

Advance Directives

Planning for Health Care

Decisions

A different conversation...

Most of us like to be in charge of our lives and the health care we receive. But if you are seriously ill or dying, you may not be able to speak for yourself and your family may be faced with difficult decisions. Talking with your family about your wishes and completing an advance directive will help. While starting the conversation can be difficult, discussing your wishes for care at end of life can provide comfort for you and direction for your loved ones. This discussion is for all adults, not just those who are elderly or have a progressive illness. Begin the discussion early, and make your wishes known.

What are advance directives?

Advance directives are forms that outline the care you would like to receive - or not receive - if you are unable to speak for yourself. The three types of forms are **Living Will**, **Durable Power of Attorney for Health Care** and **Comfort One**.

These forms do not have to be completed by an attorney; however, they do need to be signed, witnessed and, possibly, notarized.

A **Living Will** directs what treatment to provide or withhold when you are terminally ill and death is imminent or if you are permanently unconscious. It only becomes effective when you are no longer able to speak for yourself.

A **Durable Power of Attorney for Health Care** appoints someone to speak for you when you are no longer able to direct your care. This could include an illness, accident or terminal condition. If you improve and are able to speak for yourself, then you resume the ability to direct your care.

Comfort One in South Dakota provides quick identification of patients who choose not to receive life-prolonging treatment (chest compressions, breathing tubes, shock and so on) by emergency personnel. Patients wear a special bracelet or have a document that states these requests and that the emergency team should only provide comfort measures. The **Comfort One** form must be signed by your physician, nurse practitioner or physician assistant. Emergency teams, such as EMS teams or ambulance crews, cannot honor advance directives unless a Comfort One form is in place. For more information on Comfort One, please go to www.sdemta.org.

Think about this...

You have the right to decide what treatment you do and do not want at end of life.

If you do not communicate your wishes and are not able to speak for yourself, then others will make decisions about your care ... and it may not be what you want.

Without an advance directive your health care provider will turn to your family for decisions. They will start with your closest relatives, which may result in someone you would never select making decisions about your care.

When making your advance directive, think about three possible situations:

- If you have a sudden illness.
- If you have a severe accident.
- If you become terminally ill.

In each of these situations, consider the following:

- Do you want aggressive treatment?
- How long would you want treatment to continue if you were unconscious and not expected to recover - days, weeks, months?
- When would care and comfort, with an emphasis on pain management, be your choice?

Other issues to consider...

Write your requests clearly. If needed, use extra space to write about specific treatment you do or do not want (i.e. the use of CPR or breathing machines). You will also be asked about artificial hydration and nutrition.

Do not put originals in a safety deposit box or other secure place that cannot be easily accessed when they are needed.

Make copies of your documents, and share them with your family members, spokesperson, attorney, physicians, health care center and anyone else involved in your health care.

Revisit your directives as you age or your health status changes. Your care decisions may change.

If you want to make changes, complete a new form and communicate your wishes to all involved.

Laws differ from state to state. If you are traveling or moving, you may need to adjust your information.

...What gives your life meaning?

Definitions:

Allow Natural Death (AND)	This decision provides care and comfort measures for a terminally ill patient in place of aggressive, life-prolonging measures.
Artificial hydration & nutrition	This refers to a method of delivering a chemically balanced mix of nutrients and fluids when a patient is not able to eat or drink. The patient may receive fluids through a tube inserted directly into his or her stomach, a tube put through the nose and throat to the stomach, or a needle in a vein.
CPR	Cardiopulmonary Resuscitation, or CPR, is a medical procedure that can include chest compressions, drugs or electric shock in an attempt to restore a heartbeat. CPR is generally not successful in a terminally ill person.
DNR	Do not resuscitate is a medical order to not perform CPR if a patient's heart stops beating, and allow natural death.
Hospice	Hospice is a program of support for terminally ill patients and their families. A team of specially trained professionals focuses on pain and symptom management, spiritual issues, financial and legal issues, and other needs. Care may be provided at home or in the hospital, nursing home or other settings.

Funding for this brochure provided by:



For more information, please visit the following web sites:

National Hospice and Palliative Care Organization, www.nhpco.org

Aging with Dignity, www.agingwithdignity.org

Caring Connections, www.caringinfo.org

American Hospice Foundation, www.americanhospice.org

South Dakota State Medical Association, www.sdsma.org

South Dakota Hospice Organization, www.southdakotahospice.org

LifeCircle South Dakota, www.LifeCirclesd.org

South Dakota State, www.state.sd.us

Contributing Programs:

South Dakota Bar Association, South Dakota State Medical Association, South Dakota Hospice Organization, Countryside Hospice, Inc., South Dakota Association of Healthcare Organizations, Avera McKennan Hospice, Avera Health, LifeCircle South Dakota, Sanford Health and Hospice



Planning for health care decisions

Your right to choose

Have you ever thought about what would happen if you suddenly became incapable of making your own health care decisions? Who would make the decisions for you? How would they be made?

Patients who are capable of making their own health care decisions have the right to consent, to reject and to withdraw consent for medical procedures, treatments or interventions. They may say yes, no, or “I will think about it.” For patients who are incapable, someone else must make decisions for them. For many patients, this possible loss of control is a concern. Should they try to designate someone else to speak for them? How do they protect and effectively transfer their right to choose to a person whom they know will speak their mind and heart?

Those concerns can be addressed by signing an advance directive - a document that sets out guidelines for your future care. The two most common types of advance directives are the durable power of attorney for health care and the living will. The purpose of this pamphlet is to describe the durable power of attorney for health care and the living will in light of current South Dakota law and medical practice.

Frequently Asked Questions

about the Durable Power of Attorney for Health Care Living and Living Will

What is a durable power of attorney for health care?

A durable power of attorney for health care is a document that you create by appointing another person, the health care “agent,” or “attorney in fact,” to make health care decisions for you should you become incapable of making them yourself.

What is a living will?

A living will is a document that gives instructions to your physician and other health care providers as to the circumstances under which you want life sustaining treatment to be provided, withheld or withdrawn if you are terminally ill.

Are durable powers of attorney for health care and living wills recognized in South Dakota?

Both are recognized in South Dakota. The durable power of attorney for health care became part of South Dakota law on July 1, 1990, and the living will became part of South Dakota law on July 1, 1991. If you signed a durable power of attorney for health care before July 1, 1990, or if you signed a living will before July 1, 1991, you should have your document reviewed to make certain that it meets current requirements.

Which is better - a durable power of attorney for health care or a living will?

Most experts agree that a durable power of attorney for health care is a far better option than a living will. The durable power of attorney for health care can do for you everything that a living will can do, and may include a statement of your wishes on the subject of life sustaining treatment.

A durable power of attorney for health care has advantages which the living will does not share. With a durable power of attorney for health care, your agent can actively remind your physician of your wishes, something that a written document, such as a living will, cannot do alone.

Furthermore, a living will only contains directions as to when and whether you want life sustaining treatment, and it goes into effect only after your attending physician and one other physician have diagnosed you as terminally ill or permanently unconscious. A living will does not address the many other health care decisions that must be made should you become incapable of making your own decisions. A durable power of attorney for health care, though, can authorize your agent to make all health care decisions. It is in this way far more comprehensive and flexible than a living will. It is valuable and valid for all adults, both young and old.

If I choose a durable power of attorney for health care, whom should I select as my agent?

First, you need to think carefully about who knows you best and will best be able to speak for you on health care matters. For many, this will be a spouse or a child, but you may name anyone, including a friend. Second, you should consider where the person lives and whether that person could be present when health care decisions need to be made for you. Finally, you should consider naming a second person to act as an agent in the event that your first choice is unable or is unwilling to make the decision.

What should I tell the person I have selected?

Ask if he or she is willing to accept the responsibility of being your health care agent. If the person you have selected accepts the responsibility, then discuss the various kinds of health care decisions that may have to be made in your future and what your wishes are.



Can my agent make a decision against my wishes or proper medical practice?

No. The agent must follow your wishes and must consider your physician's recommendations. A decision by your agent must be within the range of accepted medical practice.

Is there an approved form for a durable power of attorney for health care or living will?

There is no approved form for a durable power of attorney for health care. Professional assistance should be sought in all instances. The South Dakota living will statute contains a living will form which you may use. It is not a simple document. You should obtain assistance prior to signing the living will form if you do not understand the form or any of its terms.

Can I use a power of attorney or living will form which I found in a book or which a friend sent me from another state?

There is nothing to prevent you from using such forms, but those forms are unlikely to take into account South Dakota's special requirements.

What are South Dakota's special requirements?

The most important relates to what is known as artificial nutrition and hydration. If you want your agent to have authority to direct the withholding or withdrawal of artificial nutrition and hydration, you must say so in your durable power of attorney for health care. If you sign a living will and prefer that artificial nutrition and hydration not be provided, your living will must say so. There also are special provisions relating to withdrawal of treatment from pregnant women.

How do I create a durable power of attorney for health care or living will?

Durable powers of attorney for health care and living wills are not simple documents. They should include your special wishes and should be tailored to meet your needs. You should consult with a lawyer. You should visit with your physician about this before or during the time when you are having the document prepared.

Frequently Asked Questions

about the Durable Power of Attorney for Health Care Living and Living Will

What should I do once I have signed a durable power of attorney for health care or living will?

If you sign a durable power of attorney for health care, you should discuss it with the agent you have selected. No matter which document you have chosen, inform your physician, your family and your religious advisor. You may also want to give copies to each of these individuals but be careful to keep a list; in case you should later decide to revoke your durable power of attorney for health care or living will, you will want to get those copies back. This will remain a part of your permanent medical record unless you choose to amend or revoke at anytime.

What if I change my mind after I've created a durable power of attorney for health care or living will?

You can amend or revoke a durable power of attorney for health care or living will at any time while you are still capable of doing so.

If I should be hospitalized or enter a nursing home, how do I know whether the hospital or nursing home will honor my durable power of attorney for health care or living will?

Effective Dec. 1, 1991, a federal law requires that hospitals, nursing homes, home health agencies and hospice programs provide their patients and residents with written information on their policies with respect to durable powers of attorney for health care and living wills. Most hospitals and nursing homes will provide this written information during the admissions process. You should carefully consider the questions and information set forth in this pamphlet prior to your admission to a hospital or nursing home.

Do it now.

Durable powers of attorney for health care and living wills are like fire insurance. You must do it before the fire. You have the right to have either or both document(s) as long as you are able of making decisions for yourself. Once you are incapable of making your own decisions, you lose the opportunity to choose someone to speak for you or to make your wishes known about future health care decisions. If that should occur, the health care decisions made for you may not be those that you would choose for yourself. Please don't delay. Do it today.



Living Will Declaration

Date of birth: _____

This is an important legal document. A living will directs the medical treatment you are to receive in the event you are in a terminal condition and are unable to participate in your own medical decisions. This living will may state what kind of treatment you want or do not want to receive.

Prepare this living will carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

This living will remains valid and in effect until and unless you revoke it. Review this living will periodically to make sure it continues to reflect your wishes. You may amend or revoke this living will at any time by notifying your physician and other health care providers. You should give copies of this living will to your family, your physician, and your health care facility. This form is entirely optional. If you choose to use this form, please note that the form provides signature lines for you, two witnesses, and a notary public.

TO MY FAMILY, HEALTH CARE PROVIDER, AND ALL THOSE CONCERNED WITH MY CARE:

I, _____ direct you to follow my wishes for care if I am in a terminal condition, my death is imminent, and I am unable to communicate my decisions about my medical care.

With respect to any life-sustaining treatment, I direct the following:

(Initial only one of the following options. If you do not agree with either of the following options, space is provided below for you to write your own instructions)

_____ If my death is imminent or I am permanently unconscious, I choose to not prolong my life. If life sustaining treatment has been started, stop it, but keep me comfortable and control my pain.

_____ Even if my death is imminent or I am permanently unconscious, I choose to prolong my life.

_____ I choose neither of the above options, and here are my instructions should I become terminally ill and my death is imminent or I am permanently unconscious:

Artificial Nutrition and Hydration: food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I direct the following: (Initial only one)

_____ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.

_____ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

Signature: X _____

Print name: _____

Address: _____

Date: _____

WITNESS STATEMENT

I declare that the person who signed or acknowledged this document is known to me, that he/she signed or acknowledged this living will in my presence and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I further declare that I am not related to the signer by blood, marriage, or adoption, and to the best of my knowledge, I am not a creditor of the principal nor entitled to any part of his/her estate under a will now existing or by operation of law.

Witness: _____

Address: _____

Witness: _____

Address: _____

NOTARIZATION

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, the said, _____ personally appeared before me, Notary Public, within and for the State and County aforesaid, and acknowledged that he or she freely and voluntarily executed the same for the purposes stated therein.

Notary Public: _____

My Commission Expires: _____

Health Care Power of Attorney

Date of birth: _____

I, _____, of _____ (address)
hereby appoint _____ (name of attorney-in-fact),
of _____ (address and telephone number of attorney-in-fact)
as my attorney-in-fact to consent to, to reject, or to withdraw consent for medical procedures, treatment, or intervention.

SUCCESSORS

In the event the person I appoint above is unable, unwilling, or unavailable to act as my health care agent, I hereby appoint (*each to act alone and successively, in the order named*) as successors to my attorney-in-fact:

A. FIRST ALTERNATIVE ATTORNEY-IN-FACT

Name

Address

Telephone number

B. SECOND ALTERNATIVE ATTORNEY-IN-FACT

Name

Address

Telephone number

EFFECTIVE DATE AND DURABILITY

By this document, I intend to create a durable power of attorney effective upon, and only during, any period of incapacity in which, in the opinion of my attorney-in-fact and attending physician, I am unable to make or communicate a choice regarding a particular health care decision.

ATTORNEY-IN-FACT'S POWERS

I grant to my attorney-in-fact full authority to make decisions for me regarding my health care. My attorney-in-fact may make any health care decisions for me which I could make individually if I had decisional capacity. However, all such decisions shall be made in accordance with accepted medical standards. Whenever making any health care decision for me, my attorney-in-fact shall consider the recommendation of the attending physician, the decision that I would have made if I had decisional capacity, if known by the attorney-in-fact, and the decision that would be in my best interest.

Accordingly, unless specifically limited by Section 5 below, my attorney-in-fact is authorized as follows:

- A. To consent, refuse or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including (but not limited to) artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- B. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose the contents to others;
- C. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted living or similar facility or service;
- D. To contract on my behalf for any health care related service or facility, without my attorney-in-fact incurring personal financial liability for such contracts;
- E. To hire and fire medical, social service and other support personnel responsible for my care;
- F. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of (but not intentionally cause) my death;
- G. To make anatomical gifts of part or all of my body for medical purposes, authorize an autopsy, and direct the disposition of my remains, to the extent permitted by law; and
- H. To take any other action necessary to do what I authorize here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my attorney-in-fact, or to seek actual or punitive damages for the failure to comply.

STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS

- A. **LIMITATIONS** The powers granted above do not include the following powers or are subject to the following rules or limitations:

B. LIFE-SUSTAINING TREATMENT With respect to any life-sustaining treatment, I direct the following: *(initial only one)*

_____ **REFERENCE TO A LIVING WILL.** I specifically direct my attorney-in-fact to follow any health care declaration or "living will" executed by me.

_____ **GRANT OF DISCRETION TO ATTORNEY-IN-FACT.** I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my attorney-in-fact believes the burdens of the treatment outweigh the expected benefits. I want my attorney-in-fact to consider the relief of suffering, the expense involved, and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

_____ **DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT.** I do not want my life to be prolonged and I do not want life-sustaining treatment if my death is imminent or I am permanently unconscious. If life sustaining treatment has been started, stop it, but keep me comfortable and control my pain.

_____ **DIRECTIVE IN MY OWN WORDS**

C. ARTIFICIAL NUTRITION AND HYDRATION

Artificial nutrition and hydration is food and water provided by means of a nasogastric tube or tubes inserted into the stomach, intestines, or veins. **With respect to artificial nutrition and hydration I wish to make clear that:** *(initial one)*

_____ I do not want artificial nutrition and hydration started if they would be the only treatments keeping me alive. If artificial nutrition and hydration are started under these conditions, I want them stopped.

_____ I want artificial nutrition and hydration regardless of my condition.

PROTECTION OF THIRD PARTIES WHO RELY ON MY ATTORNEY-IN-FACT

No person who relies in good faith upon any representation by my attorney-in-fact or successor attorney-in-fact shall be liable to me, my estate, my heirs or assigns, for recognizing the attorney-in-fact's authority.

NOMINATION OF GUARDIAN

If a guardian of my person should for any reason be appointed, I nominate my attorney-in-fact (or his or her successor), named above.

ADMINISTRATIVE PROVISIONS

- A. I revoke any prior power of attorney for health care.
- B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.
- C. My attorney-in-fact shall not be entitled to compensation for services performed under this power of attorney, but he or she shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this power of attorney.
- D. The powers delegated under this power of attorney are separable, so that the invalidity of one or more powers shall not affect any others.

By signing here I indicate that I understand the contents of this document and the effect of this grant of powers to my attorney-in-fact.

Signature: **X** _____

Print name: _____

Address: _____

Date: _____

WITNESS STATEMENT

I declare that the person who signed or acknowledged this document is known to me, that he/she signed or acknowledged this durable power of attorney in my presence and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as attorney-in-fact by this document. I further declare that I am not related to the principal (person executing this document) by blood, marriage, or adoption, and to the best of my knowledge, I am not a creditor of the principal nor entitled to any part of his/her estate under a will now existing or by operation of law.

Witness _____

Address _____

Witness _____

Address _____

NOTARIZATION

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, the said _____

known to me (or satisfactorily proven) to be the person named in the foregoing instrument, personally appeared before me, a Notary Public, within and for the State and County aforesaid, and acknowledged that he or she freely and voluntarily executed the same for the purposes stated therein.

Notary Public: _____

My Commission Expires: _____

