

Advance Directives . . .

You need to know . . .

You can decide, right now, what medical treatments you want or don't want.

You can tell your doctor or loved ones these decisions, so that if you become too sick to tell them they'll know what you want them to do.

You can choose someone you trust to make these decisions for you if you become unable to make them for yourself.

You can write these decisions down on a paper called an advance directive . . .

For more information, keep on reading!

INTRODUCTION

You can decide -- right now -- what treatment you want or don't want, and you can tell that decision to your doctor and your loved ones so that if you become too sick or unable to tell them, they'll know what you want them to do. Federal law now says that you must also be informed of other ways that you can control the medical treatment you receive. That is the purpose of this pamphlet.

WHAT HAPPENS IF I BECOME UNABLE TO MAKE MY OWN MEDICAL DECISIONS?

Unless you do something, your health care decisions will be made by someone else if you become unable to consent to or refuse your medical treatments for yourself. In Indiana, these decisions may be made by whomever your doctor talks to in your immediate family (meaning your spouse, parent, adult child, brother or sister) or by a person appointed by a court.

But in Indiana, you can make and write down your own decisions about your future medical treatment if you wish. Or you can appoint a person you choose to make these decisions for you when you are not able to do so. You can even disqualify someone you don't want to make any health decisions for you.

You can do these things by having what is called an advance directive. Advance directives are documents you can complete to protect your rights to determine your medical treatment and to help your family and doctor understand your wishes about your health care.

Your advance directive will not take away your right to continue to decide for yourself what you want. This is true even under the most serious medical conditions. Your advance directive will speak for you only when you are unable to speak for yourself, or when your doctor determines that you are no longer able to understand enough to make your own treatment decisions.

WHAT CAN I DO NOW TO EXPRESS MY WISHES IN CASE I LATER BECOME UNABLE TO TELL MY DOCTOR OR MY FAMILY?

There are three ways you can make your wishes known now, before you get too sick to tell what treatment you want or don't want:

1. You can speak directly to your doctor and your family.
2. You can appoint someone to speak or decide for you.
3. You can write some specific medical instructions.

DO I HAVE TO FILL OUT MORE PAPERS?

No. You can always talk with your doctor and ask that your wishes be written in your medical chart. You can talk with your family. You don't have to write down what you want, but writing it down makes it clear, and sometimes, writing it down is necessary to make it legal. When you are no longer able to speak for yourself, Indiana law pays special attention to what you have written in your advance directive about your health care wishes and whom you appointed to carry them out.

DO I HAVE TO DECIDE ABOUT AN ADVANCE DIRECTIVE NOW?

No. You have a right to make an advance directive if you want to, and no one can stop you from doing so. But no one can force you to make an advance directive if you don't want to, and no one can discriminate against you if you don't sign one.

WHICH ADVANCE DIRECTIVE SHOULD I USE?

That depends on what you want to do. If you want to put your wishes in writing, there are three Indiana laws that are important -- the Health Care Consent Act, the Living Will Act, and the Powers of Attorney Act. These laws may be used singly or in combination with each other. These laws are complicated, however, and it is always wise to talk to a lawyer if you have specific questions about your legal choices.

WHAT IS THE INDIANA HEALTH CARE CONSENT ACT?

The Indiana Health Care Consent Act is found in the Indiana Code at Ind. Code 16-36-1. This law lets you appoint someone to say yes or no to your medical treatments when you are no longer able to do so. This person is

called your health care representative, and he or she may consent to, or refuse, medical treatment for you in certain circumstances that you can spell out. To appoint a health care representative, you must put it in writing, sign it, and have it witnessed by another adult.

Because these are serious decisions, your health care representative must make them in your best interest. In Indiana, courts have already made it clear that decisions made for you by your health care representative should be honored. These decisions can determine which medical treatments you will or will not receive when you are unable to express your wishes. If you want, in certain circumstances and in consultation with your doctor, your health care representative may even decide whether or not food and water should be artificially provided as part of your medical treatment.

WHAT IS THE INDIANA LIVING WILL ACT?

The Indiana Living Will Act is found in the Indiana Code at Ind. Code 16-36-4. This law lets you write one of two kinds of legal documents for use when you have a terminal condition and are unable to give medical instructions. The first, the Living Will Declaration, can be used if you want to tell your doctor and family that life-prolonging medical treatment should not be used, so that you can be allowed to die naturally from your terminal condition. In a Living Will Declaration, you may choose whether or not food or water should be artificially provided as part of your medical treatment or whether someone else should make that decision for you. The second of these documents, the Life-Prolonging Procedures Declaration can be used if you want all possible life-prolonging medical treatments used to extend your life.

For either of these documents to be effective, there must be two adult witnesses and the document must be in writing and signed by you or someone that you direct to sign in your presence. Either a Living Will Declaration or a Life-Prolonging Procedures Declaration can be cancelled orally, or in writing, or by canceling or destroying the declaration yourself. The cancellation is effective, however, only when your doctor is informed.

WHAT IS THE INDIANA POWERS OF ATTORNEY ACT?

The Indiana Powers of Attorney Act is found in the Indiana Code at Ind. Code 30-5. This law spells out how you can give someone the power to act for you in a lot of situations, including health care. You do this by giving this person your power of attorney to do things you want this person to do. This person should be someone that you trust. He or she does not have to be an attorney, even though the legal term for this person is "attorney in fact." The person you appoint as your attorney in fact is given the power to act for you in only the ways that you specify. Your power of attorney must be in writing and signed in the presence of a notary public. It must spell out who you want as your attorney in fact and exactly what powers you want to give to the person who will be your attorney in fact, and what powers you don't want to give. Since your attorney in fact is not required to act for you if he or she doesn't want to, you may wish to consult with this person before making the appointment.

If you wish, your power of attorney document may appoint the person of your choice to consent to or refuse health care for you. This can be done by making this person your health care representative under the Health Care Consent Act, or by referring to the Living Will Act in your power of attorney document. You can also let this person have general power over your health care. This would let him or her sign contracts for you, admit or release you from hospitals or other places, look at or get copies of your medical records, and do a number of other things in your name. You can cancel a power of attorney at any time, but only by signing a written cancellation and having this actually delivered to your attorney in fact.

ARE THERE FORMS TO HELP ME WRITE THESE DOCUMENTS?

Although Indiana law provides limited forms for some of the purposes listed above, these may not be sufficient to accomplish everything you might want. Although these laws do not specifically require an attorney, you may wish to consult with one before you try to write one of the more complicated legal documents described above.

CAN I CHANGE MY MIND AFTER I WRITE AN ADVANCE DIRECTIVE?

Yes. As we mentioned above, you can change your mind about any of the types of appointments or about the living will. However, you need to make various people aware that you've changed your mind - like your doctor, your family or the person you've appointed - and you might have to revoke your decision in writing. Remember, however, that you can always speak directly to your doctor. But be sure to state your wishes clearly and be sure they are understood.

WHAT IF I MAKE AN ADVANCE DIRECTIVE IN INDIANA AND I AM HOSPITALIZED IN A DIFFERENT STATE, OR VICE VERSA?

The law on honoring an advance directive in or from another State is unclear. Because an advance directive tells your wishes regarding medical care, however, it may be honored wherever you are, if it is made known. But if you spend a great deal of time in more than one state, you may wish to consider having your advance directive meet the laws of those States, as much as possible.

WHAT SHOULD I DO WITH MY ADVANCE DIRECTIVE IF I CHOOSE TO HAVE ONE?

Make sure that someone, such as your lawyer or a family member, knows that you have an advance directive and knows where it is located. You should give a copy of your power of attorney document to the person you have appointed to serve as your attorney in fact. You may also decide to ask your doctor or other health care provider to make your advance directive a part of your permanent medical record. Another idea would be to keep a second copy of the directive in a safe place where it can easily be found. You might keep a small card in your purse or wallet which states that you have an advance directive and where it is located or who your attorney in fact is, if you have named one.

FINAL THINGS TO REMEMBER:

You have the right to control what medical treatment you will receive.

Even without a lawyer or a form, you can always tell your doctor and your family what medical treatments you want or do not want.

No one can discriminate against you for signing, or not signing an advance directive.

Using an advance directive is, however, your way to control your future medical treatment.

The Indiana State Department of Health attorneys cannot provide you with legal advice concerning living wills or advance directives. Therefore, it is recommended that you contact your personal attorney or representative for advice and assistance in this matter.