

Your Right to Decide

A guide to communicating your
health care choices in Virginia

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 health care. These rights include the right to accept or refuse care and the right to make advance directives about their care.

This booklet explains your rights under Virginia laws in effect July 1, 2009.

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.” Your doctor helps you exercise this right by giving you information about health care he or she is recommending. If you then agree to the recommended health care, you have given your informed consent. You also have the right to refuse the recommended health care.

What happens if I cannot give my consent?

Many people worry about what would happen if, due to physical or mental problems, they are unable to understand the possible outcomes of a proposed health care decision and cannot tell their doctor whether they want or don’t want recommended health care. 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 health care known to your doctor and family in advance. In that document, you also may 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. It has been revised from time to time, most recently in 2009. However, any valid advance directive you have made under the old laws remains valid even after the law changes unless you revoke it.

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 this brochure does not answer, you may ask your doctor or other individuals 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 or a lawyer.

What decisions can I make with an Advance Directive?

The Health Care Decisions Act permits you to name someone, called your “agent,” to make health care decisions – to accept or refuse health care – for you if, at some point, you cannot make them yourself.

This type of advance directive is often called a “health care power of attorney,” a “durable power of attorney for health care” or a “health care proxy.” Unless you say otherwise in your advance directive, 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. This includes decisions about medication, surgery, mental health treatment, health facility admission or any other health care. If you want to limit your agent’s authority, you may direct that your agent make only those decisions you list. The law says that your agent 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 body are donated, as you wish, after your death.

Whether you name an agent in your advance directive or not, **you also may use your advance directive to give specific instructions about the health care you do or do not want.** Specifically, your advance directive can address all forms of health care for any time that you cannot make decisions yourself. For example, your advance directive can address things such as mental health (psychiatric) care, dialysis and the use of antibiotics or other drugs at any time.

What if I have a terminal condition?

One type of instruction you may give in your advance directive is how to care for you if you ever have a terminal condition and you are unable to make decisions for yourself. This 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 tubes, machines that breathe for you and other kinds of medical and surgical treatment. Life-prolonging procedures do not include health care needed to make you comfortable or to ease pain. This means that your doctor will give you drugs or other health care to ease pain and make you comfortable unless you specifically say in your advance directive that you do not want them. You also can 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.

What do I need to say in my Advance Directive?

Whatever your choices are, you can put them in your own words. You do not need to use any specific medical or legal words. You may just describe as best you can what medical care you do and do not want.

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 choices in an advance directive if they are called to help you in an emergency. Also, hospital emergency department providers may not know your choices in an emergency. But you can make decisions in advance about refusing one type of emergency medical care – resuscitation or “CPR”

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. 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 procedures 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. Creating an advance directive that says you do not want life-prolonging procedures will not void a life insurance policy even if the policy says otherwise.

Must an Advance Directive be in writing?

The Health Care Decisions Act allows people who have a terminal condition and who have not signed 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. However, if you are not in a terminal condition, your advance directive must be in writing, signed by two witnesses.

Who can be a witness?

A husband or wife can be a witness. Other blood relatives also can be witnesses as long as they are adults. A health care provider also can be a witness. Finally, even your agent can be a witness, but it may be better to have someone who is not your agent (or your alternate agent) be a witness. In Virginia, you do not need a notary to witness your advance directive in order for it to be a valid advance directive.

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 any type or all types of advance directives that are allowed under the Health Care Decisions Act. 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 health care if you do not have an advance directive. In this situation, there may be multiple people who can make your health care decisions, and this can lead to conflicts. For this reason, naming a single agent in an advance directive may prevent conflicts about your decisions. If no listed person is available to decide for you, a judge can decide what health care 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 any type of advance directive. In fact, the Health Care Decisions Act suggests a form that you may use.

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

You can revoke it by saying so in writing or orally or by destroying it or having someone else destroy it in front of you. 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.

This brochure is approved for distribution under the requirements of federal law.

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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 health record shows that they have one. 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 health care you do or don't want. In Virginia, photocopies, faxes and digital scans of advance directives are valid.

Is a financial or general power of attorney the same as an Advance Directive?

A financial power of attorney gives another person power to make decisions about money for you. If the power of attorney document does not mention health care, it is not an advance directive. If you are in doubt, you may wish to consult a lawyer.

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/or 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