

Advance Health-Care Directive

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area) or visit us online at www.nmbar.org.

You have the right to make your own health-care decisions as long as you have capacity. You have the right to name someone to make health-care decisions for you when you no longer have capacity. You also have the right to give instructions about your own health care. If you do this in writing, it is called an **Advance Health-Care Directive**. This document lets you name who you want to make decisions for you. It also lets you set out your instructions for end-of-life care, including anatomical gifts or organ donation. By putting this information in writing, you make it easier for your loved ones to know what you want. Witnesses and notarization are optional and not required. You can change your directive any time. A copy is as good as an original.

If two health-care professionals determine that you lack capacity to make your own decisions, your Advance Health-Care Directive goes into effect.

Capacity means the ability to understand what you're being asked to decide, make a decision and communicate it.

The Advance Health-Care Directive Form has three optional parts. You can use any parts you choose and you can change any language in the form to make it meet your needs.

Power of Attorney for Health Care

In the first part of the form, you can name someone you trust as your **agent** to make health-care decisions for you. 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 don't name an agent in writing, you can later designate a surrogate decision maker, if you have capacity, by personally informing your health-care provider. If you don't designate a surrogate, New Mexico law identifies and prioritizes who can make decisions for you.

Instructions for Health Care

The second part of the form lets you state your wishes for end-of-life care. You can state whether you want to prolong life or not, and what methods you want to be used. It also lets you state your wishes about organ donation. You can also choose to let your agent decide about any of these matters when the time comes.

Primary Physician

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



Revoking an Advance Health-Care Directive

As long as you have capacity, you can revoke an Advance Health-Care Directive. 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 consent to medical care, 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. This is a Do Not Resuscitate 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 you have an incurable or irreversible condition that will result in your death within a relatively short time or you become unconscious and will not 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 when the principal is incapacitated.

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

A. You can name any adult 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.

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