

IOWA

ADVANCE



DIRECTIVES

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

ADVANCE DIRECTIVES

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

INTRODUCTION

Iowa 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 Iowa 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.

Iowa law recognizes 3 types of advance directives:

- 1) A Living Will Declaration.
- 2) A Durable Power of Attorney for Health Care.
- 3) An Out of Hospital Do Not Resuscitate Order.

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 Iowa 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 advance directives, your doctor or other health care providers will look to the following people in the order listed for decisions about your care:

- 1) Your guardian, if a court has appointed one, who is authorized to make health care decisions for you;
- 2) Your spouse;
- 3) An adult child, or if you have more than one adult child, a majority of those children who are reasonably available for consultation;
- 4) Either of your parents;
- 5) An adult brother or sister, or if you have more than one, a majority of those who are reasonably available for consultation.

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 or she 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, HMO's 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 Iowa law. Federal law requires your health care providers to give you written policies concerning advance directives. A summary statement of those policies is provided for you at the back of this booklet. 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 Iowa law. If this happens, they must immediately tell you. Then they must also 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 documents 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 or her, but there is no legal requirement in Iowa to do so. You may use the forms that are provided in this booklet to execute your advance directives.

Will my Iowa Advance Directive be valid in another state?

The laws on advance directives differ from state to state, so it is unclear whether an Iowa advance directive will be valid 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 should consider signing an advance directive that meets all the legal requirements of that state.

Will an Advance Directive from another state be valid in Iowa?

Yes. An advance directive executed in compliance with another state's laws will be valid in Iowa to the extent permitted by Iowa 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 clergy person; 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.

DECLARATION (LIVING WILL)

What is a "Living Will" ?

A living will 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. It is called a "living will" because it takes effect while you are still living.

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 Iowa living will.

When does an Iowa Living Will go into effect?

An Iowa 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 and another doctor have determined that you are in a terminal condition.

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 short period of time.

Is a Living Will the same as a "Do Not Resuscitate (DNR)" order?

No. An Iowa living will covers almost all types of life-prolonging treatments and procedures. A "Do Not Resuscitate (DNR)" order covers 2 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.

Does an Iowa Living Will apply if a woman is pregnant?

No. An Iowa living will cannot go into effect if a woman is pregnant and the fetus could develop to the point of live birth with continued application of life-sustaining procedures or treatments.

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

No. The Iowa Life-Sustaining Procedures Act states that a physician, a person acting under the direction of a physician, or a health care facility cannot be civilly or criminally liable for withholding or withdrawing life-sustaining procedures from a patient with a valid Iowa living will.

Does an Iowa Living Will affect insurance?

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

Does an Iowa Living Will have to be signed and witnessed?

Yes. You must sign (or have someone sign the document in your presence and at your direction, if you are unable to sign) and date the living will. Then it must be witnessed by 2 qualified people, 18 years or older, or be notarized.

The only people who **CANNOT** witness your signature of the living will are: 1) Your treating health care provider; or 2) An employee of your treating health care provider.

In addition, at least one of the witnesses must not be related to you by blood, marriage or adoption within the third degree of consanguinity (parent, grandparent, child, grandchild).

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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

A DPAHC 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.

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 select your spouse, and then become divorced, the appointment of your spouse as your agent is revoked.

The following people **CANNOT** be appointed as your agent: 1) Your treating health care provider; or 2) An employee of your treating health care provider, unless he or she is related to you by blood, marriage or adoption within the third degree of consanguinity (parent, grandparent, child, grandchild).

When does the DPAHC take effect?

The DPAHC only becomes effective when you are temporarily or permanently unable to make your own health care decisions and your agent consents to start making those decisions. Your agent will begin making decisions after your doctors have decided that you are no longer able to make them. Remember, as long as you are able to make treatment decisions, you have the right to do so.

What decisions can my Agent make?

Unless you limit his or her authority in the DPAHC, your agent will be able to make almost every treatment decision in accordance with accepted medical practice that you could make, if you were able to do so. If your wishes are not known or cannot be determined, your agent has the duty to act in your best interest in the performance of his or her duties. These decisions can include authorizing, refusing, or withdrawing treatment, even if it means that you will die. As you can see, the appointment of an agent is a very serious decision on your part.

What happens if I regain the capacity to make my own decisions?

If your doctor determines that you have regained the capacity to make or to communicate health care decisions, then two things will happen: 1) Your agent's authority will end; and 2) Your consent will be required for treatment.

If your doctor later determines that you no longer have the capacity to make or to communicate health care decisions, then your agent's authority will be restored.

Can there be more than one Agent?

Yes. While you are not required to do so, you may designate alternates who may also act for you, if your primary agent is unavailable, unable or unwilling to act. Your alternates have the same decision-making powers as the primary agent.

Can I appoint more than one person to share the responsibility of being my Agent?

You should appoint only **ONE** person to be your primary agent. Any others that you want to be involved with your health care decisions should be appointed as your alternates. If two or more people are given equal authority and they disagree on a health care decision, one of the most important purposes of the DPAHC--to clearly identify who has the authority to speak for you--will be defeated. If you are afraid of offending people close to you by choosing one over another to be your agent, ask them to decide among themselves who will be your primary agent and select the others as alternates.

Can my Agent be paid for his or her services?

No. Your agent and your alternates cannot accept payment for the performance of their authority, rights and responsibilities. But your agent(s) can be reimbursed for actual and necessary expenses incurred in the performance of their duties.

Can my Agent be legally liable for decisions made on my behalf?

No. Your health care agent or your alternate agent cannot be held legally liable for treatment decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs incurred for your care, just because he or she is your agent.

Does the DPAHC have to be signed and witnessed?

Yes. You must sign (or have someone sign the DPAHC in your presence and at your direction, if you are unable to sign) and date it. Then it must be witnessed by 2 qualified people or notarized.

The only people who **CANNOT** witness your signature are: 1) Your treating health care provider; 2) An employee of your treating health care provider; 3) The person you appointed as your health care agent; 4) The person(s) you appointed as your alternate health care agent(s); or 5) Anyone who is not at least 18 years of age.

In addition, at least one of the witnesses must not be related to you by blood, marriage or adoption within the third degree of consanguinity (parent, grandparent, child, grandchild).

How is the DPAHC different from the Living Will?

A living will only applies if you are terminally ill, and unless you write in other specific instructions, it only tells your doctor what you do **NOT** want.

The DPAHC allows you to appoint someone to make health care decisions for you if you cannot make them. It covers all health care situations in which you are incapable of making decisions for yourself. It also allows you to give specific instructions to your agent about the type of care you want to receive.

The DPAHC allows your agent to respond to medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes.

Since the DPAHC is more flexible, it is the advance directive most people choose. Some people, however, do not have someone whom they trust or who knows their values and preferences. These people should consider creating a living will.

OUT OF HOSPITAL DNR ORDER

What is an Out of Hospital DNR order (OHDNR)?

An OHDNR is a document prepared by you and your attending physician that tells medical personnel in an "out of hospital setting" that if you suffer cardiac arrest (your heart stops beating) or respiratory arrest (you stop breathing), they are not to try to revive you by any means.

What is an Out of Hospital Setting?

An "out-of-hospital setting" is any setting outside a hospital in which health care professionals are called for assistance. Among these settings are: 1) Home health; 2) Hospice; 3) Nursing homes; and 4) Ambulances.

Is the OHDNR form the same as an Iowa Living Will?

No. The OHDNR form covers only 2 types of life-threatening situations, cardiac arrest and respiratory arrest. The living will covers almost all types of life-sustaining treatments and procedures, and can include cardiac and respiratory arrest.

Can my health care providers be sued or prosecuted for carrying out the provisions of an OHDNR?

No. Iowa law states that no individual can be subject to criminal prosecution, any civil liability or can be disciplined for unprofessional conduct for carrying out the provisions of an OHDNR.

Does the OHDNR order need to be signed and witnessed?

Yes, but this type of order must be signed by your doctor and not by you. Also, there is no need to have witnesses for your doctor's signature.

Where can I get more information and the correct document?

Your doctor should have information and the correct form. Also, many hospitals, home health agencies, and long term care facilities may have information also.

You can also contact the Iowa Department of Health, Bureau of EMS, Lucas State Office Building, Des Moines, IA 50319-0075, or visit their website at www.idph.state.ia.us/ems.

IOWA DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, _____

(Name and Address of Principal)

designate as my attorney-in-fact (hereafter referred to as "Agent")

(Name of Agent)

(Address of Agent)

and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The agent must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the law of this state, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to the provision of any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of my desires and any limitations included in this document.

My agent must act consistently with my desires as stated in this document or as otherwise made known by me to my agent.

My agent has the same right as I would have to receive, review, and obtain copies of my medical records and to consent to disclosure of those records.

DESIGNATION OF ALTERNATE AGENT (OPTIONAL)

(You are not required to designate one or more alternate agents, but you may do so. An alternate agent may make the same health care decisions as your designated agent, if the designated agent is unable or unwilling to act as your agent.)

If my agent named by me shall die, become legally disabled, incapacitated or incompetent, or resign, refuse to act, or be unavailable, I name the following (each to act successively in the order named) as my alternate agent:

First Alternate Agent

Name: _____

Address: _____

Second Alternate Agent

Name: _____

Address: _____

SPECIAL INSTRUCTIONS (OPTIONAL)

(You may give your agent(s) any special instructions in this section. If you do not wish to do so, put "None" on the lines provided.)

LIMITATIONS (OPTIONAL)

(You may wish to put additional limitations on your agent(s) in this section. If you do not wish to do so, put "None" on the lines provided.)

DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

OTHER PROVISIONS

I revoke any prior Durable Power of Attorney for Health Care.

I understand that I may revoke this Durable Power of Attorney for Health Care at any time.

This Durable Power of Attorney for Health Care is intended to be valid in any jurisdiction in which it is presented.

This Durable Power of Attorney for Health Care shall become effective upon my disability or incapacity.

Photocopies of this Durable Power of Attorney for Health Care may be relied upon as though they were the original.

SIGNATURE OF PRINCIPAL

I am fully informed as to all the contents of this Durable Power of Attorney for Health Care and understand the full import of this grant of power to my agent(s). I further declare that I am emotionally and mentally competent to make this Durable Power of Attorney for Health Care.

(Signature of Principal) _____ (Date) _____

(Address) _____ (Date of Birth) _____

(City, State, Zip Code)

Second Witness Signature: _____

Second Witness Printed Name: _____

(Address)

(City, State, Zip Code)

ADDITIONAL WITNESS SIGNATURE

(AT LEAST ONE OF THE TWO WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION)

I further declare under penalty of perjury under the laws of the State of Iowa that I am not related to the Declarant by blood, marriage or adoption within the third degree of consanguinity.

Signature _____

Signature _____

**— OR —
NOTARY**

State of Iowa)

) ss.

County of _____)

On this _____ day of _____, in the year 20_____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ (the Declarant) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument; and acknowledged that he or she executed it as his or her voluntary act or deed.

I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence, and that I am satisfied as to the genuineness and due execution of this document.

(NOTARY SEAL)

Signature of Notarial Officer

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 any 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 Iowa 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, an Iowa Living Will Declaration, a Durable Power of Attorney for Health Care, and an Out of Hospital Do Not Resuscitate Order.

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 Iowa 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 IOWA ADVANCE DIRECTIVES

Complete and cut out 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: IOWA HEALTH CARE PROVIDERS
I have created the following Advance Directives:
(Check one or more, as appropriate)

Iowa Declaration (Living Will)
 Health Care Surrogate Designation
 Out of Hospital DNR Order

Please contact _____
(Name)

at _____
(Address)

and _____ for more information.
(Telephone)

(Date) _____
(Signature)

✂

ATTN: IOWA HEALTH CARE PROVIDERS
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(Check one or more, as appropriate)

Iowa Declaration (Living Will)
 Health Care Surrogate Designation
 Out of Hospital DNR Order

Please contact _____
(Name)

at _____
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and _____ for more information.
(Telephone)

(Date) _____
(Signature)

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