

Your State Senator

#6003 - 11/10

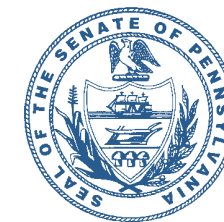
*What you need
to know about*

ADVANCE DIRECTIVES

LIVING WILLS

HEALTH CARE POWERS OF ATTORNEY

GUARDIANSHIP LAWS



**An Informational Guide From
Your State Senator**

OR

_____ I do not consent to donate my organs or tissues at the time of my death.

SIGNATURE

Having carefully read this document, I have signed it this _____ day of _____, 20____, revoking all previous health care powers of attorney and health care treatment instructions.

SIGNED: _____
(SIGN FULL NAME HERE FOR HEALTH CARE POWER OF ATTORNEY AND HEALTH CARE TREATMENT INSTRUCTIONS)

WITNESS: _____

WITNESS: _____

Two witnesses at least 18 years of age are required by Pennsylvania law and should witness your signature in each other's presence. A person who signs this document on behalf of and at the direction of a principal may not be a witness. (It is preferable if the witnesses are not your heirs, nor your creditors, nor employed by any of your health care providers).

NOTARIZATION (OPTIONAL)

(Notarization of document is not required by Pennsylvania law, but if the document is both witnessed and notarized, it is more likely to be honored by the laws of some other states).

On this _____ day of _____, 20____, before me personally appeared the aforesaid declarant and principal, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____, State of _____ the day and year first above written.

Notary Public

My commission expires _____

3. I specifically do not want any of the following as life prolonging procedures: (If you wish to receive any of these treatments, write "I do want" after the treatment).

- Heart-lung resuscitation (CPR) _____
- Mechanical ventilator (breathing machine) _____
- Dialysis (kidney machine) _____
- Surgery _____
- Chemotherapy treatment _____
- Radiation treatment _____
- Antibiotics _____

Please indicate whether you want nutrition (food) or hydration (water) medically supplied by a tube into your nose, stomach, intestine, arteries, or veins if you have an end-stage medical condition or are permanently unconscious and there is no realistic hope of significant recovery. (Initial only one statement).

TUBE FEEDINGS _____ I want tube feedings to be given.

OR

NO TUBE FEEDINGS _____ I do not want tube feedings to be given.

HEALTH CARE AGENT'S USE OF INSTRUCTIONS

_____ These instructions are only guidance. My health care agent shall have final say and may override any of my instructions. (Indicate any exceptions).

If I did not appoint a health care agent, these instructions shall be followed.

LEGAL PROTECTION

Pennsylvania law protects my health care agent and health care providers from any legal liability for their good faith actions in following my wishes as expressed in this form or in complying with my health care agent's direction. On behalf of myself, my executors and heirs, I further hold my health care agent and my health care providers harmless and indemnify them against any claim for their good faith actions in recognizing my health care agent's authority or in following my treatment instructions.

ORGAN DONATION (INITIAL ONE OPTION ONLY)

_____ I consent to donate my organs and tissues at the time of my death for the purpose of transplant, medical study or education. (Insert any limitations you desire on donation of specific organs or tissues or uses for donation of organs and tissues).

TO CONSTITUENTS

Pennsylvania's Probate Code, Title 20 of the Pennsylvania Consolidated Statutes, provides for advance directives, including living wills and health care powers of attorney, guardianships, and powers of attorney. All three concepts are very important, especially for our elderly citizens. Chapter 54 of the Probate Code provides information about and forms for living wills and health care powers of attorney. Chapter 54 also provides for health care representatives when the patient has not executed an advance directive. Finally, Chapter 54 provides for out-of-hospital do-not-resuscitate orders. Chapter 55 governs the appointment of guardians for incapacitated persons. This brochure is intended to provide citizens with information about the contents of the law, and help them to make educated decisions about the use of an advance directive, the appointment of a guardian for the person or the estate of a loved one, and the use of a power of attorney. Included in the brochure is a sample advance directive/health care power of attorney. If after reading the brochure you require further information, please contact your physician or attorney for advice.

NOTICE

This material is for informational purposes only and should not be construed as offering advice or making recommendations on any issue. Neither the Republican caucus of the Pennsylvania Senate nor any individual member thereof shall be responsible for any errors or omissions in the material contained in this document, or for the effect on such material of the subsequent passage or repeal, after its publication, of legislation dealing with the same subject matter. Moreover, they shall not be responsible for mistakes in the interpretation of any statutory provisions or case law decisions relative thereto. Any user of the document should consult with an attorney for advice on interpreting the material contained herein before taking any action in reliance thereon which could affect his or her own rights or the rights of others.

ADVANCE DIRECTIVES / HEALTH CARE POWERS OF ATTORNEY

■ What is an advance directive?

An advance directive is a living will, health care power of attorney, or a written combination of a living will and health care power of attorney. The individual executing an advance directive is called the "principal."

■ What is a living will?

A writing that expresses the principal's wishes and provides instructions for health care if and when the principal is determined to be incompetent and has an end-stage medical condition or is permanently unconscious. A living will is often used to indicate the principal's wishes regarding the use of life sustaining treatment.

■ What is a health care power of attorney?

A writing that designates a health care agent to make health care decisions for the principal. The health care power of attorney may specify what decisions the agent is to make under what circumstances.

■ **Who may execute an advance directive?**

An individual who is 18 years of age or older, has graduated from high school, has married, or is an emancipated minor. The principal or another individual at the principal's direction on his/her behalf must sign the document. Two witnesses who are 18 years of age or older must also sign the document.

■ **When does an advance directive become operative?**

In the case of a living will, when a copy is provided to the attending physician and the principal is determined by the attending physician to be incompetent and to have an end-stage medical condition or to be permanently unconscious. In the case of a health care power of attorney, when a copy is provided to the attending physician and the attending physician determines that the principal is incompetent.

■ **Is an advance directive forever?**

Unless a living will states a time of termination, it is valid until revoked by the principal, notwithstanding the lapse of time since its execution. Unless a health care power of attorney states a time of termination, it is valid until revoked by the principal or the principal's guardian of the person, notwithstanding the lapse of time since its execution.

■ **What constitutes life-sustaining treatment?**

Life-sustaining treatment is defined as any medical procedure that only serves to prolong the process of dying or to maintain the patient in a state of permanent unconsciousness. An individual's advance directive may be very specific, if that is the individual's desire, in describing and instructing the attending physician to initiate, continue, withhold, or withdraw particular life-sustaining medical procedures. The withholding or withdrawing of medical treatment is not considered [as] suicide or homicide under the law.

■ **What happens if the person has not executed an advance directive?**

In lieu of an advance directive, the law directs a physician to consult with a family member or other individual close to the patient to make health care decisions for the person. The law provides for a prioritized list of who should be consulted beginning with a spouse, and adult child and concluding with a close friend.

■ **What if a physician will not comply with the advance directive?**

If a physician or health care provider cannot, in good conscience, comply with an advance directive, then they must assist in transferring the case to another physician or health care provider who will comply.

■ **What effect does an advance directive have on insurance?**

Under the law, an advance directive should not affect any life insurance policy nor can an individual be required to write an advance directive in order to purchase life insurance. The existence or absence of an advance directive cannot affect insurance rates.

■ **What offenses and penalties are contained in the legislation?**

A person who conceals or damages the advance directive of another commits a third-degree felony. A person may be charged with criminal homicide for forging or concealing a revocation of an advance directive with the intent to cause the withholding or withdrawal of life-sustaining treatment against the wishes of the declarant. If undue influence, fraud, or duress is used to cause the execution of an advance directive, such conduct is a third degree felony.

GUIDANCE FOR HEALTH CARE AGENT (OPTIONAL)

GOALS: If I have an end-stage medical condition or other extreme irreversible medical condition, my goals in making medical decisions are as follows (insert your personal priorities such as comfort, care, preservation of mental function, etc.).

SEVERE BRAIN DAMAGE OR BRAIN DISEASE

If I should suffer from severe and irreversible brain damage or brain disease with no realistic hope of significant recovery, I would consider such a condition intolerable and the application of aggressive medical care to be burdensome.

I therefore request that my health care agent respond to any intervening (other and separate) life-threatening conditions in the same manner as directed for an end-stage medical condition or state of permanent unconsciousness as I have indicated below.

Initials _____ I agree Initials _____ I disagree

HEALTH CARE TREATMENT INSTRUCTIONS IN THE EVENT OF END-STAGE MEDICAL CONDITION OR PERMANENT UNCONSCIOUSNESS (LIVING WILL)

The following health care treatment instructions exercise my right to make my own health care decisions. These instructions are intended to provide clear and convincing evidence of my wishes to be followed when I lack the capacity to understand, make, or communicate my treatment decisions:

IF I HAVE AN END-STAGE MEDICAL CONDITION (WHICH WILL RESULT IN MY DEATH, DESPITE THE INTRODUCTION OR CONTINUATION OF MEDICAL TREATMENT) OR AM PERMANENTLY UNCONSCIOUS SUCH AS IN AN IRREVERSIBLE COMA OR IRREVERSIBLE VEGETATIVE STATE AND THERE IS NO REALISTIC HOPE OF SIGNIFICANT RECOVERY, ALL OF THE FOLLOWING APPLY (CROSS OUT ANY TREATMENT INSTRUCTIONS WITH WHICH YOU DO NOT AGREE):

- 1. I direct that I be given health care treatment to relieve pain or provide comfort even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit forming.
- 2. I direct that all life prolonging procedures be withheld or withdrawn.

APPOINTMENT OF HEALTH CARE AGENT

I appoint the following health care agent:

Health Care Agent: _____
(Name and relationship)

Address: _____

Telephone Number: Home _____ Work _____

E-MAIL: _____

IF YOU DO NOT NAME A HEALTH CARE AGENT, HEALTH CARE PROVIDERS WILL ASK YOUR FAMILY OR AN ADULT WHO KNOWS YOUR PREFERENCES AND VALUES FOR HELP IN DETERMINING YOUR WISHES FOR TREATMENT.

NOTE THAT YOU MAY NOT APPOINT YOUR DOCTOR OR OTHER HEALTH CARE PROVIDER AS YOUR HEALTH CARE AGENT, UNLESS RELATED TO YOU BY BLOOD, MARRIAGE OR ADOPTION.

If my health care agent is not readily available or if my health care agent is my spouse and an action for divorce is filed by either of us after the date of this document, I appoint the person or persons named below in the order named. (It is helpful, but not required, to name alternative health care agents.)

First Alternative Health Care Agent: _____
(Name and relationship)

Address: _____

Telephone Number: Home _____ Work _____

E-MAIL: _____

Second Alternative Health Care Agent: _____
(Name and relationship)

Address: _____

Telephone Number: Home _____ Work _____

E-MAIL: _____

How do advance directives affect pregnant women?

Notwithstanding any advance directives provisions, life-sustaining treatment, nutrition and hydration must be provided to a pregnant woman who is incompetent and terminally ill, or in a permanent state of unconsciousness unless such treatment:

- will not ensure a live birth
- is physically harmful to the pregnant woman, or
- causes pain to the woman which cannot be alleviated by medication.

A physician is not required to administer a pregnancy test.

If an incapacitated pregnant woman is kept alive by life-sustaining treatment, the Commonwealth must pay her expenses, and is entitled to reimbursement for such expenses by a third-party health insurer.

What should be included in an advance directive?

There is a sample of a combined advance directive and health care power of attorney on page 5. It may be altered to include other directions at the discretion of the principal. Specific medical procedures regarding nutrition and hydration, whether by artificial or invasive means, are considered life-sustaining treatment and may be withheld or withdrawn only if the principal's advance directive specifically states so.

What is an out-of-hospital do-not-resuscitate order?

An order issued by the attending physician directing emergency medical services providers to withhold cardiopulmonary resuscitation from the patient in the event of respiratory or cardiac arrest. The law provides for necklaces or bracelets which may be worn at the patient's option to notify emergency medical services providers of the presence of an order.

GUARDIANSHIP

Guardianship is most frequently used when children of aging parents need to obtain legal authority to make personal care and financial decisions when their parents are no longer capable of doing so. A "durable power of attorney" is often used to grant to a child or trusted friend the legal authority to arrange for a person's admission to a hospital or nursing home and to make expenditures on their behalf. The term make "durable" means that the power of attorney was granted when the person was capable of making such decisions on their own and remains valid when he/she becomes incapacitated and can no longer make such decisions. If a person has not executed a durable power of attorney and becomes incapacitated, the family or friend must obtain a court order under the Guardianship Law in order to have the legal authority to make personal and financial decisions on his/her behalf.

What is the purpose of the guardianship law?

The law promotes the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions affecting them, while protecting their rights.

How does the law seek to accomplish these goals?

The general provisions of the law define an incapacitated adult as one whose ability to receive and evaluate information effectively and communicate decisions in any way and is impaired to such a significant extent that they are partially or totally unable to manage their financial resources or to meet essential requirements for their physical health and safety.

The law endorses the principle of and a preference for limited guardianship. This means the court could find a person “partially incapacitated” and could appoint a “limited guardian” of a person or an estate to manage only specific affairs deemed proper by the court. The partially incapacitated person would retain legal authority to take certain actions to the extent of their ability.

■ How does a court decide whether a guardian should be appointed?

In making a decision the court must consider expert testimony on the person’s condition and the extent of their ability to make and communicate decisions; the availability of family, friends or other support; the existence of durable powers of attorney or trusts; and the duration of the proposed guardianship, as well as any medical, psychological and social issues. The court must also consider the services required to meet the person’s needs with the goal of enabling the person to function independently when able.

The person subject to being declared incapacitated has a right to an independent evaluation by an expert to refute the allegation of incapacity, which would be paid for by the Commonwealth if not affordable. If the court finds it to be appropriate, it may appoint a lawyer to represent the person, which would be paid for by the Commonwealth if not affordable.

If a person is found to be incapacitated, the court must inform the person of the right of appeal and the right to seek modification or termination of guardianship in the future.

Clear and convincing evidence is required for the court to declare a person incapacitated.

The court may appoint a plenary guardian of a person or an estate only upon finding that the person is totally incapacitated and in need of plenary guardianship services.

Once a person has been declared incapacitated and a guardian is appointed, the court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person’s capacity or a change in the need for guardianship services.

■ What are a guardian’s duties?

It shall be the duty of the guardian to assert the rights and best interests of the incapacitated person. The guardian shall also encourage the incapacitated person to participate to the maximum extent of their abilities in all decisions which affect them, and to act on their own behalf whenever able.

Guardians of the person must file annual reports with the court describing their activities and the health and welfare of the incapacitated person. Guardians of an estate must file annual reports regarding the management of the incapacitated person’s income.

Guardians are not permitted to commit incapacitated persons to a psychiatric institution, prohibit their marriage or consent to a divorce, relinquish parental rights, consent to specific medical procedures such as abortion, sterilization, psychosurgery, electro convulsive therapy or removal of a healthy body organ, or consent to any experimental biomedical or behavioral medical procedures.

■ What are emergency guardians?

The court may appoint an emergency guardian of the person or estate of a person alleged to be incapacitated, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment will result in irreparable harm to the person or estate. Emergency appointments for a guardian of the person may be in effect for 72 hours and may be extended for no more than 20 days. Emergency appointments for a guardian of the estate shall not exceed 30 days. After expiration of the emergency order, a full guardianship proceeding must be initiated.

DURABLE HEALTH CARE POWER OF ATTORNEY

I, _____, of _____ County, Pennsylvania, appoint the person named below to be my health care agent to make health and personal care decisions for me.

Effective immediately and continuously until my death or revocation by a writing signed by me or someone authorized to make health care treatment decisions for me, I authorize all health care providers or other covered entities to disclose to my health care agent, upon my agent's request, any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and what is otherwise private, privileged, protected or personal health information, such as health information as defined and described in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936), the regulations promulgated thereunder and any other state or local laws and rules. Information disclosed by a health care provider or other covered entity may be redisclosed and may no longer be subject to the privacy rules provided by 45 C.F.R. Pt. 164.

The remainder of this document will take effect when and only when I lack the ability to understand, make or communicate a choice regarding a health or personal care decision as verified by my attending physician. My health care agent may not delegate the authority to make decisions.

MY HEALTH CARE AGENT HAS ALL OF THE FOLLOWING POWERS SUBJECT TO THE HEALTH CARE TREATMENT INSTRUCTIONS THAT FOLLOW RELATING TO LIVING WILL. (CROSS OUT ANY POWERS YOU DO NOT WANT TO GIVE YOUR HEALTH CARE AGENT):

1. To authorize, withhold or withdraw medical care and surgical procedures.
2. To authorize, withhold or withdraw nutrition (food) or hydration (water) medically supplied by tube through my nose, stomach, intestines, arteries or veins.
3. To authorize my admission to or discharge from a medical, nursing, residential or similar facility and to make agreements for my care and health insurance for my care, including hospice and/or palliative care.
4. To hire and fire medical, social service and other support personnel responsible for my care.
5. To take any legal action necessary to do what I have directed.
6. To request that a physician responsible for my care issue a do-not-resuscitate (DNR) order, including an out-of-hospital DNR order, and sign any required documents and consents.