Questions and Answers on Advance Directives
Many people today are worried about the medical care they would receive if they should become terminally ill and unable to communicate their wishes.

That’s why a growing number of people are taking an active role in their care before they become seriously ill. They are stating their health care preferences in writing, while they are still healthy and able to make such decisions, through legal documents called advance directives.

Before deciding what choices about your care at the end of life are best, you should talk over the issues involved with your family and your physician. Find out about the laws and forms that apply in your state. Decide whether advance directives are right for you.

This brochure will give you some basic facts about advance directives to get you started on this process.
**What are advance directives?**

Formal advance directives are documents written in advance of serious illness that state your choices for health care, or name someone to make those choices, if you become unable to make decisions. Through advance directives, such as living wills and durable powers of attorney for health care, you can make legally valid decisions about your future medical treatment.

**Why is there so much interest in advance directives now?**

Questions about medical care at the end of life are of concern, partly because of the growing ability of medical technology to prolong life. Many people want to avoid extending personal and family suffering by artificial prolongation of life if they are in a vegetative state or when there is no hope of recovery. Others want everything medically possible done.

The best way for you to retain control in such a situation is to record your preferences for medical care in advance and share your decisions with your physician, loved ones and clergyman.

**What does the law say about this issue?**

Laws differ somewhat from state to state, but in general a patient’s expressed wishes will be honored. No law or court has invalidated the concept of advance directives, and an increasing number of statutes and court decisions support it. Formal advance directives can be critical to establishing such clear and convincing evidence of a patient’s wishes. The Patient Self-Determination Act of 1990 requires hospitals to inform their patients about advance directives.

**What is a living will?**

A living will is one type of advance directive and is a document in which you can stipulate the kind of life-prolonging medical care you want if you become terminally ill, permanently unconscious, or in a vegetative state and unable to make your own decisions. Many states have their own living-will forms, each with somewhat different requirements. It is also possible to complete one of many easy-to-use forms such as Aging With Dignity’s Five Wishes or the Institute for Healthcare Advancement’s multi-language options. Or, simply write a statement of your preferences for treatment, and follow your state’s witnessing requirements.
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A living will should be signed, dated, and witnessed by two people, preferably individuals who know you well but are not related to you and are not your potential heirs or your health care providers. A number of states require a notary or permit a notary in lieu of two witnesses. The living will should be discussed and shared with your physician, family and clergy, and you should ask your physician to make it a part of your permanent medical record. Verify that the living will is indeed in your medical chart. Although you do not need a lawyer to draw up a living will, you may wish to discuss it with a lawyer; however most states do not allow the appointed agent to act as a witness.

**What is a durable power of attorney for health care?**

A durable power of attorney for health care is another kind of advance directive: a signed, dated, and witnessed document naming another person to make medical decisions for you if you are unable to make them for yourself at anytime, not just at the end of life. You can include instructions about any treatment you want or wish to avoid, such as surgery or artificial nutrition and hydration. The majority of states have specific laws allowing a health care power of attorney, and provide suggested forms. You can draw up a durable power of attorney for health care with or without the advice of a lawyer; however most states do not allow the appointed agent to act as a witness.

**Which is better — a living will or a durable power of attorney for health care?**

Historically, living wills were developed first, and health care powers of attorney were designed later to be more flexible and apply to more situations. Today the distinction between the two types of documents is becoming blurred. It is possible to have both a living will and a durable power of attorney for health care. Some states combine them in a single document that both describes one’s treatment preferences in a variety of situations and names a proxy.
**Q** How can I know in advance which procedures I would want or not want to prolong my life?

**A** Although it isn’t possible to specify every possible procedure under every possible circumstance, it is possible to decide what kind of treatment you would want in most situations. There are certain common conditions (terminal, irreversible brain damage and dementing illnesses) and treatments commonly used in end-of-life situations (CPR, ventilators, artificial nutrition and hydration, dialysis and antibiotics) that can be discussed in advance. Preferences can be clarified by thinking about and discussing with your family, friends and others your views about death, being totally dependent on the care of others, the role of family finances, the conditions that would make life intolerable to you, and how artificial life-support would affect the dying process. If you have questions about the kinds of procedures that are often used when illness is severe and recovery unlikely, ask your physician. It is never too early to start this decision-making process, and you should not postpone it until you face serious illness. Patients need to play an active role in determining their own health care decisions.

**Q** What is the legal status of advance directives?

All states legally recognize some form of advance medical directive. Even if a particular instruction in an advance directive might not be enforceable under some circumstances, it is better to express your wishes and intent in some kind of written document than not to express them at all.

**Q** What if I draw up a living will or health care power of attorney and then change my mind?

**A** You may change or revoke these documents at any time. Any alterations and any written revocation should be signed and dated, and copies should be given to your family, physician, and other appropriate people. (For substantial changes, a new living will should be written and witnessed.) Even without an official written change, your orally expressed direction to your physician generally has priority over any statement made in a living will or power of attorney as long as you are able to decide for yourself and can communicate your wishes. If you wish to revoke an advance directive at any time, you should notify your primary physician, family, clergyman, and others who might need to know. If you consulted an attorney in drawing up your document, you should also notify him or her.

**Q** What if I fill out an advance directive in one state and am hospitalized in a different state?

**A** The majority of states have reciprocity provisions. Even in those states that do not explicitly address the issue, there is a common law and constitutional right to accept or refuse treatment that may be broader than the rights identified under the state law. Because an advance directive is an expression of your intent regarding your medical care, it will influence that care no matter where you are hospitalized. However, if you spend a great deal of time in more than one state, you might wish to consider executing an advance directive in those states.
If a comatose or mentally incompetent patient doesn’t have a living will or durable power of attorney, who decides whether to withdraw treatment?

If there is no advance directive by the patient, the decision is left to the patient’s family, physician, and hospital, and ultimately a judge. Usually the family, physician, and hospital can reach an agreement without resorting to the courts, often with the help of a hospital ethics committee. However, many times the individual who has the authority to make the decision is not the person the patient would have chosen. There also may be more restrictions on a surrogate than an appointed agent.

What will the hospital do to help if I or my family member should be in this situation?

Many hospitals have ethics committees or ethics consultation services, one of whose functions is to help in decision making about the end of life. Physicians, nurses, social workers, lawyers, clergy, patient representatives, and sometimes professional bioethicists discuss issues, advise on hospital policy, and review cases if there is a conflict or lack of clarity. Although they will often counsel a patient’s family and make a recommendation, the final decision is still up to the patient, the family, and the physician.

Where can I get living-will and health-care-power-of-attorney forms?

Caring Connections
National Hospice & Palliative Care Organization
1700 Diagonal Road, Suite 625
Alexandria, VA 22314
1-800-658-8898

Through their web site www.caringinfo.org, the National Hospice and Palliative Care Organization (NHPCO) offers free, state-specific advance directives and advice for communicating wishes to family and close friends. The site is focused around learning, implementing, voicing, and engaging in the care you receive at the end of life. Information is also available from the American Hospital Association (www.putitinwriting.org), the AARP (www.aarp.org), Aging with Dignity (www.agingwithdignity.org), your state or local Office on Aging, your local bar association, and many local civic and service organizations.
Advance Directive

A document in which a person either states choices for medical treatment or designates who should make treatment choices if the person should lose decision-making capacity. The term can also include oral statements by the patient.

Artificial Nutrition and Hydration

A method of delivering a chemically balanced mix of nutrients and fluids when a patient is unable to eat or drink. The patient may be fed through a tube inserted directly into the stomach, a tube put through the nose and throat into the stomach, or an intravenous tube.

Cardiopulmonary Resuscitation (CPR)

A medical procedure, often involving external chest compression, administration of drugs, and electric shock, used to restore the heartbeat at the time of a cardiac arrest.

Decision-Making Capacity

The ability to make choices that reflect an understanding and appreciation of the nature and consequences of one’s actions.

Declaration

One type of advance directive, commonly referred to as a living will.

DNR

Do Not Resuscitate; a medical order to refrain from cardiopulmonary resuscitation if a patient's heart stops beating.

Durable Power of Attorney for Health Care (DPOA)

An advance directive in which an individual names someone else (the “agent” or “proxy”) to make health care decisions in the event the individual becomes unable to make them. The DPOA can also include instructions about specific possible choices to be made.

Hospice

A program that provides care for the terminally ill in the form of pain relief, counseling, and custodial care, either at home or in a facility.
| **Legal Guardian** | A person charged (usually by court appointment) with the power and duty of taking care of and managing the property and rights of another person who is considered incapable of administering his or her own affairs. |
| **Life-Sustaining Treatment** | A medical intervention administered to a patient that prolongs life and delays death. |
| **Palliative Care** | Medical interventions intended to alleviate suffering, discomfort, and dysfunction but not to cure (such as pain medication or treatment of an ongoing infection). |
| **Persistent Vegetative State** | As defined by the American Academy of Neurology, “a form of eyes-open permanent unconsciousness in which the patient has periods of wakefulness and physiologic sleep/wake cycles but at no time is aware of himself or his environment.” |
| **Proxy** | A person appointed to make decisions for someone else, as in a durable power of attorney for health care (also called a surrogate or agent). |
| **Terminal Condition** | In most states, a status that is incurable or irreversible and in which death will occur within a short time. There is no precise, universally accepted definition of “a short time,” but in general it is considered to be less than one year. |
| **Ventilator** | A machine that moves air into the lungs for a patient who is unable to breathe naturally. |
MARYLAND ADVANCE DIRECTIVE:
PLANNING FOR FUTURE HEALTH CARE DECISIONS

By: ___________________________ Date of Birth: ___________________________
(Print Name) (Month/Day/Year)

Using this advance directive form to do health care planning is completely optional. Other forms are also valid in Maryland. No matter what form you use, talk to your family and others close to you about your wishes.

This form has two parts to state your wishes, and a third part for needed signatures. Part I of this form lets you answer this question: If you cannot (or do not want to) make your own health care decisions, who do you want to make them for you? The person you pick is called your health care agent. Make sure you talk to your health care agent (and any back-up agents) about this important role. Part II lets you write your preferences about efforts to extend your life in three situations: terminal condition, persistent vegetative state, and end-stage condition. In addition to your health care planning decisions, you can choose to become an organ donor after your death by filling out the form for that too.

➔ You can fill out Parts I and II of this form, or only Part I, or only Part II. Use the form to reflect your wishes, then sign in front of two witnesses (Part III). If your wishes change, make a new advance directive. »

Make sure you give a copy of the completed form to your health care agent, your doctor, and others who might need it. Keep a copy at home in a place where someone can get it if needed. Review what you have written periodically.

PART I: SELECTION OF HEALTH CARE AGENT

A. Selection of Primary Agent

I select the following individual as my agent to make health care decisions for me:

Name: ___________________________

Address: ___________________________

Telephone Numbers: ___________________________
(home and cell)
B. Selection of Back-up Agents  
(Optional; form valid if left blank)

1. If my primary agent cannot be contacted in time or for any reason is unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: 
Address: 

Telephone Numbers: (home and cell)

2. If my primary agent and my first back-up agent cannot be contacted in time or for any reason are unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: 

Telephone Numbers: (home and cell)

C. Powers and Rights of Health Care Agent

I want my agent to have full power to make health care decisions for me, including the power to:

1. Consent or not to medical procedures and treatments which my doctors offer, including things that are intended to keep me alive, like ventilators and feeding tubes;

2. Decide who my doctor and other health care providers should be; and

3. Decide where I should be treated, including whether I should be in a hospital, nursing home, other medical care facility, or hospice program.

4. I also want my agent to:
   a. Ride with me in an ambulance if ever I need to be rushed to the hospital; and
   b. Be able to visit me if I am in a hospital or any other health care facility.

   THIS ADVANCE DIRECTIVE DOES NOT MAKE MY AGENT RESPONSIBLE FOR ANY OF THE COSTS OF MY CARE.
This power is subject to the following conditions or limitations:
(Optional; form valid if left blank)

D. How my Agent is to Decide Specific Issues

I trust my agent’s judgment. My agent should look first to see if there is anything in Part II of this advance directive that helps decide the issue. Then, my agent should think about the conversations we have had, my religious and other beliefs and values, my personality, and how I handled medical and other important issues in the past. If what I would decide is still unclear, then my agent is to make decisions for me that my agent believes are in my best interest. In doing so, my agent should consider the benefits, burdens, and risks of the choices presented by my doctors.

E. People My Agent Should Consult
(Optional; form valid if left blank)

In making important decisions on my behalf, I encourage my agent to consult with the following people. By filling this in, I do not intend to limit the number of people with whom my agent might want to consult or my agent’s power to make decisions.

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<thead>
<tr>
<th>Name(s)</th>
<th>Telephone Number(s):</th>
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F. In Case of Pregnancy
(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my agent shall follow these specific instructions:
G. Access to my Health Information – Federal Privacy Law (HIPAA) Authorization

1. If, prior to the time the person selected as my agent has power to act under this document, my doctor wants to discuss with that person my capacity to make my own health care decisions, I authorize my doctor to disclose protected health information which relates to that issue.

2. Once my agent has full power to act under this document, my agent may request, receive, and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and other protected health information, and consent to disclosure of this information.

3. For all purposes related to this document, my agent is my personal representative under the Health Insurance Portability and Accountability Act (HIPAA). My agent may sign, as my personal representative, any release forms or other HIPAA-related materials.

H. Effectiveness of this Part

(Read both of these statements carefully. Then, initial one only.)

My agent’s power is in effect:

1. Immediately after I sign this document, subject to my right to make any decision about my health care if I want and am able to.

   ✝ __________

   >>OR<<

2. Whenever I am not able to make informed decisions about my health care, either because the doctor in charge of my care (attending physician) decides that I have lost this ability temporarily, or my attending physician and a consulting doctor agree that I have lost this ability permanently.

   ✝ __________

If the only thing you want to do is select a health care agent, skip Part II. Go to Part III to sign and have the advance directive witnessed. If you also want to write your treatment preferences, go to Part II. Also consider becoming an organ donor, using the separate form for that.
PART II: TREATMENT PREFERENCES ("LIVING WILL")

A. Statement of Goals and Values
(Optional: Form valid if left blank)

I want to say something about my goals and values, and especially what's most important to me during the last part of my life:

B. Preference in Case of Terminal Condition
(If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that my death from a terminal condition is imminent, even if life-sustaining procedures are used:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

   ✎ ______________

   >>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

   ✎ ______________

   >>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

   ✎ ______________
C. Preference in Case of Persistent Vegetative State
(If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in a persistent vegetative state, that is, if I am not conscious and am not aware of myself or my environment or able to interact with others, and there is no reasonable expectation that I will ever regain consciousness:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

D. Preference in Case of End-Stage Condition
(If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in an end-stage condition, that is, an incurable condition that will continue in its course until death and that has already resulted in loss of capacity and complete physical dependency:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.
E. Pain Relief

No matter what my condition, give me the medicine or other treatment I need to relieve pain.

F. In Case of Pregnancy
(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

G. Effect of Stated Preferences
(Read both of these statements carefully. Then, initial one only.)

1. I realize I cannot foresee everything that might happen after I can no longer decide for myself. My stated preferences are meant to guide whoever is making decisions on my behalf and my health care providers, but I authorize them to be flexible in applying these statements if they feel that doing so would be in my best interest.

2. I realize I cannot foresee everything that might happen after I can no longer decide for myself. Still, I want whoever is making decisions on my behalf and my health care providers to follow my stated preferences exactly as written, even if they think that some alternative is better.
PART III: SIGNATURE AND WITNESSES

By signing below as the Declarant, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand its purpose and effect. I also understand that this document replaces any similar advance directive I may have completed before this date.

(Signature of Declarant)                            (Date)

The Declarant signed or acknowledged signing this document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this advance directive.

(Signature of Witness)                                                      (Date)

Telephone Number(s):

(Signature of Witness)                                                      (Date)

Telephone Number(s):

(Note: Anyone selected as a health care agent in Part I may not be a witness. Also, at least one of the witnesses must be someone who will not knowingly inherit anything from the Declarant or otherwise knowingly gain a financial benefit from the Declarant’s death. Maryland law does not require this document to be notarized.)
PART I: ORGAN DONATION

(Initial the ones that you want. Cross through any that you do not want.)

Upon my death I wish to donate:
✎ Any needed organs, tissues, or eyes.
✎ Only the following organs, tissues or eyes:

I authorize the use of my organs, tissues, or eyes:
✎ For transplantation
✎ For therapy
✎ For research
✎ For medical education
✎ For any purpose authorized by law

I understand that no vital organ, tissue, or eye may be removed for transplantation until after I have been pronounced dead. This document is not intended to change anything about my health care while I am still alive. After death, I authorize any appropriate support measures to maintain the viability for transplantation of my organs, tissues, and eyes until organ, tissue, and eye recovery has been completed. I understand that my estate will not be charged for any costs related to this donation.

PART II: DONATION OF BODY

After any organ donation indicated in Part I, I wish my body to be donated for use in a medical study program.

__________________
PART III: DISPOSITION OF BODY AND FUNERAL ARRANGEMENTS

I want the following person to make decisions about the disposition of my body and my funeral arrangements: (Either initial the first or fill in the second.)

The health care agent who I named in my advance directive.

OR

This person:

Name: ____________________________________________

Address: ____________________________________________

Telephone Number(s): ____________________________  (Home and Cell)

If I have written my wishes below, they should be followed. If not, the person I have named should decide based on conversations we have had, my religious or other beliefs and values, my personality, and how I reacted to other peoples’ funeral arrangements. My wishes about the disposition of my body and my funeral arrangements are:

PART IV: SIGNATURE AND WITNESSES

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

(Signature of Donor)      (Date)

The Donor signed or acknowledged signing the foregoing document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this donation.

(Signature of Witness)                                                                 (Date)

Telephone Number(s):

(Signature of Witness)                                                                 (Date)

Telephone Number(s):
The State Anatomy Board, a unit of the Department of Health and Mental Hygiene administers a statewide Body Donation Program. Anatomical Donation allows individuals to dedicate the use of their bodies upon death to advance medical education, clinical and allied-health training and research study to Maryland’s medical study institutions. The Anatomy Board requires individuals to pre-register prior to death as an anatomical donor to the state Body Donation Program. There are no medical restrictions or qualifications to becoming an a “Body Donor”. At death the Board will assume the custody and control of the body for study use. It is truly a legacy left behind for others to have healthier lives. For donation information and forms you can contact the Board toll-free at 800.879.2728