

Planning Ahead With Advance Directives, Health Care Proxies and Surrogates

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Decisions about your medical care can often be difficult to discuss; however, it is imperative that you address your wishes in advance to ensure they will be honored even in the event you are unable to express them. These important decisions include whether in the event of your terminal illness or injury to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld or withdrawn. A competent adult person can make a written statement called an advance directive, which instructs his/her physician to take particular actions. An individual may also appoint a family member or friend to speak for them and address these issues through a health care proxy designation. If no such designation is made, the law provides a process for the appointment of a surrogate decision-maker, who will speak on your behalf.



Advance Directive for Healthcare

An advance directive is a document signed by a competent individual that instructs health care providers about the individual's treatment in the event that he/she is not able to speak for him/herself. The advance directive, sometimes referred to as a living will, may include a health care proxy designation, or it may only give specific instructions on the type of treatment to provide in certain situations. An advance directive is not effective until two events have occurred: First, the attending physician must determine that the patient is no longer able to "understand, appreciate, and direct his or her medical treatment;" and second, both the attending physician and a second physician, who is qualified and experienced in making such diagnosis, must personally examine the patient and diagnose that he/she either has a terminal illness or injury or is permanently unconscious. Further, such diagnoses must be documented in the medical record. Until these two events have occurred, a competent individual may make decisions and supersede the advance directive.

Health Care Proxy

A health care proxy designation appoints an individual to speak on behalf of a patient who has lost the ability to make decisions regarding his/her healthcare. A health care proxy is required by law to make healthcare decisions according to the specific instructions or directions given to him/her by the patient. These instructions are usually included in the written designation; however, in the absence of guidance, the proxy is required to make decisions that conform to what the patient would have done or intended.

When appointing a proxy, there are several important considerations to keep in mind. First, neither the patient's health care provider nor a nonrelative employee of the patient's health

care provider can serve as a proxy. Second, unless otherwise stated, divorce, dissolution, or annulment of marriage of the patient revokes a designation of the patient's former spouse. Finally, unless stated otherwise, decisions by the proxy regarding providing, withholding, or withdrawal of life-sustaining treatment or artificially provided nutrition or hydration *take precedence over a living will or advance directive* of the patient. If you prefer for your advance directive or living will to control, then it is imperative you address this in the living will or health care proxy designation.

Surrogate

Situations may arise in which a surrogate is needed to make health care decisions for the patient. For instance, if an advance directive has not been made, or if no duly appointed health care proxy is available, or if the advance directive fails to address certain circumstances, then a surrogate may be necessary. Four conditions must be met in order for a surrogate to make health care decisions: 1) The attending physician must determine that the individual is no longer able to “understand, appreciate, and direct his or her medical treatment” and that the individual does not have hope of regaining such ability; 2) Two physicians—the attending physician and another physician who is qualified and experienced in making such diagnosis—must personally examine the patient and diagnose him/her with a terminal illness or injury or permanent unconsciousness; 3) The attending physician or health care provider and the surrogate must not have actual knowledge of the existence of a valid advance directive that gives guidance in treating the patient's condition; and 4) The treating physician must determine that the surrogate's decision will not result in undue pain or discomfort for the patient. A surrogate is usually a family member of the patient; however, a judicially appointed guardian or a committee comprised of the patient's primary treating physician and the ethics committee of the facility where the patient is receiving treatment may also serve as a surrogate.

Liability

As long as a physician or health care provider acts in accordance with the advance directive, proxy or surrogate, he/she will not be liable for criminal or civil liability or unprofessional conduct unless he/she had actual knowledge of a revocation. Further, in the event that the health care provider refuses to comply with the living will or directions of the proxy or surrogate, he/she will not be liable for that refusal as long as he/she advises the patient and an individual designated to act for the patient and allows the patient to be transferred to another health care provider. Additionally, an advance directive that was executed in another state is valid as long as it is in compliance with the laws of the state of Alabama.

Advance directives, health care proxies, and surrogates are all tools designed to help you prepare for the future. They are important to execute and keep updated, because they will effectuate your directions and intentions with regard to your health care.



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