



Health Care Advance Directives

When you need medical care, you have the right to make choices about that care. But there may come a time when you are so sick that you can't make your wishes known. You can stay in charge by putting your choices in writing ahead of time by completing an Advance Directive. This section will answer some basic questions about Advance Directives.

What is an Advance Directive?

Any spoken or written decision or instruction about the health care you want in the future is called an Advance Directive. You can tell your doctor or family what you want, but it is best to write it down.

Advance Directives are sometimes called Living Wills or Durable Health Care Powers of Attorney. If you have already signed one, make sure your doctor, your hospital and your family have a copy. If you don't have one, the Maine Hospital Association has a free form you can use. This is a very straightforward form that provides easy to follow directions. However, the law does not require that this particular form be used, so you may use any form that you like when preparing an Advance Directive.

Who can make an Advance Directive?

In Maine, anyone 18 years old or older can complete an Advance Directive. If you are younger than 18, you may also be able to complete an Advance Directive under certain circumstances.

Do I need an Advance Directive?

If you sign an Advance Directive, your family and your doctor will know who to talk to about your care or what kinds of treatment you want or do not want when you are too sick to decide. This could happen if you have a serious illness or are near the end of life. If your doctor does not know your wishes, they will treat you until they can ask your family what you want. If your family does not know your wishes, you may get treatments you do not want.

What do I say in an Advance Directive?

The Maine Hospital Association form provides you with a number of choices, including:

1. Choosing someone to make all your health care decisions beginning either right away or when you are too sick to make decisions. That person is called your agent. Your agent can be a family member or friend. If you choose an agent, two (2) witnesses must sign your Advance Directive.
2. Choosing whether or not you want certain end-of-life treatments when you are very ill. For example, you can choose what you wish to have done if you are terminally ill or unconscious. Your agent must follow any choices you make in an Advance Directive.
3. Stating a desire to donate your organs. Indicate your wishes and any plans you have made to donate your organs.

4. Naming your primary doctor.

You may choose to fill out the whole form or any part of the form. It will be valid so long as you sign and date the form before witnesses. You may just use the form to name an agent to make your health care decisions for you.

What happens if I do not make an Advance Directive?

If you do not name an agent or do not have an Advance Directive, the doctor will ask your family what treatment you would want, in this order:

- Spouse (unless legally separated) or similar relationship
- Adult children
- Parents
- Adult brothers and sisters
- Adult grandchildren
- Adult nieces and nephews
- Adult aunts and uncles

If the doctor can't reach a family member, the doctor may ask another adult relative or good friend who knows your values. If you do not want certain members of your family to be able to make decisions for you, you need to put this in writing and give it to your doctor or hospital.

Your family can tell your doctor to continue to treat you. They can also tell your doctor to stop or not give treatment to keep you alive (life-sustaining treatment) if you are terminally ill or unconscious. Certain family members may not, however, be able to make other decisions for you unless you name one of them as your agent in your Advance Directive.

What rights do I have as a patient?

When you need medical care, you have certain rights, including the right to refuse care. You have a right to know:

- What your medical problem is and what tests and treatments may be needed.
- What the doctor thinks can be done and what the usual risks are.
- If there are other ways to care for you.
- What may happen if you refuse care.

How do I make an Advance Directive?

1. Most health care facilities have free forms that you can use for making an Advance Directive. Legal Services for Maine Elders can also send you a copy of the Maine Hospital Association's form. If you'd like to get one, or if you would like help filling out the form, give LSE a call at [1-800-750-5353](tel:1-800-750-5353).
2. Talk to your doctor. Ask your doctor about your health and what might happen to you. Take the form with you to the visit to help you think about the choices you have. Medicare Part B covers voluntary advance care planning as part of your "Welcome to Medicare" and yearly "Wellness" visit.
3. Fill out the form, sign it, and have 2 others sign as witnesses. The person you choose to make health care decisions for you cannot be a witness to your signature. You don't have to have an attorney to make an Advance Directive, unless you want to. You don't have to get it notarized, but it's a good idea to do so if you can.

4. Make copies and give one to each of your doctors or hospital. Ask your doctor to include it in your medical record. If you had an attorney help you with the form, give a copy to them. Also give a copy to the person you have named to make health care decisions for you. It's a good idea to keep the original yourself and give other copies to your family.
5. **Keep on talking about what you want.** Writing an Advance Directive is just the start of an on-going process. Look at your Advance Directive every five years or if you have a new health situation to make sure it still reflects your wishes. Talk with your family, your doctor, and anyone else who is involved in your care about what you want. Make sure they agree to do what you want. It's not easy to think about or talk about these things, but unless others know what you want, you may get care you don't want, or your family could end up in court fighting about your care.

If you aren't sure how to talk about this with your family, Legal Services for Maine Elders can provide you with some materials that include suggested topics. Call the Helpline at [1-800-750-5353](tel:1-800-750-5353) to get a copy of these materials.

What happens to the Advance Directive after I have signed it and given it to my doctor?

Your doctor will put the Advance Directive in your medical record, where it should be seen by everyone involved in your care. Later on, if you are terminally ill or unconscious, the doctor caring for you will follow the directions in your Advance Directive. If the doctor is not willing to follow your directions because of the doctor's own personal or religious beliefs, they must transfer you to the care of another doctor who will follow your directions.

When does my Advance Directive go into effect?

Many people want their Advance Directive to go into effect immediately. If you do, you have to say so in your Advance Directive. If your Advance Directive doesn't say anything about when it will go into effect, it will be used only when you become "incapacitated," meaning you are too sick to choose your care or tell others what care you want. Your doctor will help decide if that time has come and when your Advance Directive should be used. If your doctor later states that you have recovered and have regained your ability to choose your care or tell others what you want, then your Advance Directive is no longer in effect.

How will I be determined to be incapacitated?

Unless you state otherwise in your Advance Directive, your primary care physician will be responsible for determining incapacity. If your primary care physician is unavailable, then the physician who is providing you care at the time will make the incapacity determination.

If you want to name a specific person or someone other than your primary care physician to determine incapacity, then you must state this in your Advance Directive. Some alternative options might be:

- Your primary care physician makes an initial determination about your incapacity, but then must obtain a confirming second opinion from another doctor before your Advance Directive becomes effective.
- A probate court judge can make the incapacity determination.

Does my doctor have to follow my choices in my Advance Directive?

Yes. If your doctor, hospital, or other place of health care has any special rules about health care decisions, or if they will not carry out your decisions, they must tell you. They must then

arrange to move you to a doctor, hospital, or other place which will carry out your decisions.

Will my Advance Directive be followed by emergency responders?

Sometimes emergency medical personnel administer life support to people who have Advance Directives that say they don't want life supports. This may happen because, in an emergency, the staff will have to act quickly. They may not have time to read the Advance Directive before responding to the emergency. And, even after they read the Advance Directive, they would need even more time to make sure that the patient is in a terminal condition and that it is indeed appropriate to withdraw treatment.

If you are already in a terminal condition and feel strongly that you do not want to be given life support under any circumstances, you should talk to your doctor. Your doctor may be able to notify the ambulance service and the emergency room that they should not give life support and that they should only give you treatment that will ease your pain and keep you comfortable.

What happens if my heart stops?

If you are in the hospital and your heart or breathing suddenly stops, drugs, machines, and other means will be used to try to restart them. This is called *cardiopulmonary resuscitation* or CPR. CPR is always done unless your doctor writes an order called a "Do Not Resuscitate" order or DNR. If you have concerns about CPR, discuss them with your doctor while you are well. If you make an Advance Directive that says you do not want CPR, it may not be possible for the hospital to follow your decision all the time. For example, if you come to the emergency room and your heart has stopped, there may be no time to check your Advance Directive before CPR is started. If you do not want CPR, your doctor must write a DNR order for you and put it in your hospital record. Your doctor will then give you a special orange bracelet designed to alert ambulance crews and hospital emergency personnel that you do not want CPR.

What if I suffer from a mental health problem?

You may choose to sign a different form, called a Mental Health Directive, which allows you to choose what treatment you want if you become very mentally ill and are unable to make health care decisions. This is similar to making a Health Care Advance Directive, but there are questions that are specific to mental health determinations that will affect what you write in your Mental Health Directive. You should contact the Maine Disability Rights Center and talk to an attorney about this process. *See Resources, below, for contact information for the Maine Disability Rights Center.*

Does a Guardian have to follow my Advance Directive?

Yes, unless the probate court specifically decides otherwise. Under the "Uniform Health Care Decisions Act," Guardians have to follow Advance Directives unless the court orders that the Guardian's decisions need to be followed instead.

If I make an Advance Directive in Maine, will it be followed if I am in another state?

It is possible that you may get sick, injured, or need to go to a hospital while visiting in another state. You should carry a copy of your Advance Directive with you in your wallet or purse, since your medical record will not be available right away to the doctors there. You should also have your Advance Directive witnessed by a notary public or attorney if you travel sometimes

and are concerned about how your Advance Directive will be treated in another state. Whether the doctors there follow your directions depends on whether that state has an Advance Directive law similar to Maine's. As of February 2013, at least 42 states recognize Advance Directives.

Will signing an Advance Directive affect my insurance?

The law says that insurance companies are not allowed to base anything in an existing or future life insurance policy on whether a person does or does not have an Advance Directive.

What else should I know about Advance Directives?

Every hospital and many other places that provide health care in Maine have Advance Directive forms or can tell you how to get them. Just ask your doctor or nurse. They can explain the forms, but they cannot give you legal advice.

No one can make you sign a form or stop you from signing it. You also have the right to change or cancel a form at any time. The Advance Directive form does not allow others to control your money or property. It does not allow anyone to violate laws against mercy killing and euthanasia.

What can I do if I don't think my medical provider followed my Advance Directive?

If you have a complaint about how a hospital or other health care facility handled your Health Care Advance Directive, you may contact:

Division of Licensing and Regulatory Services
Maine Department of Health and Human Services
State House Station 11, 41 Anthony Ave.
Augusta, ME 04333
Tel: 207-287-9300 OR 1-800-383-2441

If you have a complaint about how a physician or physician assistant handled your Health Care Advance Directive, you may contact:

Maine Board of Licensure in Medicine
137 State House Station
Augusta, ME 04333-0137
Tel: 207-287-3601 OR Complaints: 1-888-365-9964

OR

State of Maine Board of Osteopathic Licensure
142 State House Station
Augusta, ME 04333-0142
Tel: 207-287-2480 OR Complaints: 1-888-365-9964

If you have a complaint about how a nurse practitioner handled your Health Care Advance Directive, you may contact:

Maine State Board of Nursing
158 State House Station
Augusta, ME 04333-0158

Tel: [207-287-1133](tel:207-287-1133)

Resources

Legal Services for Maine Elders

If you are a Maine resident who is 60 or older and you have questions about making a Health Care Advance Directive, or if you would like us to mail you a form, call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to speak to an attorney for free.

Disability Rights Maine

If you have a mental illness or cognitive impairment, and you are interested in learning more about making an Advance Directive or a Mental Health Advance Directive, Disability Rights Maine can help you. [Click here for Disability Rights Maine's website.](#)

[1-800-452-1948](tel:1-800-452-1948)

Disability Rights Maine
24 Stone Street, Suite 204
Augusta, ME 04330

Consumer's Toolkit for Health Care Advance Planning

Created by the American Bar Association, this Toolkit contains a variety of self-help worksheets, suggestions, and resources. There are 10 tools in all, each clearly labeled and user-friendly. The toolkit does not create a formal Advance Directive for you. Instead, it helps you do the much harder job of discovering, clarifying, and communicating what is important to you in the face of serious illness.

[Get the toolkit at the American Bar Association website by clicking here.](#)

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