



Oklahoma Advance Directive for Health Care

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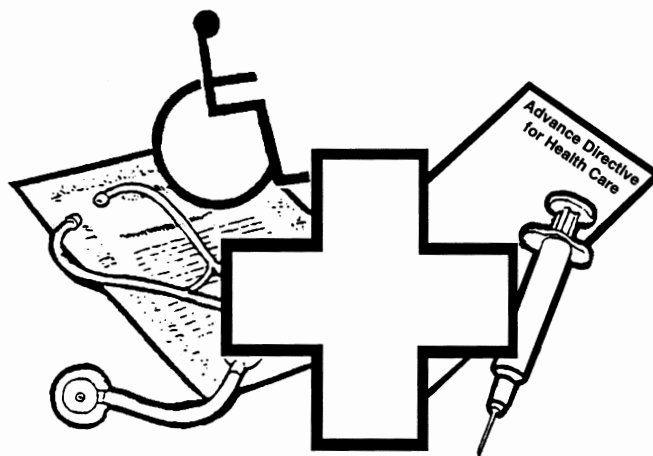
Yes, you do have rights about medical care!

When in good mental and physical health, individuals often take for granted the right to make personal medical care decisions. But, in a split second, illness can strike or an injury can occur leaving many unable to communicate health care decisions. Then what? Everyone can remain in control of these decisions, including the right to refuse medical treatment, if a person prepares an Advance Directive for Health Care.

Addendum to 1992 law

Some form of Advance Directive for Health Care has been in effect in Oklahoma since 1985 - these being the Living Will, Self-Determination Act, Right to Terminally Ill and Persistently Unconscious Act. The Right to Terminally Ill and Persistently Unconscious Act authorized the Advance Directive for Health Care on September 1, 1992.

The new Advance Directive for Health Care includes a separate section con-



cerning organ donations. Now individuals can indicate their wishes concerning donations of the entire body, designated organs, or body parts.

What is an Advance Directive?

An Advance Directive is a written document signed while individuals are capable of making decisions. This document informs health care professionals what medical treatment is desired. You can also name an individual to make decisions about your medical care.

The Advance Directive has five major sections:

1. Living Will
2. Health Care Proxy
3. Anatomical Gifts (organ donation)
4. Conflicting Provisions
5. General Provisions

One may sign any or all of the provisions within the sections. Fifteen signatures are required if every provision in the directive is completed.

What if I signed a Health Care Directive under the old laws?

If an Advance Directive was signed under old Oklahoma laws, it is valid and binding under the November 1, 1995, law. However, an individual may want to sign a new directive because it covers additional provisions.

Who should have an Advance Directive for Health Care?

At the present time, the law covers persons 18 years or older.

When should an Advance Directive for Health Care be prepared?

It is important everyone think through their wishes and prepare the directive while healthy. Remember, illness or injury can strike at any time.

Is it necessary to have an attorney prepare the Advance Directive for Health Care?

It is unnecessary to have an attorney prepare the document. The directive requires two witnesses that are 18 years or older.

How do I create an Advance Directive for Health Care?

Advance Directive forms are available from the local Department of Health

and Human Services office and hospitals. Several procedures are then required to make it effective. First, it must be a voluntary decision.

Requirements are:

- in writing
- signed by the individual preparing document
- dated
- signed in the presence of two witnesses

Requirements of witnesses are:

- must be at least 18
- cannot inherit from you
- cannot be an heir, your spouse, or a blood relative

Who should have copies of the signed Advance Directive for Health Care?

A copy of the Advance Directive should be placed with one's personal papers. Additional copies should be given to personal physician(s), the designated health care proxy, children or other relatives, or any nursing home or care providing facility. It is important to keep a list of who has copies, so if changes are made in the directive, all copies can be replaced. Keep a small card in your purse or wallet that shows you have an Advance Directive. List where the directive is located and the name of the designated "agent" or "proxy", if a person has been given this role.

Under the new law, when you enter a Medicare or Medicaid hospital or nursing facility, receive home health or hospice care from a Medicare or Medicaid provider, or enroll in a Medicare or Medicaid-certified HMO, you should be asked whether you have a directive.

Do I need to have an Advance Directive for Health Care?

If you do not have a directive you may be unable to communicate wishes about medical decisions, such as whether to continue life-support systems. These decisions are then left to a patient's family, physician, hospital, or sometimes a judge if a disagreement arises.

What happens if there is no Advance Directive for Health Care and a terminal illness develops?

When a terminally ill patient is diagnosed and unable to make medical treatment decisions, the attending physician can request that the court appoint a guardian to make decisions. The guardian must have a court order to make decisions regarding the removal of life-sustaining equipment.

Oklahoma's Comprehensive Guardianship must be authorized by a court, and a potential ward is entitled to notice and counsel. Administrators or employees of nursing homes and residential care homes may not be appointed as guardians.

How does the Guardianship differ from the Advance Directive for Health Care?

A person voluntarily makes personal decisions when preparing an Advance Directive for Health Care. However, under a guardianship, decisions are made by someone else through court authorization. When a guardianship is approved, there is full or partial loss of rights by the patient, who is legally determined to be fully or partially incapacitated. A guardian may make many kinds of decisions within the scope of the court order. Keep in mind however, a guardian may NOT make decisions relating to withholding or withdrawal of life-sustaining treatment, unless there is a separate and specific authorization by the court or the patient has a valid Advance Directive for Health Care.

In Oklahoma, it is permissible to have a limited guardianship, a temporary guardianship or a full guardianship. A limited guardian is designated only to manage financial affairs for the patient. A temporary guardianship deals with difficult emergency situations such as abuse or exploitation. When a full guardianship is granted by the court, the patient loses all rights to make personal decisions. Because there is potential for financial abuse, annual reports are required; however, the monitoring of these reports is uncertain.

What is a “Living Will”?

The Living Will is a document stating an individual’s wishes regarding life sustaining treatment, such as respirators or intravenous feeding. This also applies if the patient is terminally ill or persistently unconscious and unable to express preferences to doctors or relatives. The Living Will is one of the major sections of the Advanced Directive for Health Care.

What is a Health Care Proxy?

A health care proxy makes medical decisions for you, including decisions about life-sustaining treatment. You appoint your health care proxy by naming the person in the Advance Directive for Health Care form.

What is a Durable Power of Attorney for Health Care?

A Durable Power of Attorney for Health Care is a separate legal document in which you name the person you want to make routine medical care decisions for you when unable to communicate. This document requires the assistance of a lawyer. The person named in this document should be the same person named in the Health Care Proxy Section II of the Advance Directive for Health Care.

Do not confuse a Durable Power of Attorney for Health Care with the Durable Power of Attorney.

The Durable Power of Attorney is a legal document in which an individual

(principal) authorizes another person (agent) to act on behalf of the principal’s financial affairs, should the principal become mentally incapacitated. An agent named in a Durable Power of Attorney is not authorized to make health care decisions. The document authorizes a person to make only financial and business decisions for the principal.

Who should be named the Health Care Proxy or Durable Power of Attorney for Health Care?

People often like to name one of their children. However, a proxy does not need to be a family member and can be a close friend or a counselor. More important, the proxy should be someone who knows and understands the person’s wishes and is easily available for communication with the attending physician.

When will the Living Will section of the Advance Directive for Health Care become operative?

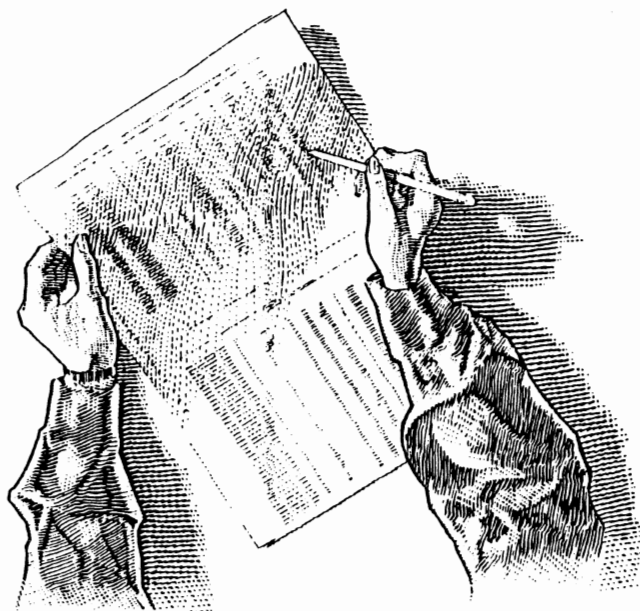
If a person has completed an Advance Directive and has been diagnosed as terminally ill or persistently unconscious by two physicians, as defined in the directive, and the attending physician does not want to comply with the patient’s wishes, that physician must act promptly to arrange for care by another physician or health care provider.

The law protects a person from misjudgment by a physician by requiring a

separate opinion by a second physician who must agree that your condition is terminal or that you are persistently unconscious. This second opinion must be made a part of the patient's medical record.

What if a person filled out an Advance Directive in Oklahoma and is hospitalized in a different state?

The laws on honoring an Advance Directive in another state are unclear. Because an Advance Directive outlines your wishes regarding medical care, it may be honored wherever you are, if it is made known that you have a directive. However, if you spend a great deal of time in more than one state, you may wish to consider completing an Advance Directive that meets the law of each state.



What if I sign an Advance Directive in another state?

An Advance Directive signed in another state is valid and binding in Oklahoma for any procedure the Oklahoma law allows.

Can I change my mind after I write an Advance Directive for Health Care?

Any change or cancellation should be written, signed, and dated in accordance with state law. Copies of the directive should be given to the family physician or to others to whom copies of the original document may have been given.

Even without changes in writing, your wishes stated in person with your physician generally carry more weight than a Living Will or Durable Power of Attorney for Health Care, as long as you can decide yourself and can communicate your wishes.

Summary

The Advance Directive for Health Care should be reviewed on a regular basis to assure that it meets your wishes regarding medical care.

The Advance Directive form may be obtained from the Area Agency on Aging, Aging Nutrition Program sites, hospitals, and the local Department of Health and Human Services office.

References:

- Aging: The Oklahoma Advance Directive for Health Care* (1996). Oklahoma Department of Human Services Aging Services Division.
- Bradley, C. & Wilson, H. (June, 1992). OPA News Bureau. Capitol report, living will. *Stillwater News Press*.
- Green, R. (November, 1992). Living wills for all ages. *Oklahoma Alliance on Aging Newsletter*.
- Allis, D. F. (Winter, 1996). New advance directives under Oklahoma law. *PD Perspective*.
- Smith, V. (1993). Adult protective services and guardianship. *Oklahoma Alliance on Aging Newsletter*.
- Smith, V. (1995). Individual rights and safeguards. *Oklahoma Alliance on Aging Newsletter*.
- Stillwater Medical Center Patient Information Sheet (1995).
- West, J. (October, 1992). New law changes living will. *The Sage Age* 10(4).
- H.B. No. 1969. Public Health and Safety - Advance Directives - Donation of Organs or Body Parts. First Regular Session, Laws Forty-Fifth Legislature (1995), Ch. 99 *1, Pages 389-394.