

Advance Health-Care Directive

For more information call the LREP toll-free Legal Helpline at 800-876-6657 or 505-797-6005 (Albuquerque area) www.nmbar.org/public/LREP

You have the right to make your own health care decisions as long as you have the **capacity** to do so. Having **capacity** means that you understand the nature and consequences of proposed health care and that you are able to make and communicate your decision. An **Advance Health Care Directive (AHCD)** allows you to specify who will make health care decisions for you if lose the capacity to make those decisions for yourself.

The **AHCD Form** has three parts: The Power of Attorney for Health Care; Instructions for Health care (sometimes referred to as a Living Will); and Primary Physician designation. You can use or delete any parts you choose and you can change any language in the form to make it meet your needs.

An AHCD does not need to be witnessed or notarized to be effective in New Mexico. You can change your directive any time. A copy is as good as an original.

Your Advance Health Care Directive goes into effect when two health care professionals determine that you lack the capacity to make your own decisions.

Power of Attorney for Health Care

The Power of Attorney for Health Care is the first part of the AHCD. It allows you name an agent to make health care decisions for you in the event you do not have the capacity to make those decisions for yourself. Your agent should be someone who understands your wishes and whom you trust to act in accordance with those wishes. You can also name other people as backup agents in case the person you name isn't able to act for you when the time comes. Unless you say otherwise, your agent can only make decisions for you if doctors determine you lack capacity.

Naming an agent must be done in writing. If you have not named an agent in writing, you can designate a "surrogate decision maker" by personally informing your health care provider, if you have the capacity to do so at the time. If you have not named an agent and you



do not, or cannot, designate a surrogate, New Mexico law identifies and prioritizes who can make health care decisions for you.

Instructions for Health Care

The second part of the AHCD form allows you to give instructions regarding the types of end-of-life care you wish to receive. You can state whether you want to prolong life or not, and what methods you want to be used. The form also allows you state your wishes regarding organ donation. Putting this information in writing makes it easier for your loved ones to know your wishes. Alternatively, you can choose to let your agent decide about any or all of these matters when the time comes.

Primary Physician

The third part of the form lets you designate your primary physician, who would also be one of the two health care professionals to decide whether you have capacity.

Revoking an AHCD

As long as you have capacity, you can revoke an AHCD. You can revoke your designation of an agent by a signed writing or by personally informing your health care provider. You can revoke the other parts of the directive in any way that communicates your intent to revoke them.

Frequently Asked Questions About **Advance Health-Care Directives:**

Q. What health care decisions can my agent or surrogate make?

A. Unless you limit your agent's authority, your agent has the right to consent or refuse to consent to medical care for you, decide who treats you and where the treatment takes place, and approve or disapprove tests and orders not to resuscitate (DNRs).

Q. What is a DNR?

A. DNR stands for Do Not Resuscitate. It is an order that your doctor writes, with your consent (or your agent's consent if you lack capacity). This order instructs emergency medical technicians not to resuscitate you if you stop breathing.

Q. When will my instructions for health care go into effect?

A. When you are unable to make or communicate decisions, and either have an incurable or irreversible condition that will result in your death within a relatively short time or you become unconscious and are not expected to regain consciousness.

Q. Can my agent or surrogate have access to my medical records?

A. Yes. Your agent or surrogate has the same rights as you do to request, receive, examine, copy and consent to the disclosure of health care information.

Q. If I appoint someone to be my agent, will I lose my right to make my own health care decisions?

A. No. As long as you have the physical and mental capacity to make your own decisions, you are entitled to do so. Generally, an agent acts only after you become incapacitated.

Q. Can I name anyone I want to be my agent?

A. You can name any adult (over the age of 18) you choose. You should be sure the person you name is someone you trust to carry out your wishes. It should also be someone who is likely to be available when needed.

Q. How does the law prioritize surrogate decision-makers?

A. The law prioritizes surrogate decision-makers according to their relationship to you. The priority of decision makers is as follows:

1. The spouse;
2. An individual who has been in a long term relationship with the patient, similar to the commitment of a spouse and where the individual and the patient consider themselves to be responsible for each other;
3. An adult child;
4. A parent;
5. An adult brother or sister;
6. A grandparent.

Q. What if none of these people is available?

A. An adult who has exhibited special care and concern for you, who is familiar with your personal values and who is reasonably available may act as your surrogate.