

## ADVANCE HEALTH CARE PLANNING

### What are advance directives?

An advance directive is a written instruction that you make while you are mentally competent that states how you want your health care decisions to be made if you become incapacitated or cannot express your wishes. Advance directives guide your physician and other health care professionals, and relieve your family from the burden of guessing what types of care and treatment you would want to receive.

Alabama statutes recognize two different types of advance directives – the Advance Directive for Health Care and the Health Care Durable Power of Attorney.

## ADVANCE DIRECTIVES FOR HEALTH CARE

Alabama law provides a form called “Advance Directive for Health Care” that includes sections on (1) a Living Will and (2) proxy appointment (Health Care Durable Power of Attorney).

### (1) Living Will

This describes the kind of life-sustaining care you would want only if you had a terminal condition or were in a state of permanent unconsciousness, which includes persistent vegetative state or deep coma. This directs your physician on whether to withhold or withdraw life-sustaining treatment or a feeding tube if you are not able to speak for yourself. A Living Will does not give authority to make all health care decisions on your behalf.

### (2) Health Care Durable Power of Attorney

This appoints a proxy to make health care decisions for you, in collaboration with your personal physician, if you lose the ability to make health care decisions for yourself. Your proxy can tell the physician or hospital exactly what care you would want in all types of health decisions, not just those concerning life-sustaining

treatment. A court supervised guardianship and/or a protective placement proceeding may be avoided if a Health Care Durable Power of Attorney has been accurately completed. You can use the form in the Advance Directive for Health Care (titled “If I Need Someone To Speak For Me”) or your attorney can draft a separate document.

## HOW DO I GET STARTED?

For both the Living Will and the Health Care Durable Power of Attorney, you may use the form created by law. The form is available in the “LIFEPLAN A Gift to Your Family” consumer guide, on-line at [www.alabar.org/public/lifeplan.cfm](http://www.alabar.org/public/lifeplan.cfm) and at most courthouses, hospitals, nursing homes, and through the Alabama Medicaid Agency. You must read the form carefully before completing the document. Completing the document incorrectly may invalidate it at the time when it is most needed. An attorney can assist you in completing the form or write an individualized form for you. Begin by thinking through your options and talking with your family. If you have specific questions, consult your attorney, physician or health care professional.

## COMMONLY ASKED QUESTIONS

### Why should I have an advance directive?

An advance directive makes your wishes clear to your family, friends, and health care professionals while you are still able to do so. It helps prevent disagreements about what treatment you should receive if you are incapacitated. If you appoint someone to make your health care decisions, you will still be able to make your own decisions as long as you are capable.

### What if I don't have an advance directive?

If you do not have an advance directive, and you are incapacitated, your decisions might be left to your spouse, adult child, adult sibling, close friend or court-appointed guardian who may not know or carry out your wishes. In any event, those persons may want to consult with your physician. If you have not designated a health care proxy, loved ones may need to spend time and money going to court in order to make decisions on your behalf.

### When should I prepare an advance directive?

Now.

While most people first think about preparing an advance directive when they are admitted to a hospital or nursing home, it is a good idea to do it now, while your health permits you to do so.

### Which document is right for me?

The Health Care Durable Power of Attorney (Section 2 of the “Advance Directive for Health Care” form or a separate document prepared by your attorney) may avoid costly guardianship proceedings in court. The Health Care Durable Power of Attorney is a powerful and flexible document. A Health Care Durable Power of Attorney can include specific treatment preferences. However, if you do not have someone to act on your behalf or your proxy becomes incapacitated or dies, the Living Will is your other option. If you have both a Living Will and a Health Care Durable Power of Attorney, be sure they are consistent.

### What is a Health Care Durable Power of Attorney?

This document allows you to appoint an agent to make health care decisions for you and it gives your agent authority to consent, to refuse consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

You must indicate at the end of Section 2 of the “Advance Directive for Health Care” form whether your proxy is given power to make decisions that are different from the provisions of the “Living Will” in Section 1.

### What rights do I have about the medical care I receive?

As a competent adult, you have the right to make your own decisions about medical care, including accepting or refusing treatment.

## Am I required to create an advance directive?

No. Federal law requires hospitals and other health care facilities to inform patients about advance directives when they are admitted and to request a copy, but health care providers cannot require you to have one.

## What if I change my mind about my wishes?

Your Advance Directive For Health Care and your Health Care Durable Power of Attorney will last from the time they are created until your death, unless they are revoked or changed. They can be revoked or changed at any time if you do any of the following:

- Tear, burn, obliterate or destroy the document or direct someone else to do it in your presence;
- Write and sign a cancellation;
- Verbally express your intent to cancel the document in the presence of two witnesses; or
- Write a new document.

Although it is not mandated by statute, lawyers advise clients that wish to revoke their documents to tear them up or otherwise deface them (in accordance with the statute) in the presence of an adult so that there is a witness to the revocation (and that they inform their proxies). Alternatively, you have to be sure to retrieve all copies from all sources to insure that all are destroyed. Otherwise, there may be no evidence that the Advance Health Care Directive has been revoked.

## Where should I keep my advance directives?

Keep one copy of your directive with your other important documents. Let your loved ones, your health care proxy and alternate proxy know that you have an advance directive, and give them a copy. Be sure that one copy of your advance directive is included in your physician's medical record and at the hospital that would treat you. You may choose to carry the advance directive with you when you travel and keep it in the glove compartment of your car.

## Where is my directive valid?

Your directive is valid in Alabama. If you spend considerable time in another state, you also should have one prepared in that state. Under Ala. Code Section 22-8A-12 (1975), Advance Health Care Directives entered in another state and in compliance with another state's laws will be honored in Alabama (some lawyers recommend that a competent client who has moved to Alabama execute an Advance Health Care Directive here since the hospitals are accustomed to the form used in Alabama).

## Who is a Health Care Proxy?

This is someone you have chosen in your "Advance Directive for Health Care" form (or by a separate Health Care Durable Power of Attorney) to make health care decisions for you if you are unable to express your own wishes for care or treatment. Your proxy should have full knowledge of your wishes regarding future care and treatment.

## ORGAN AND TISSUE DONATION

Advances in medical technology have allowed physicians to save lives and improve the quality of life through organ and tissue donation. Talk to your family about your decision to become a donor.

*The material contained in this pamphlet provides general information and is intended to inform, not to advise. It is always best to consult an attorney about your legal rights and responsibilities. Copies of, "A Gift to Your Family" consumer guide, which includes the Alabama Advance Directive for Health Care form, are available free on-line at the Alabama State Bar's Web site: [www.alabar.org/public/lifeplan.cfm](http://www.alabar.org/public/lifeplan.cfm)*

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