

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 right 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.

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*, adults may sign a document that makes their choices about health care known to their doctor and family in advance. In that document, adults also may name someone they trust to make health care decisions for them if they become unable to express their wishes. This document is known as an Advance Directive.

The *Health Care Decisions Act* became law in 1992. It has been revised from most recently in 2015. However, any valid Advance Directive 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 specify that your agent only make those decisions you authorize in writing. The law says that your agent must base any decisions, so far as possible, on your religious beliefs, basic values and stated preferences, or on your best interests if your values are unknown. You also may name a person who will see that your organs or body are donated, as you wish, after your death.

Whether or not you name an agent in your Advance Directive, 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 from which death is imminent. It can also mean 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. They just 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 reject such treatment. You also can say in an 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 specify 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 simply 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 can 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 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?

Any person over the age of 18, including a husband, wife, or other blood relative can be a witness. A health care provider also can 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, 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 people such as guardians or family members among those 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.

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, by destroying it, or by 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.

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 reflects that they have one. You should give copies of your Advance Directive to your family, 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.

Virginia created a free online Advance Directive registry at www.connectvirginia.org/adr that allows Virginia residents to securely store their Advanced Health Directive, Health Care Power of Attorney, Declaration of Anatomical Gift, and other documents so that medical providers, emergency responders, family members, and anyone else you designate will know how to honor your wishes. The information in the Virginia Registry is safe and confidential. Only health care providers, you, and people you designate will have access to your documents.

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 financial decisions 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.

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Cut along dotted line and carry in your wallet

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

See other side for additional information



Name	()
Address	Phone
Signed	
Date	

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