

Advance Directives

You have the right to make decisions about the health care you get now and in the future. An advance directive is a written statement you prepare that expresses how you want medical decisions made in the future should you not be able to make them yourself.

Federal law requires that you be told of your right to make an advance directive when you are admitted to a health care facility, and the Patient Self-Determination Act (see LAWS & RULES) requires certain providers participating in the Medicare and Medicaid programs to furnish patients with information on advance directives. The information is to be given to patients upon admission to a facility or when provision of care begins. Providers covered by this requirement include hospitals, nursing facilities, providers of home health or personal care services, hospice programs and health maintenance organizations.

Illinois law allows you to make four types of advance directives: a health care power of attorney; a living will; a mental health treatment preference declaration, and a Do-Not-Resuscitate (DNR)/Practitioner Orders For Life-Sustaining Treatment (POLST). The Department of Public Health is required by law (see Illinois Compiled Statutes - Advance Directive Information under LAWS & RULES) to make available to you standard forms for each of these types of advance directives. The forms can be downloaded at the following website. More information on these advance directives is provided below.

After reviewing the information below on the different types of advance directives, you may want to discuss them with your family, your health care professional and/or attorney. You may decide to make more than one advance directive. For example, you could make a health care power of attorney, as well as a living will. If you decide to have one or more advance directives, you should tell your health care professionals and provide them with copies of any advance directives you have. You should also provide copies of your advance directives to those you have appointed to make health care decisions for you, and you may want to provide copies to your family members.

Health Care Power of Attorney

The **health care power of attorney** lets you choose someone to make health care decisions for you in the future, if you are no longer able to make these decisions for yourself. You are called the "principal" in the power of attorney form and the person you choose to make decisions is called your "agent." Your agent would make health care decisions for you if you were no longer able to make these decisions for yourself. So long as you are able to make these decisions, you will have the power to do so. You may give your agent specific directions about the health care you do or do not

want. The agent you choose cannot be your health care professional or other health care provider. You should have someone who is not your agent witness your signing of the power of attorney.

The power of your agent to make health care decisions on your behalf is broad. Your agent would be required to follow any specific instructions you give regarding care you want provided or withheld. For example, you can say whether you want all life-sustaining treatments provided in all events; whether and when you want life-sustaining treatment ended; instructions regarding refusal of certain types of treatments on religious or other personal grounds; and instructions regarding anatomical gifts and disposal of remains. Unless you include time limits, the health care power of attorney will continue in effect from the time it is signed until your death. You can cancel your power of attorney at any time, either by telling someone or by canceling it in writing. You can name a backup agent to act if the first one cannot or will not take action. If you want to change your power of attorney, you must do so in writing.

You may use a standard health care power of attorney form or write your own.

Living Will

A **living will** tells your health care professional whether you want death-delaying procedures used if you have a terminal condition and are unable to state your wishes. A living will, unlike a health care power of attorney, only applies if you have a terminal condition. A terminal condition means an incurable and irreversible condition such that death is imminent and the application of any death delaying procedures serves only to prolong the dying process.

Even if you sign a living will, food and water cannot be withdrawn if it would be the only cause of death. Also, if you are pregnant and your health care professional thinks you could have a live birth, your living will cannot go into effect.

You can use a standard living will form or write your own. You may write specific directions about the death-delaying procedures you do or do not want. Two people must witness your signing of the living will. Your health care professional cannot be a witness. It is your responsibility to tell your health care professional if you have a living will, if you are able to do so. You can cancel your living will at any time, either by telling someone or by canceling it in writing.

If you have both a health care power of attorney and a living will, the agent you name in your power of attorney will make your health care decisions unless he or she is unavailable.

Mental Health Treatment Preference Declaration

A **mental health treatment preference declaration** lets you say if you want to receive electroconvulsive treatment (ECT) or psychotropic medicine when you have a mental illness and are

unable to make these decisions for yourself. It also allows you to say whether you wish to be admitted to a mental health facility for up to 17 days of treatment.

You can write your wishes and/or choose someone to make your mental health decisions for you. In the declaration, you are called the "principal", and the person you choose is called an "attorney-in-fact." Neither your health care professional nor any employee of a health care facility in which you reside may be your attorney-in-fact. Your attorney-in-fact must accept the appointment in writing before he or she can start making decisions regarding your mental health treatment. The attorney-in-fact must make decisions consistent with any desires you express in your declaration unless a court orders differently or an emergency threatens your life or health.

Your mental health treatment preference declaration expires three years from the date you sign it. Two people must witness you signing the declaration. The following people may not witness your signing of the declaration: your health care professional; an employee of a health care facility in which you reside; or a family member related by blood, marriage or adoption. You may cancel your declaration in writing prior to its expiration as long as you are not receiving mental health treatment at the time of cancellation. If you are receiving mental health treatment, your declaration will not expire and you may not cancel it until the treatment is successfully completed.

Do-Not-Resuscitate/Practitioner Orders For Life-Sustaining Treatment

You may also ask your health care professional about having a **do-not-resuscitate (DNR)/practitioner orders for life-sustaining treatment (POLST)**(DNR/POLST Order). A DNR/POLST Order is an advanced directive that says that cardiopulmonary resuscitation (CPR) cannot be used if your heart and/or breathing stops; it can also be used to record your desires for life-sustaining treatment. The Department of Public Health has published a Uniform DNR/POLST Order that is available for download at this webpage. This webpage also provides a link to guidance for individuals, health care professionals and health care providers concerning the IDPH Uniform DNR/POLST Order.

The Uniform DNR/POLST Order requires your signature or that of your authorized legal representative (your legal guardian, health care power of attorney, or health care surrogate), as well as the signature of your attending practitioner and a witness who is 18 years of age or older. A DNR/POLST Order will not be entered into your medical record unless it contains all of the required signatures. You can ask your practitioner to work with you to prepare the Uniform DNR/POLST Order.

What Happens If You Cannot Make Health Care Decisions For Yourself And You Don't Have an Advance Directive?

If you cannot make health care decisions for yourself, a health care "surrogate" may be chosen for you. Under Illinois law, two doctors must certify that you cannot make health care decisions for

yourself before a health care surrogate can be appointed. A health care surrogate can be one of the following persons (in order of priority): guardian of the person, spouse, any adult child(ren), either parent, any adult brother or sister, any adult grandchild(ren), a close friend, or guardian of the estate.

However, while your health care surrogate can make most health care decisions for you, there are certain decisions that a surrogate cannot make. For example, a health care surrogate cannot tell your health care professional to withdraw or withhold life-sustaining treatment unless you have a "qualifying condition". A qualifying condition can be (1) a "terminal condition" (an incurable or irreversible injury for which there is no reasonable prospect of cure or recovery, death is imminent, and life-sustaining treatment will only prolong the dying process); (2) "permanent unconsciousness" (a condition that, to a high degree of medical certainty, will last permanently, without improvement; there is no thought, purposeful social interaction or sensory awareness present; and providing life-sustaining treatment will only have minimal medical benefit), or (3) an "incurable or irreversible condition" (an illness or injury for which there is no reasonable prospect for cure or recovery, that ultimately will cause the patient's death, that imposes severe pain or an inhumane burden on the patient, and for which life-sustaining treatment will have minimal medical benefit). Two doctors must certify that you have one of these qualifying conditions.

There are also limitations on the decision-making authority of a health care surrogate that relate to mental health treatment. A health care surrogate, other than a court-appointed guardian, cannot consent for you to have certain mental health treatments, including treatment by electroconvulsive therapy (ECT), psychotropic medication or admission to a mental health facility, although the health care surrogate can petition a court to allow these mental health services.

To avoid the decision-making limitations of a health care surrogate, you may want to consider having one or more advance directives.

Final Notes

You should talk with your family, your health care professional, your attorney, and any agent or attorney-in-fact that you appoint about your decision to make one or more advance directives. If they know what health care you want, they will find it easier to follow your wishes. If you cancel or change an advance directive in the future, remember to tell these same people about the change or cancellation.

No health care facility, health care professional or insurer can make you execute an advance directive as a condition of providing treatment or insurance. It is entirely your decision. If a health care facility, health care professional or insurer objects to following your advance directive, they must tell you or the individual responsible for making your health care decisions. They must continue to provide care

until you or your decision maker can transfer you to another health care provider who will follow the orders contained in your advance directive.