

Advance directives: exercising your right to choose

Through the past several decades, the ability of medical science to save and preserve lives has increased dramatically. However, this ability has raised some serious questions: Should health care providers preserve a patient's life after the quality of the patient's life is gone? When a patient can no longer make decisions or communicate decisions about treatment, should health care providers make those decisions?

Many states — including Kansas — have passed laws allowing people to prepare written directions about their future health care. These documents are called “advance directives.”

In 1990, the federal government passed the Patient Self-Determination Act, a law that requires hospitals to provide written information to adult inpatients concerning their right under state law to make decisions about their own medical care and their right to formulate advance directives.

Two types of advance directives are most commonly used: the “Living Will” and the “Durable Power of Attorney for Health Care Decisions.”

The Living Will

The Living Will is a written declaration that makes your wishes known in the event that you have a terminal condition and cannot communicate. (A terminal condition is one that is expected to cause the patient to die.) The Living Will states that life-sustaining procedures should be withheld or withdrawn if you have lost the ability to make decisions and when such procedures would merely prolong death. Medical procedures that provide comfort or alleviate pain are not considered life-sustaining procedures.

To be valid, the Living Will must be signed by you and witnessed by two adults who are not related to you, and who will not inherit from you.

For the Living Will to go into effect, two doctors must examine you and determine that you have a terminal condition. The doctors must agree that you will die whether or not the life-sustaining procedure is done.

The Living Will is not valid while you are pregnant. It is not valid in the operating room, nor is it valid in outpatient settings. In the event an outpatient needs inpatient care, any existing advance directives will be honored.

Durable Power of Attorney for Health Care Decisions

A Durable Power of Attorney for Health Care Decisions is a document in which you give someone else the right to make decisions about your health care in the event that you cannot make these decisions for yourself. That person is called your “agent.”

You can name as your agent any competent adult, except a health care provider (unless that person is related to you by blood or marriage). To be valid, the document must be signed by you and notarized or witnessed by two adults who are not related to you and who will not inherit from you.

The powers that can be granted to your agent include the power to make decisions, give consent, refuse consent or withdraw consent for organ donation, autopsy or the treatment of any physical or mental condition. The agent may make all necessary arrangements for hospitalization, doctors or other care. The agent may also sign releases for your medical records or request and receive your medical records or information about your condition. You can outline in your durable power of attorney document which of the above powers your agent will have.

You can also put specific instructions in your document. For example, you may prohibit a specific treatment. Or you may request treatment, including life-sustaining care. Your agent and health care providers must follow your expressed wishes. They must also respect any wishes you have stated in a Living Will.

For further information about a Living Will or a Durable Power of Attorney, or to complete these documents, ask your nurse or call Guest Services at 962-2100. Alternate numbers are 962-2096 and 962-3148.

Questions and answers about advance directives

Should I have both a Living Will and a Durable Power of Attorney for Health Care Decisions?

You may choose between a Living Will and a Durable Power of Attorney for Health Care Decisions, or you may have both. The basic difference between the two is that the durable power of attorney designates a particular person to make decisions for you when you are not able to decide for yourself. It can cover all health

care decisions. A Living Will states your wishes about withholding or withdrawing life-sustaining care if you have a terminal condition.

What must I do to make sure my advance directives document is valid?

A Living Will must be witnessed by two adults. A durable power of attorney may be witnessed or notarized. However, experts advise that you have either document both witnessed and notarized.

Who should have copies of my advance directives document?

If you make advance directives, you should discuss them with your doctor. You are responsible for making copies available to your doctor and all other doctors who provide care for you.

You should also discuss and share copies of your advance directives with your family members. And be sure to keep copies yourself. When you are admitted to a health care facility, you should provide a copy of your advance directives.

Will my Living Will be honored in an emergency situation?

It is often impossible in an emergency situation to determine the patient's chances of survival. During the emergency, the patient's consent for treatment is presumed. The emergency room staff continues treatment until the patient is stabilized and the attending doctor evaluates the patient's condition. Then, if necessary, the Living Will can be implemented.

If I fill out an advance directives form in Kansas, will it be honored if I am hospitalized in another state?

The law is not clear on whether the state where the health care provider is located should honor a form complying with the laws of another state. However, even if a Living Will form does not comply with the law in the state of the health care provider, it would still be beneficial because it would contain written instructions of your intent regarding your medical care. When traveling, you should keep a copy of your advance directives on your person along with the name of someone to contact in the event of an emergency.

Must my doctor, family and institution carry out my wishes expressed in my advance directives?

In a terminal situation, if there is no serious reason for doing otherwise, the doctor should honor your wishes even if your family does not agree. The Living Will has the force of law in terminal cases. Additional instructions in a durable power of attorney should also be honored as expressions of your right to self-determination.

What if my doctor or hospital refuses to honor my advance directives?

If your Living Will complies with the state law and no one can present evidence that the document has been revoked, then the doctor or hospital is legally obligated to honor the document. If your doctor or hospital cannot honor your advance directives, your family or your agent should be permitted to transfer your care to health care providers who will honor them.

Can I make provision for donating organs or tissues in my advance directives document?

Yes. You should also complete a Uniform Donor Card, or indicate on the back of your driver's license your wish to donate organs or tissues. You must be at least 18 years old to legally make this decision for yourself. You may also authorize your agent in a durable power of attorney to approve these donations.

What if I change my mind about my advance directives?

If you change your mind about your advance directives, you can revoke the old document and make new advance directives that must also be witnessed or notarized.

A Living Will may be revoked in several ways. You may destroy the document. You may state in writing that you revoke the Living Will. Or you may tell an adult that the document no longer expresses your wishes. For a verbal revocation to be effective, the adult who heard the verbal revocation must confirm it in writing. This written confirmation must be given to the attending doctor.

A Durable Power of Attorney for Health Care must be formally revoked in writing with a witnessed or notarized statement.

For more information

If you would like forms for a Living Will or durable power of attorney, or if you have further questions, please contact your nurse or call Wesley Guest Services at (316) 962-2100. Alternate numbers are 962-2096 and 962-3148. The Guest Services office is open on weekdays from 8 a.m. to 8 p.m. and on Saturdays from 8 a.m. to 5 p.m. For your convenience these forms are included with this booklet. Here are some additional resources for information:

- Kansas Health Ethics
5900 E. Central, Suite 101, Wichita, KS 67208
(316) 684-1991 www.kansashealthethics.org
- Kansas Department of Aging
New England Building, 503 S. Kansas Ave.
(800) 432-3535 www.agingkansas.org