, it is entirely up to you whether you want to prepare any documents. But if questions arise about the kind of medical treatment that you want or do not want, advance directives may help to solve these important issues. Your doctor or any health care provider cannot require you to have an advance directive in order to receive care; nor can they prohibit you from having an advance directive. Moreover, under Nebraska law, no health care provider or insurer can charge a different fee or rate depending on whether or not you have executed an advance directive.

What will happen if I do not make an Advance Directive?

You will receive medical care even if you do not have any advance directives. However, there is a greater chance that you will receive more procedures or more treatment than you may want.

If you cannot speak for yourself and have not made an advance directive, your doctor or other health care providers will generally look to your family or friends for decisions about your care. But if your doctor or your health care facility is unsure or if your family members cannot agree, they may have to ask the court to appoint a person (called a guardian) to make those decisions for you.

How do I know what treatment I want?

Your doctor(s) must inform you about your medical condition and what different treatments can do for you. Many treatments have serious side effects. Your doctor must give you information, in language that you can understand, about serious problems that medical treatment is likely to cause. Often, more than one treatment might help you and different people might have different ideas on which is best. Your doctor can tell you the treatments that are available to you, but he cannot choose for you. That choice depends on what is important to you.

Whom should I talk to about Advance Directives?

Before writing down your instructions, you should talk to those people closest to you and who are concerned about your care and feelings. Discuss them with your family, your doctor, friends and other appropriate people, such as a member of your clergy or your lawyer. These are the people who will be involved with your health care, if you are unable to make your own decisions.

When do Advance Directives go into effect?

It is important to remember that these directives only take effect when you can no longer make your own health care decisions. As long as you are able to give "informed consent," your health care providers will rely on **YOU** and **NOT** on your advance directives.

What is “Informed Consent”?

Informed consent means that you are able to understand the nature, extent and probable consequences of proposed medical treatments and you are able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures **AND** you are able to communicate that understanding in any way.

How will health care providers know if I have any Advance Directives?

All hospitals, nursing homes, home health agencies, HMOs and all other health care facilities that accept federal funds must ask if you have an advance directive, and if so, they must see that it is made part of your medical records.

Will my Advance Directives be followed?

Generally, yes, if they comply with Nebraska law. Federal law requires your health care providers to give you their written policies and procedures concerning advance directives. A summary statement of those policies is provided to you at the back of this book. It may happen that your doctor or other health care provider cannot or will not follow your advance directives for moral, religious or professional reasons, even though they comply with Nebraska law. If this happens, they must immediately tell you. Then they must also help you transfer to another doctor or facility that will do what you want.

Can I change my mind after I write an Advance Directive?

Yes, at any time, you can cancel or change any advance directive that you have written. To cancel your directive, simply destroy the original document and tell your family, friends, doctor and anyone else who has copies that you have cancelled them. To change your advance directives, simply write and date a new one. Again, give copies of your documents to all the appropriate parties, including your doctor.

Do I need a lawyer to help me make an Advance Directive?

A lawyer may be helpful and you might choose to discuss these matters with him, but there is no legal requirement in Nebraska to do so. You may use the forms that are provided in this booklet to execute your advance directives.

Will a Nebraska Advance Directive be honored in another state?

The laws on advance directives differ from state to state, so it is unclear whether a Nebraska advance directive will be valid in another state. Because an advance directive is a clear expression of your wishes about medical care, it will influence that care no matter where you are admitted. However, if you plan to spend a great deal of time in another state, you might want to consider signing an advance directive that meets all the legal requirements of that state.

Will an Advance Directive from another state be honored in Nebraska?

Yes. An advance directive executed in compliance with another state's laws will be honored in Nebraska to the extent permitted by Nebraska law.

What should I do with my Advance Directives?

You should keep them in a safe place where your family members can get to them. Do **NOT** keep the original copies in your safe deposit box. Give copies of these documents to as many of the following people as you are comfortable with: your spouse and other family members; your doctor; your lawyer; your clergyperson; and any local hospital or nursing home where you may be residing. Another idea is to keep a small wallet card in your purse or wallet which states that you have an advance directive and who should be contacted. Wallet cards are provided for you at the back of this booklet for that purpose.

LIVING WILL DECLARATION

What is a “Living Will”?

A living will (officially called a “Declaration” in Nebraska) is a document which tells your doctor or other health care providers whether or not you want life-sustaining treatments or procedures administered to you if you are in a terminal condition or a persistent vegetative state. It is called a “living will” because it takes effect while you are still living.

Is a “Living Will” the same as a “Will” or “Living Trust”?

No. Wills and living trusts are financial documents which allow you to plan for the distribution of your financial assets and property after your death. A living will only deals with medical issues while you are still living. Wills and living trusts are complex legal documents and you usually need legal advice to execute them. You do not need a lawyer to complete your Nebraska living will.

When does a Nebraska Living Will go into effect?

A Nebraska living will goes into effect when:

- 1) Your doctor has a copy of it, and
- 2) Your doctor has concluded that you are no longer able to make your own health care decisions, and
- 3) Your doctor has determined that you are in a terminal condition or in a persistent vegetative state and the use of life-sustaining procedures will only prolong your death, and
- 4) Your doctor has notified a reasonably available member of your immediate family or your guardian of his intent to put the living will into effect.

What are “life-sustaining” procedures?

These are treatments or procedures that are not expected to cure your terminal condition or make you better. They only prolong dying. Examples are mechanical respirators which help you to breathe, kidney dialysis which clears your body of wastes, and cardiopulmonary resuscitation (CPR) which restores your heartbeat and breathing.

What is a “terminal” condition?

A terminal condition is defined as an incurable or irreversible condition for which administration of medical treatment will only prolong the dying process and without the administration of these treatments or procedures, death will occur in a relatively short period of time.

What is a “persistent-vegetative” state?

A persistent vegetative state means that a patient is in a permanent coma or state of unconsciousness, caused by illness, injury or disease. The patient is totally unaware of himself, his surroundings and environment, and to a reasonable degree of medical certainty, there can be no recovery.

Is a Living Will the same as a “Do Not Resuscitate (DNR)” order?

No. A Nebraska living will covers almost all types of life-sustaining treatments or procedures. A “Do Not Resuscitate” order covers two types of life-threatening situations. A DNR order is a document prepared by your doctor at your direction and placed in your medical records. It states that if you suffer cardiac arrest (your heart stops beating) or respiratory arrest (you stop breathing), your health care providers are not to try to revive you by any means.

Does a Nebraska Living Will apply if a woman is pregnant?

No. A Nebraska living will cannot go into effect if a woman is pregnant and it is probable that the child will develop to the point of live birth with the continued application of life-sustaining treatment.

Will I receive medication for pain?

Unless you state otherwise in the living will, medication for pain will be provided where appropriate to make you comfortable and will not be discontinued.

Can my doctor be sued or prosecuted for carrying out the provisions of a Nebraska Living Will?

No. The Nebraska Rights of the Terminally Ill Act states that a physician or any other health care provider cannot be subject to criminal or civil liability, or discipline for unprofessional conduct for carrying out the provisions of a valid Nebraska living will.

Does a Nebraska Living Will affect insurance?

No. The making of a living will, in accordance with Nebraska law, will not affect the sale or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy. In addition, the removal of life-support systems shall not, for any purpose, constitute suicide, homicide or euthanasia, nor shall it be deemed the cause of death for the purposes of insurance coverage.

Does a Nebraska Living Will have to be signed and witnessed?

Yes, you must sign (or have someone sign the document in your presence and at your direction, if you are unable to sign) and date the living will. Then it

must be witnessed by 2 qualified people or a notary public.

The only people who **CANNOT** witness your signature of the living will are:

- 1) Any person who is your life insurance provider; or
- 2) Any person who is your health insurance provider.

In addition, no more than one witness shall be an administrator or employee of a health care provider who is caring for you or treating you.

POWER OF ATTORNEY FOR HEALTH CARE

What is a Power of Attorney for Health Care (PAHC)?

A PAHC is a legal document which will allow you (the “principal”) to appoint another person (the “attorney-in-fact”) to make medical decisions for you if you should become temporarily or permanently unable to make those decisions yourself. The person you choose as your attorney-in-fact does not have to be a lawyer.

What is the difference between a “Power of Attorney” and a “Power of Attorney for Health Care”?

Normally a power of attorney deals only with personal and financial matters and it is no longer valid if you become unable to make your own decisions. A power of attorney for health care deals only with health care and becomes effective when you are no longer able to make your own decisions. A “Power of Attorney for Health Care” should contain the following or similar statement:

“This power of attorney shall become effective upon my disability or incapacity.”

OR

“This power of attorney shall not be affected by my subsequent disability or incapacity.”

Who can I select to be my Attorney-in-Fact?

You can appoint almost any adult to be your attorney-in-fact. You should select a person(s) knowledgeable about your wishes, values, religious beliefs, in whom you have trust and confidence and who knows how you feel about health care. You should discuss the matter with the person(s) you have chosen and make sure that they understand and agree to accept the responsibility.

You can select a member of your family, such as your spouse, child, brother or sister, or a close friend. If you select your spouse and the marriage is dissolved or annulled, the appointment of your spouse is revoked.

The following people **CANNOT** be appointed as your attorney-in-fact:

- 1) Your attending physician;

- 2) An employee of your attending physician, unless he/she is related to you by blood, marriage or adoption;
- 3) An owner, operator or employee of a health care provider in which you are a resident or patient, unless he/she is related to you by blood, marriage or adoption; or
- 4) Any person who is presently serving as an attorney-in-fact for 10 or more people, unless he/she is related to you by blood, marriage or adoption.

When does the PAHC take effect?

The PAHC only becomes effective when you are temporarily or permanently unable to make your own health care decisions and your attorney-in-fact consents to start making those decisions. Your attorney-in-fact will begin making decisions after your doctor, and another doctor, have decided that you are no longer able to make them. Remember, as long as you are able to make treatment decisions, you have the right to do so.

What decisions can my Attorney-in-Fact make?

Unless you limit his/her authority in the PAHC, your attorney-in-fact will be able to make almost every treatment decision in accordance with accepted medical practice that you could make, if you were able to do so. If your wishes are not known or cannot be determined, your attorney-in-fact has the duty to act in your best interest in the performance of his or her duties. These decisions can include authorizing, refusing or withdrawing treatment, even if it means that you will die. As you can see, the appointment of an attorney-in-fact is a very serious decision on your part.

Can there be more than one Attorney-in-Fact?

Yes. While you are not required to do so, you may designate alternates who may also act for you, if your primary attorney-in-fact is unavailable, unable or unwilling to act. Your alternates have the same decision-making powers as your primary attorney-in-fact.

Can I appoint more than one person to share the responsibility of being my Attorney-in-Fact?

You should appoint only **ONE** person to be your attorney-in-fact. Any others that you want to be involved with your health care decisions should be appointed as your alternates. If two or more people are given equal authority and they disagree on a health care decision, one of the most important purposes of the PAHC--to clearly identify who has the authority to speak for you--will be defeated. If you are afraid of offending people close to you by choosing one over another to be your attorney-in-fact, ask them to decide among themselves who will be your primary attorney-in-fact and select the others as alternates.

Can my Attorney-In-Fact be liable for decisions made on my behalf?

No. Your attorney-in-fact or your alternates cannot be held liable for treatment

decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs incurred for your care, just because he or she is your attorney-in-fact.

Can my Attorney-in-Fact resign?

Yes. Your attorney-in-fact and your alternates can resign at any time by giving written notice to you, your doctor or the hospital or nursing home where you are receiving care.

Does a Nebraska PAHC have to be signed and witnessed?

Yes, you must sign (or have someone sign the PAHC in your presence and at your direction, if you are unable to sign) and date it. Then it must be witnessed by 2 qualified people, who are at least 18 years of age or older or notarized.

The following people **CANNOT** witness your signature of the PAHC:

- 1) Your spouse, parent, child, grandchild, brother or sister;
- 2) Any person who is entitled to any portion of your estate;
- 3) Your attending physician;
- 4) The person you appointed as your attorney-in-fact;
- 5) The person(s) you appointed as your alternate attorney-in-fact;
- 6) An employee of your life insurance provider;
- 7) An employee of your health insurance provider.

In addition, no more than one witness may be an administrator or employee of a health care provider who is caring for you or treating you.

How can I find a Notary Public to complete my PAHC form?

Businesses such as banks, insurance companies, government offices, hospitals, doctors offices and automobile associations have or can direct you to a notary public.

How is the PAHC different from the Living Will?

A living will only applies if you are terminally ill or if you are in a persistent vegetative state and unless you write in other specific instructions, it only tells your doctor what you do **NOT** want.

The PAHC allows you to appoint someone to make health care decisions for you if you cannot make them. It covers all health care situations in which you are not capable of making decisions for yourself. It also allows you to give specific instructions to your attorney-in-fact about the type of care you want to receive.

The PAHC allows your attorney-in-fact to respond to any medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes.

Since the PAHC is more flexible, it is the advance directive most people choose. Some people, however, do not have someone whom they trust or who knows their values and preferences. These people should consider creating a living will.

NEBRASKA LIVING WILL DECLARATION

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

DECLARANT SIGNATURE

By signing below, I indicate that I am emotionally and mentally competent to make this living will declaration and that I understand the purpose and effect of this document.

Signature of Declarant: _____

Print Name: _____ Date: _____

Address: _____

Date of Birth: _____ Social Security Number: _____

WITNESS SIGNATURES

I declare that the person who signed this document is personally known to me to be the Declarant; that the Declarant signed this document in my presence; or directed another person to sign this document in my presence; that I have signed this document in the presence of the Declarant and also in the presence of the other witness; and that the Declarant appears to be under no duress, fraud or undue influence.

Witness Signature: _____

Witness Name: _____

Address: _____

Telephone Number: _____

Witness Signature: _____

Witness Name: _____

Address: _____

Telephone Number: _____

- OR -
NOTARY

(You may sign this document before a notary public instead of having it witnessed above.)

The declarant voluntarily signed this writing in my presence.

Notary Public _____

NEBRASKA POWER OF ATTORNEY FOR HEALTH CARE

I appoint _____, whose address is _____, and whose telephone number is _____, as my attorney-in-fact for health care.

I appoint _____, whose address is _____, and whose telephone number is _____, as my successor attorney-in-fact for health care.

I authorize my attorney-in-fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning stated in this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney-in-fact comply with the following instructions: (optional)

I direct that my attorney-in-fact comply with the following limitations: (optional)

I direct that my attorney-in-fact comply with the following instructions on life-sustaining treatment: (optional)

I direct that my attorney-in-fact comply with the following instructions on artificially administered nutrition and hydration: (optional)

OTHER PROVISIONS

I revoke any prior Power of Attorney for Health Care.

This Power of Attorney for Health Care is intended to be valid in any jurisdiction in which it is presented.

This Power of Attorney for Health Care shall become effective upon my disability or incapacity.

Photocopies of this Power of Attorney for Health Care may be relied upon as though they were the original.

SIGNATURE OF PRINCIPAL

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY-IN-FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

Signature of Principal: _____

Print Name: _____ Date: _____

Address: _____

Date of Birth: _____ Social Security Number: _____

A SUMMARY STATEMENT OF HEALTH CARE POLICIES REGARDING PATIENTS' RIGHTS OF SELF-DETERMINATION

(Since a summary like this cannot answer all possible questions or cover every circumstance, you should discuss any remaining questions with a representative of this health care facility.)

1. Prior to the start of any procedure or treatment, the physician shall provide the patient with whatever information is necessary for the patient to make an informed judgment about whether the patient does or does not want the procedure or treatment performed. Except in an emergency, the information provided to the patient to obtain the patient's consent shall include, but not necessarily be limited to, the intended procedure or treatment, the potential risks, and the probable length of disability. Whenever significant alternatives of care or treatment exist, or when the patient requests information concerning alternatives, the patient shall be given such information. The patient shall have the right to know the person responsible for all procedures and treatments.

2. The patient may refuse medical treatment to the extent permitted by law. If the patient refuses treatment, the patient will be informed of significant medical consequences that may result from such action.

3. The patient will receive written information concerning his or her individual rights under Nebraska state law to make decisions concerning medical care.

4. The patient will be given information and the opportunity to make advance directives--including, but not limited to, a Nebraska Living Will and a Power of Attorney for Health Care.

5. The patient shall receive care regardless of whether or not the patient has or has not made an advance directive.

6. The patient shall have his or her advance directive(s), if any has been created, made a part of his or her permanent medical record.

7. The patient shall have all of the terms of his or her advance directive(s) complied with by the health care facility and caregivers to the extent required or allowed by law.

8. The patient shall be transferred to another doctor or health care facility if his or her doctor(s), or agent of his or her doctor(s), or the health care facility cannot respect the patient's advance directive requests as a matter of "conscience."

9. The patient shall receive the name, phone number and address of the appropriate state agency responsible for receiving questions and complaints about these advance directive policies.

WALLET CARDS FOR NEBRASKA ADVANCE DIRECTIVES

Cut out and complete the cards below. Put one card in the wallet or purse you carry most often, along with your driver's license or health insurance card. You may keep the second card on your refrigerator, in your motor vehicle glove compartment, a spare wallet or purse, or other easy-to-find place.

✂

ATTN: NEBRASKA HEALTH CARE PROVIDERS

I have created the following Advance Directives:
(Check one or more, as appropriate)

Nebraska Living Will
 Power of Attorney for Health Care
 Other _____

Please contact _____
(Name)

_____ (Address)

_____ for more information.
(Telephone)

_____ (Date) _____ (Signature)

✂

ATTN: NEBRASKA HEALTH CARE PROVIDERS

I have created the following Advance Directives:
(Check one or more, as appropriate)

Nebraska Living Will
 Power of Attorney for Health Care
 Other _____

Please contact _____
(Name)

_____ (Address)

_____ for more information.
(Telephone)

_____ (Date) _____ (Signature)

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