

MAINE



**Legal Documents
To Assure Future Health Care Choices**

ADVANCE DIRECTIVES

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

INTRODUCTION

Maine and federal law give every competent adult, 18 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 Maine 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.

Maine law recognizes 2 types of advance directives:

- 1) Instructions for Health Care (Living Will).
- 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 Maine 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 treatment or more procedures than you may want.

If you cannot speak for yourself and you do not have an advance directive, your doctor or any other health care provider will look to the following people in the order listed for decisions about your care:

- 1) Your spouse, unless you are legally separated;
- 2) Any of your adult children;
- 3) Either of your parents;
- 4) Any of your adult brothers or sisters;
- 5) Any of your adult grandchildren;
- 6) Any of your adult nieces or nephews, related by blood or adoption;
- 7) Any of your adult aunts or uncles, related by blood or adoption;
- 8) Any other adult relative by blood or adoption who is familiar with your personal values;
- 9) Any other adult who has exhibited special concern for you and who is familiar with your personal values.

How do I know what treatment I want?

Your doctor 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 Maine law. Federal law requires your health care providers to give you their written policies concerning advance directives. A summary statement of those policies is provided for 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 Maine law. If this happens, they must immediately tell you. Then they must 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 revised document 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 Maine to do so. You may use the form that is provided in this booklet to execute your advance directives.

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 Maine living will.

When does a Maine Living Will go into effect?

A Maine 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 terminally ill or that you are in a persistent vegetative state.

What are “life-sustaining” treatments?

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 breathe, kidney dialysis which clears your body of wastes and cardiopulmonary resuscitation (CPR) which restores your heartbeat.

What is a “terminal” condition?

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

What is an “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 completely 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 Maine living will covers almost all types of life-sustaining treatments and 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.

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.

Will a Maine Advance Directive be honored in another state?

The laws on advance directives differ from state to state, so it is unclear whether a Maine advance directive will be honored 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 Maine?

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

How do Maine Advance Directives differ from other states?

There are several differences:

1) Most states, including Maine before October 1, 1995, use two or more documents in order for a person to give advance instructions about his/her future health care. On October 1, 1995, the Maine Legislature created one simplified document that covers all the elements of an advance directive.

2) Maine is one of the very few states that allows you to make organ donation part of your advance directive document.

3) Maine is one of the very few states that allows you to appoint your primary physician and your guardian in your advance directive document.

INSTRUCTIONS FOR HEALTH CARE (LIVING WILL)

What is a "Living Will"?

A living will (officially called "Instructions for Health Care" in Maine) 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.

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

No. The Maine Uniform Health-Care Decisions Act states that no physician, hospital or medical institution, or any of their employees may be held civilly or criminally liable for carrying out the provisions of a valid Maine living will.

Does a Maine Living Will affect insurance?

No. The making of a living will, in accordance with Maine 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 according to Maine law, shall not, for any purpose, constitute homicide, suicide or euthanasia, nor shall it be deemed the cause of death for the purposes of insurance coverage.

POWER OF ATTORNEY FOR HEALTH CARE

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

A PAHC is a legal document which allows you (the "principal") to appoint another person (the "attorney-in-fact" or "agent") 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 only deals 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 Agent?

You can appoint almost any adult to be your agent. 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 appoint your spouse and then become divorced, the

MAINE ADVANCE HEALTH-CARE DIRECTIVE

EXPLANATION OF THIS DOCUMENT

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

PART 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- a) consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- b) select or discharge health-care providers and institutions;
- c) approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- d) direct the provisions, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

PART 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

PART 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

PART 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any

PART 1
POWER OF ATTORNEY FOR HEALTH CARE
DESIGNATION OF AGENT

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

(Name of the individual you choose as your Agent)

(Address)

(City)

(State)

(Zip Code)

(Home Phone)

(Work Phone)

DESIGNATION OF ALTERNATE AGENT(S)

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

(Name of the individual you choose as your First Alternate Agent)

(Address)

(City)

(State)

(Zip Code)

(Home Phone)

(Work Phone)

If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

(Name of the individual you choose as your Second Alternate Agent)

(Address)

(City)

(State)

(Zip Code)

(Home Phone)

(Work Phone)

AGENT'S AUTHORITY

My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE

My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions, unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

AGENT'S OBLIGATION

My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

NOMINATION OF GUARDIAN

If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

END-OF-LIFE DECISIONS

I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

[] a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, **OR**

[] b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

ARTIFICIAL NUTRITION AND HYDRATION

Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in the paragraph above unless I mark the following box. If I mark this box [], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in the paragraph above.

RELIEF FROM PAIN

Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

OTHER WISHES

(If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.)

I direct that:

(Add additional sheets if needed.)

PART 3 DONATION OF ORGANS AT DEATH (OPTIONAL)

Upon my death (mark applicable box)

- (a) I give any needed organs, tissues or parts, OR
- (b) I give the following organs, tissues or parts only _____
- (c) My gift is for the following purposes (strike any of the following you do not want)
(i) Transplant, (ii) Therapy, (iii) Research, (iv) Education

PART 4 DESIGNATION OF PRIMARY PHYSICIAN(S) (OPTIONAL)

I designate the following physician as my primary physician:

(Name of Physician)

(Address) (City) (State) (Zip Code)

(Phone)

If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(Name of Physician)

(Address) (City) (State) (Zip Code)

(Phone)

OTHER PROVISIONS

I revoke any prior Advance Health-Care Directive.

This Advance Health-Care Directive is intended to be valid in any jurisdiction in which it is presented.

This Advance Health-Care Directive shall become effective upon my disability or incapacity, unless I have checked the appropriate box in part 1, in which case, my agent's authority becomes effective immediately.

Photocopies of this Advance Health-Care Directive may be relied upon as though they were the original.

SIGNATURE OF PRINCIPAL

(Sign and date the form here)

_____ (Date)	_____ (Sign Your Name)
_____ (Address)	_____ (Print Your Name)
_____ (City) (State) (Zip Code)	_____ (Your Social Security Number)

SIGNATURES OF WITNESSES

First Witness:

Second Witness:

_____ (Print Name)	_____ (Print Name)
_____ (Address)	_____ (Address)
_____ (City) (State)	_____ (City) (State)
_____ (Signature of Witness)	_____ (Signature of Witness)
_____ (Date)	_____ (Date)


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 Maine 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 Maine Instructions for Health Care 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 MAINE 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: MAINE HEALTH CARE PROVIDERS

I have created the following Advance Directives:
(Check one or both)

_____ Maine Instructions for Health Care
_____ Power of Attorney for Health Care

Please contact _____
at _____ (Name)
and _____ (Address) for more information.
_____ (Telephone)

_____ (Date) _____ (Signature)




MAINE ORGAN DONOR CARD

I have donated an anatomical gift, if medically acceptable, in my Maine Advance Health-Care Directive dated _____.

Please contact _____
_____ (Name)
_____ (Address) for more information.
_____ (Telephone)

_____ (Date) _____ (Signature)




ATTN: MAINE HEALTH CARE PROVIDERS

I have created the following Advance Directives:
(Check one or both)

_____ Maine Instructions for Health Care
_____ Power of Attorney for Health Care

Please contact _____
at _____ (Name)
and _____ (Address) for more information.
_____ (Telephone)

_____ (Date) _____ (Signature)



MAINE ORGAN DONOR CARD

I have donated an anatomical gift, if medically acceptable, in my Maine Advance Health-Care Directive dated _____.

Please contact _____
_____ (Name)
_____ (Address) for more information.
_____ (Telephone)

_____ (Date) _____ (Signature)

© Copyright
Professional Media Resources
PO Box 460380
St. Louis, MO 63146-7380
800-753-4251