

Alternatives to Guardianship (Part 2): Advance Directives

Hello. I'm here to talk about advance directives, which are sometimes called medical or health care powers of attorney. With an advance directive, you give another person, who is called an "agent," legal authority to make health or mental health care decisions on your behalf.

One of the first steps is appointing a health care agent.

CHAPTER HEADING: APPOINTING A HEALTH CARE AGENT

The person you select will be able to make decisions about your care and treatment. If you like, your agent's authority can go into effect right away. Or you can choose to have their decision-making authority only go into effect if you become too ill to make your own decisions. In this situation, two people, your attending physician and one other doctor, must certify in writing that you are no longer able to make informed medical decisions. If you are unconscious or unable to communicate in any way, your attending physician **alone** can certify the need for a health care agent.

Once their authority goes into effect, your agent will have access to your medical records and can talk to your care providers. They can also consent to treatment or the withdrawal or withholding of treatment on your behalf. If you regain the ability to make decisions, their authority ends.

Your advance directive can include instructions about the type of care you want to receive if you have a terminal or incurable condition and are close to death. This is referred to as a living will.

CHAPTER HEADING: LIVING WILL

For example, your living will can give instructions about when or if you receive life-sustaining treatment such as CPR, intubation, or a feeding tube. Do you have preferences about organ donation or funeral arrangements? Put those in your living will. You can also have an advance directive for mental health services.

CHAPTER HEADING: MENTAL HEALTH SERVICES

This is a separate document in which you designate a person to make decisions about your mental health care if you later become unable to do so. Your directive can identify the mental health providers, programs, or facilities you prefer. You can state your preferences about psychiatric medications or stipulate who will be notified about the mental health services you receive and who has access to your records.

Who can create an advance directive?

CHAPTER HEADING: WHO CAN CREATE AN ADVANCE DIRECTIVE?

Any competent adult at any time can. “Competent” here means that you understand what it means to appoint another person to make health or mental health care decisions on your behalf. An advance directive can be in writing or oral. Written advance directives must be dated and signed in front of two witnesses. An oral advance directive needs to be made by talking to your health care provider in front of one witness. Your agent cannot be a witness.

If you want to make sure that your instructions are followed, put it in writing. Maryland has a sample form you can use or a lawyer can help.

You might be wondering, who can be your agent?

CHAPTER HEADING: WHO CAN BE YOUR AGENT?

It can be a family member or a friend. It should be someone you trust and who will follow your instructions. Designate someone who understands your wishes and values. Think carefully about who you want. Talk to them and make sure they agree to be your agent and understand your preferences. You can also list a back-up agent in your directive.

There are several people who may not be eligible to serve as your agent, for example:

- Your health care providers or anyone associated with them
- anyone you have a protective order against
- or an ex-spouse.

You might want to talk to a lawyer before selecting your agent.

So, you have an advance directive. Now what?

CHAPTER HEADING: NOW WHAT?

Give copies to your health care agent, your backup agent if you have one, and your health care providers. If you later become unable to make decisions, your agent must follow your instructions and base their decisions on your interests, wishes, values, and beliefs, not their own. If they don't, someone can ask a court to intervene. In rare cases the court may appoint a guardian. If that happens, your advance directive will help guide the court and the guardian's decisions.

What if your wishes change?

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CHAPTER HEADING: WHAT IF YOUR WISHES CHANGE?

That's okay! As long as you are mentally competent, you can revoke, or cancel, your advance directive at any time in writing, orally, or by executing a new advance directive. Just make sure your agent and health care providers have the most recent version.

What happens if you don't have an advance directive?

CHAPTER HEADING: DON'T HAVE AN ADVANCE DIRECTIVE?

If you don't have one and are diagnosed with a serious or life-threatening illness, you and your health care provider can complete what's called a Medical Order for Life Sustaining Treatment or MOLST. A MOLST has instructions about what life-sustaining treatment you want or don't want. For example, it can indicate whether you want CPR if you go into cardiac arrest or to be intubated if you cannot breathe on your own. It can include instructions about blood transfusions, medical tests, and when to administer artificial fluids or nutrition. A MOLST is portable, meaning it travels with you from health care facility to health care facility and is part of your medical record.

Your health care provider will turn to a surrogate decision-maker if you are unable to make a decision and don't have an advance directive or a MOLST. Surrogate decision-makers are discussed in part 3 of this series. If no surrogate is available or willing to step up, someone can ask a court to appoint a guardian of the person to make medical decisions for you. Guardianship is a complex and expensive process and the court may end up appointing someone you don't know or don't want to make decisions for you.

While you're not required to have an advance directive, having one can make things easier for you and your loved ones.

I hope this information has been helpful. Thanks for watching.