



Advance Directives

This fact sheet provides a brief introduction to advance care plans, living wills, powers of attorney for health care and appointments of health care agents.

What Are Advance Directives?

Advance directives are legal documents that help determine the type of extended health care and life-sustaining treatments an individual is to receive should the individual become incapacitated or incapable of making those determinations. Since 2004, Tennessee law has recognized two types of written advance directives for health care decision-making. A **living will**, or an **advance care plan**, allows an individual to provide specific instructions regarding the health care the individual is to receive should the individual become incapacitated. A living will or advance care plan may provide for the individual's life to be prolonged as long as possible or may order the attending physician to withhold or withdraw treatment that would only prolong the process of dying. By providing guidance on health care decisions, living wills or advance care plans may decrease the stress or guilt felt by family members who would otherwise have to make difficult medical decisions about someone else's life or death. **Medical powers of attorney**, or **appointments of health care agent**, are the second type of advance directive. A medical power of attorney or appointment of health care agent appoints someone else to make health care decisions should an individual become incapacitated.

Thus, one way to look at the difference between living wills or advance care plans and medical powers of attorney or appointments of health care agents is that living wills or advance care plans help to solve problems one may be anticipating, while a medical power of attorney or appointment of health care agent helps when unexpected problems arise.

Living Wills and Advance Care Plans

A living will or advance care plan is a written statement that gives health care providers instructions on the medical care an individual wishes to receive should the individual become incapacitated. For example, an individual can use a living will or advance care plan to let health care providers know whether the individual wants to avoid life-prolonging interventions such as cardiopulmonary resuscitation (CPR), kidney dialysis or breathing machines.

This type of advance directive was known as a living will in Tennessee prior to 2004 and was written primarily by attorneys for individuals. However, in 2004, Tennessee simplified the law, changing the name to "advance care plan," and created a form an individual can complete to specify their preferences.

Living wills created before the law change in 2004 are still valid. However, while it is not necessary to replace a living will with an advance care plan, it might be wise to review the living will to ensure it includes all of the features of an advance care plan. An advance care plan may allow for clearer direction regarding the type and length of care an individual would wish to receive under a variety of possible situations or medical conditions.

Advance directives work to ensure that time and money are not spent on medical care in a way an individual would not want.

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Medical Powers of Attorney Or Appointments of Health Care Agent

Medical powers of attorney or appointments of health care agent allow individuals to name adults (18 years old or older) or emancipated minors to make health care decisions for them if they are unable to do so for themselves. “Medical power of attorney” was the term used in Tennessee law prior to 2004, while “appointment of health care agent” is the term used since then. Although the names have changed, any medical power of attorney completed prior to July 1, 2004, will continue to be valid and honored.

Selecting a Health Care Agent

An individual selecting a health care agent should choose someone whom the individual trusts and who has a good understanding of the individual’s wishes. The individual selecting the agent also should be sure that the person chosen is willing to serve in this role. Family members might be caught in the emotional desire to keep the individual alive, and a health care agent will have to follow the individual’s directions in making these difficult decisions. Therefore, it is important to choose someone who has the strength of character to ensure that the individual’s desires will be carried out when others might disagree. A second person can be named as a backup agent in case the first choice cannot serve in this role.

Who Needs Advance Directives?

Advance directives are for adults of all ages. Accidents and serious illnesses can occur unexpectedly, leaving a person incapable of making his or her own health care decisions.

When Do Advance Directives Become Effective?

Unless otherwise specified in the advance directive, the authority of an appointment of health care agent or medical power of attorney becomes effective only upon the determination that the principal lacks capacity and ends upon a determination that the principal has recovered capacity. Capacity relates to soundness of mind and to an intelligent understanding and perception of one’s actions.

Revoking Advance Directives

Revoking a Health Care Agent or Medical Power of Attorney

- An individual who appoints a health care agent or medical power of attorney can revoke the appointment at any time as long as the individual is not incapacitated. The revocation can occur in a written statement signed by the individual revoking the appointment or by the individual informing a health care provider personally that their current wishes are different.
- Decrees of annulment, divorce, dissolution of marriage or legal separation revoke a designation of a spouse as the health care agent unless otherwise specified in the appointment of health care agent or in an advance care plan.
- A designation of a health care agent that conflicts with an earlier designation of a health care agent revokes the earlier directive.

Revoking an Advance Care Plan/Living Will

- An individual having capacity can revoke part or all of an advance care plan at any time.
- The most recent advance care plan revokes any earlier advance care plans.

Advance directives release the burden on family members when choosing life-sustaining treatments for an incapacitated individual.

Advance Directive Forms

Current forms and information about advance directives may be downloaded from the Tennessee Department of Health website. The current website address is <http://health.state.tn.us/advancedirectives/index.htm>.

All forms have a special section to write in specific comments about circumstances in which a person would not want CPR, a feeding tube, dialysis or treatment with a breathing machine. These comments and choices should be discussed with family and doctors, so they can better understand the desired medical treatment. A copy of all advance directives should be kept in a personal file at home where they can be accessed easily by others. Also, copies of these forms should be given to the individual's doctor and the person appointed as health care agent, so they will be ready and available in case of a medical emergency.

To make these forms legally binding, they must be signed in front of two witnesses **or** in front of a notary. The witnesses must not be related to the individual by blood, marriage or adoption. The witnesses cannot be people who will inherit the individual's property or serve as their health care agent. A notary can commonly be found at banks, insurance companies, hospitals or law offices. The forms mentioned in this fact sheet can be used to make an advance care plan or to choose a health care agent without an attorney. However, if there are questions or the forms do not seem to fit an individual's situation, then one should seek out the advice of an attorney. An attorney who helps with a will can also help with an advance care plan. The attorney also can provide guidance on choosing a suitable health care agent.

An attorney can provide guidance when choosing a healthcare agent.

Summary

Generally, all advance directives work to ensure that time and money are not spent on medical care in a way an individual would not want. They also can remove a burden from family members who might otherwise have to make difficult decisions about the level and length of care the individual receives. Advance directives are a way for individuals to exercise both some control over their medical care and show that they care for the well-being of their friends and family.

Additional information about the use of advance directives in Tennessee can be found at the following websites:

- State of Tennessee Department of Health website: <http://www.health.state.tn.us/AdvanceDirectives/index.htm>.
- What Tennesseans Need to Know About Making an Advance Health Care Plan (Living Will) and Naming a Health Care Agent, Tennessee Legal Aid, July 2005 (<http://www.tennlegalaid.com>).

***The Tennessee Farmland Legacy Partnership
“Planning Today for Tomorrow’s Farms”***

On Feb.16, 2010,12 organizations and Gov. Phil Bredesen officially formed the Tennessee Farmland Legacy Partnership with the purpose of serving as an authoritative resource, providing information and assistance, and encouraging both farm-level and community planning that promotes the preservation and viability of working farms in Tennessee.

The University of Tennessee is a member of this partnership and provides many resources related to farm succession and estate planning. To find out more about these resources or the partnership, visit <http://www.farmlandlegacy.org>.

This fact sheet is intended for general information only and should not be used as a substitute for the advice of an attorney. The circumstances of every case are different and need to be dealt with on a case-by-case basis.