



ADVANCED MEDICAL DIRECTIVES ADOPTION



Every adult (i.e. 18 years or older) in the United States has the legal right to consent to or refuse medical treatment under the Patient Self-Determination Act of 1990. Making your wishes known about the treatment you would want when you're incapacitated can be very helpful to doctors and to your family.

What is an Advance Medical Directive (a.k.a. living will)?

An Advance Medical Directive (AMD) is a written declaration created while you are healthy in which you state in advance your wishes about the use of life-prolonging medical care if you become terminally ill and unable to communicate. It lets your wishes be carried out even if you become unable to state them. If you don't want to burden your family with the medical expenses and prolonged grief involved in keeping you alive when there's no reasonable hope of revival, a living will typically authorizes withholding or turning off life-sustaining treatment if your condition is irreversible. Living wills typically come into play when you are incapable of making and communicating medical decisions. Usually, you'll be in a state such that if you don't receive life-sustaining treatment (e.g., intravenous feeding, respirator), you'll die. If your living will is properly prepared and clearly states your wishes, the hospital or doctor should abide by it, and will in turn be immune from criminal or civil liability for withholding treatment.

Some people worry that by making out a living will, they are authorizing abandonment by the medical system, but a living will can state whatever your wishes are regarding treatment, so even if you prefer to receive all possible treatment, whatever your condition, it's a good idea to state those wishes in a living will.

What is a Health Care Power of Attorney?

A Health Care Power of Attorney (HCPOA) is a special kind of durable power of attorney dealing with health-care planning. In it you appoint someone else to make health-care decisions for you -- including, if you wish, the decision to refuse intravenous feeding or turn off the respirator if you're brain dead -- if you become incapable of making that decision. The form can be used to make decisions about things like nursing homes, surgeries, and artificial feeding. Since it's simply impossible to predict every possible contingency in an AMD, having both an AMD and a HCPOA enables you to handle other kinds of disability, or gray-area cases where it's not certain that your terminally ill, or your doctor or state law fail to give your wishes due weight. Better to have a trusted relative or friend make the call

Finally, despite recent changes in the law, old habits die hard, and many doctors and nurses are still reluctant to turn off life support--even if that's what the patient wants. That's why you need an advocate appointed by your HCPOA to press your intentions.

Obviously, decisions so important should be discussed in advance with your agent, who should be a spouse, child or close friend. You should try to talk about various contingencies that might arise and what he or she should do in each case.

As with the AMD, make sure you put a copy of the HCPOA in your medical record. Since it's so much more flexible than a living will, the HCPOA is a very useful document that could save you and your family much anxiety, grief, and money.

Can I Have These Documents Prepared at the Same Time?

It's a good idea to prepare the HCPOA and living will at the same time, and make sure they're compatible with each other and the rest of your estate plan. These days, planning for the day when you might not be able to decide for yourself should be regarded as an essential component of any estate plan.

If I Have a Living Will, Do I Still Need a Health Care Power of Attorney?

It is a good idea. A HCPOA appoints an agent to act for you; a living will doesn't. A HCPOA applies to all medical decisions (unless you specify otherwise); most living wills typically apply to a few decisions near the end of your life, and often are limited to use if you have a "terminal illness." A HCPOA can include specific instructions to your agent about the issues you care most about, or what you want done in particular circumstances.

Where can I get more information?

Check out the following sites for more information:

[AARP End of Life Planning](#)

[ABA HealthCare Planning Kit](#)

[American Hospital Association Put It In Writing](#)

[JAGCnet Legal Assistance Information](#) (see Estate Planning)

[National HealthCare Decisions Day](#)

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