

Your Right To Decide

Communicating Your Health Care Choices

In 1990, Congress passed the Patient Self-Determination Act. It requires health care institutions to tell patients and the people in their communities about their rights under Virginia law to make decisions about their medical care. These rights include the right to accept or refuse care and the right to make advance directives about their care.

How do I exercise my health care rights?

Under Virginia law, “[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body.” Doctors help their patients to exercise this right when they give information about medical treatment they are recommending. When you then agree to the recommended treatment, you have given your informed consent. You also have the right to refuse the recommended treatment.

What happens if I cannot give my consent?

Many people worry about what would happen if, due to mental, physical or emotional problems, they are unable to tell their doctor whether they want or don’t want recommended medical treatment. Under a Virginia law called the Health Care Decisions Act, if you are an adult you may sign a document that makes your choices about treatment known to your doctor and

family in advance. In that document, you also can name someone you trust to make these decisions for you if you become unable to express your wishes yourself. This document is known as an “advance directive.”

The Health Care Decisions Act became law in 1992, but most of the decision-making rights contained in it have existed in Virginia for several years under other laws. The Health Care Decisions Act combines these laws to bring them together in one place and to be sure that they do not disagree with each other. Any advance directive made under the old laws is still valid.

This brochure describes advance directives and answers some questions about them. It is not intended as legal advice. If you have questions about advance directives that it does not answer, you may ask those in charge of your health care or call your local hospital for more information. You also may wish to talk about advance directives with your family, your doctor, or a lawyer.

How do I make my choices about life-prolonging treatment known?

The Virginia Health Care Decisions Act allows you to make two types of decisions about your health care in an advance directive. The first type of decision you can make tells people how to care for you if you ever have

a terminal condition and you are unable to make decisions for yourself. This document is often called a “living will.” A terminal condition is an incurable condition in which death is imminent. It also means a persistent vegetative state, which some people call a permanent coma, even when death is not imminent. In either case, a doctor has determined that there is no medically reasonable hope for recovery.

Signing this type of advance directive permits you to decide in advance whether you want doctors to give you what the law calls “life-prolonging procedures.”

What are “life-prolonging procedures?”

These are treatments that aren’t expected to cure a terminal condition or make you better and that only prolong dying. They include hydration (giving water) and nutrition (giving food) by tube, machines that breathe for you, and other kinds of medical and surgical treatment. Life-prolonging procedures do not include treatments needed to make you comfortable or to ease pain. Your doctor will give you treatment or drugs to ease pain and make you comfortable unless you say in your advance directive that you do not want them. You can also say in this type of advance directive that you want to have particular life-prolonging procedures given to you. For example, if you want to have all life-prolonging procedures except

tube feeding withdrawn, you may say that in your advance directive.

Will an Advance Directive help me if I do not have a terminal condition?

Yes. The Health Care Decisions Act permits you to make a second kind of decision in an advance directive. You may name someone to make treatment decisions – to accept or refuse medical care – for you if at some point you cannot make them yourself. This type of advance directive is often called a “medical power of attorney,” a “durable power of attorney for health care” or a “health care proxy.” The person named in this type of advance directive can make all health care decisions for you that you could have made for yourself if you were able, whether or not you are terminally ill. Or you may direct instead that he or she make only those decisions you list. The law says that the person you choose cannot make decisions that he or she knows go against your religious beliefs, basic values and stated preferences. You also may name a person who will see that your organs or your body are donated, as you wish, after your death.

How do these two types of Advance Directives differ?

The first type of advance directive – known as the living will – is only followed when you have a terminal condition and only deals with life-prolonging procedures.

The second type of advance directive – often called a durable power of attorney for health care – covers those cases and also covers situations where you can't make treatment decisions for yourself but do not have a terminal condition, such as when you have an accident or take a drug that leaves you unconscious. It also covers more than decisions about life-prolonging procedures. It will cover any decisions you want it to cover. If you wish, the person to whom you give a durable power of attorney for health care could make any decisions about your health care that you could have made yourself.

Will my Advance Directive be followed in an emergency if I cannot make my wishes known?

Usually emergency medical personnel, such as rescue squads or ambulance teams, cannot follow your wishes in an advance directive if they are called to help you in an emergency. Also, hospital emergency room providers may not know your wishes in an emergency. But if you have a terminal or serious condition, under certain circumstances you can make decisions in advance about refusing one type of emergency medical care—resuscitation if your heart stops beating or you stop breathing. You do this by having your doctor complete a “Durable Do Not Resuscitate Order” (often called a “Durable DNR order”) for you on a form approved by the state. Your doctor also may write a DNR order to be followed in a hospital or nursing home. This order is valid unless you

revoke it — that is, you change your mind and tell your doctor that you do want to be resuscitated.

If I die because I refused life-prolonging treatment under the Health Care Decisions Act, will my death be considered suicide?

No. The Health Care Decisions Act specifically says that, if it is followed and the patient dies, the death is not suicide. Following the Act will not void a life insurance policy even if the policy says otherwise.

Must an Advance Directive be in writing?

No. The Health Care Decisions Act allows people who have a terminal condition and who never sign an advance directive to make an oral advance directive. They may say what they want, or name a person to make decisions for them, in front of witnesses.

Must I have an Advance Directive?

No. An advance directive is just one way of being sure your doctors and your loved ones know what health care you want when you can't tell them yourself. You may have only one or both of the two types of advance directives. The law requires that health care providers not discriminate against people based on whether they have or do not have an advance directive.

What happens If I can't make decisions and I have no Advance Directive?

Virginia law lists persons such as guardians or family members who may make decisions about your medical care even if you have no advance directive. If no listed person is available to decide for you, a judge can decide what treatment is best.

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

A lawyer is helpful, but you don't have to have a lawyer prepare either type of advance directive. In fact, the Health Care Decisions Act gives a suggested form that you may use.

What if I change my mind after I sign an Advance Directive?

You can revoke it. If you want to, you can make a new one. If you are a patient or resident in a health care facility, tell your doctor or nurse that you want to revoke or change your advance directive. It is best to destroy all copies of the old one.

How will my doctor know I have an Advance Directive?

Hospitals and other health care facilities must ask patients or residents if they have an advance directive and, if so, must see that a patient's or resident's medical record shows that they have one. In any case, you should give copies of your advance directive to your family and to your doctor, and to anyone else you think needs to know what medical treatment you do or don't want.

Where can I go for more information about Advance Directives?

There are many sources of additional information on advance directives, including your local hospital. You also may wish to talk this over with your physician and lawyer.

Notice to Health Care Providers:

I, _____, have executed an advance medical directive and have given a copy of such document to:

Name Phone

Address

Name Phone

Address

Signed _____

Date _____

The Virginia Department of Health and the Virginia Department for the Aging have approved this brochure for distribution under the requirements of federal law.
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