

Washington State Medical Association – Advance Directives

<https://wsma.org/advance-directives> (cited November 1, 2019)

Learn more about advance directives below. You are encouraged to discuss the directives with your physician and your loved ones. Any legal questions you may have about the use and effect of these directives may be answered by an attorney.

NEW: Updates to health care directive and health care surrogate options with passage of House Bill 1175

House Bill 1175, passed during the 2019 Washington State Legislative Session, expands decision-making options for patients who lack capacity and makes improvements to the health care directive. The legislation, effective July 28, 2019, has two significant provisions: First, the law expands the category of people who can be a surrogate health care decision-maker to include extended family members and close friends; second, the law allows a notary to finalize a health care directive (also known as a living will). Learn more about the health care directive and surrogacy options on this page. Physicians and providers may wish to review [this bulletin](#) from the Washington State Hospital Association for further guidance.

The WSMA has updated its health care directive form as part of its "Who Will Decide If You Can't?" brochure, now available at the top of this page. Previously completed or executed health care directives will not be impacted by the new law.

What are advance directives?

The term 'advance directive' refers to your oral and written instructions about your future medical care in the event you are unable to express your medical wishes. There are two types of advance directives: a health care directive (also known as a living will) and a durable power of attorney for health care.

Health care directive (living will)

If you had a terminal condition, would you want your dying artificially prolonged? The health care directive is a legal document allowing you to answer this question in writing. This directive is used only if you have a terminal condition as certified by your physician, where life-sustaining treatment would only artificially prolong the process of dying; or you are certified by two physicians to be in an irreversible coma or other permanent unconscious condition and there is no reasonable hope of recovery. In either situation, the directive allows treatment to be withheld or withdrawn so that you may die naturally.

You may also direct whether you would want artificially provided nutrition (food) and hydration (water) stopped under these circumstances. Also in the directive, you can give further instructions regarding your care. The health care directive must be signed by you and witnessed by two people or acknowledged by a notary public.

The health care directive allows people who clearly do not want their lives artificially prolonged under the above conditions to make their wishes known.

To help you understand your treatment options when faced with a terminal or serious illness, visit the new [Honoring Choices Pacific Northwest](#) website.

Durable power of attorney for health care

Who would you want making your health care decisions if you were unable? The durable power of attorney for health care is a legal document allowing you to name a person as your health care agent—someone who is authorized to consent to, stop or refuse most medical treatment for you if a physician determines you cannot make these decisions yourself. The person you choose should be a trusted family member or friend with whom you have discussed your values and medical treatment choices.

Who can make decisions for me if I'm unable?

If you lose the ability to communicate and make decisions, Washington state law enables the following people, in order of priority, to make health care decisions for you, including withdrawing or withholding care:

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1. A guardian with health care decision-making authority, if one has been appointed.
2. The person named in the durable power of attorney with health care decision-making authority.
3. Your spouse or state-registered domestic partner.
4. Your adult children.
5. Your parents.
6. Your adult brothers and sisters.
7. Your adult grandchildren who are familiar with you
8. Your adult nieces and nephews who are familiar with you
9. Your adult aunts and uncles who are familiar with you
10. Your close friend who meets criteria.

When there is more than one person in a class, such as multiple children or siblings, all individuals in that class must agree on the health care decision.

Making your wishes known in an advance directive will provide your doctor and your agent the clear guidance necessary to respect your wishes. The medical decisions made by your health care agent (as named in your durable power of attorney for health care form) are as meaningful and valid as your own. The wishes of other family members should not override your own clearly expressed choices or those made by your agent on your behalf.

Do I need an advance directive?

Advance directives are the best possible assurance that decisions regarding your future medical care will reflect your own wishes, in the event that you are unable to voice these wishes. For this reason, every person aged 18 or over should prepare a directive.

Do I need both a health care directive (living will) and a durable power of attorney for health care?

Yes. Having both a living will and a durable power of attorney for health care will provide the best protection for your treatment wishes.

A durable power of attorney will allow for some flexibility regarding treatment decisions, since the agent that you choose to represent your wishes will be able to respond to unexpected changes in your condition and base decisions not just on your written wishes, but also on their familiarity with you and your feelings regarding your care.

A living will is necessary to provide instruction in case your agent is unable to serve, to provide evidence that the agent is acting in good faith in case the agent's decisions are challenged, or to serve as the primary record of your wishes in case you are unable to appoint a health care agent.

Are advance directives legal?

Yes. There are federal and state laws that govern the use of advance directives. All 50 states and the District of Columbia have laws recognizing the use of advance directives. If you travel, you may want to take copies of your documents with you, as other states may honor these forms.

Will advance directives be recognized in emergencies?

No. During most emergencies, there is not enough time for emergency service personnel to consult the patient's advance directive. Once the patient is under the direct care of a physician, there will be time for the advance directive to be evaluated and/or the health care agent to be consulted.

For individuals with serious health conditions, there is a form in Washington state that can help represent your wishes in emergency medical situations called the Physician Orders for Life-Sustaining Treatment form. For more information on POLST, please ask your physician, or visit our [POLST page](#).

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What to do with these forms

Signed copies of your completed directives should be included in your medical record, given to any person to whom you give your durable power of attorney—including any alternate people you may have named—and to your personal attorney. Originals should be in a safe but accessible place (not a safe deposit box) or given to someone you trust and who can obtain them in an emergency.

Discuss your wishes

It is essential that you have honest and open discussions with your appointed health care agent, doctor(s), clergy, and family and friends about your wishes concerning medical treatment. Starting a conversation about end-of-life planning can be tough, but taking that step can put you at ease for whatever may lie ahead. To assist you in encouraging your patients to plan for the future, WSMA's new [Honoring Choices Pacific Northwest](#) website has information that will help you begin these conversations with your family and health care professionals.

Discuss your wishes with them often, especially if your medical condition changes.

Can I change/revoke my directive?

You can always revoke one or both of your Washington state directives. If you choose to revoke your documents, make sure you notify your health care agent, alternate agents, your family and your doctor(s). If you wish to make changes to the directives, you should complete new documents.

Changes to the Washington state durable power of attorney for health care form in 2017

Physicians and others who provide direct patient care should take note of new requirements taking effect Jan. 1 that affect the Washington state durable power of attorney for health care form.

Senate Bill 5635, passed by the Legislature in 2016, requires all powers of attorney—including those for health care—to be either witnessed by two individuals or notarized, beginning in 2017 (prior to the bill's enactment, a power of attorney for health care could be signed by a patient without witnesses or a notary public). Note that these requirements for witnesses are different from the requirements for witnesses in the health care directive form. All powers of attorney, including those for health care, executed before Jan. 1 will remain valid.

A power of attorney is a document granting to another individual the authority to act on your behalf. A power of attorney for health care allows that individual (the “attorney in fact”) to make decisions regarding your health care on your behalf.

The power of attorney becomes “durable” if it is written to remain or become effective if you become incapacitated and are not able to make health care decisions on your own. In addition to requiring witnessing or notarization, the new law also requires specific wording* that clearly indicates that the power of attorney is intended to be durable.

The new law is based on the [Uniform Power of Attorney Act](#) drafted by the Uniform Law Commission, the national organization which promotes uniformity of certain state laws. While the uniform act excludes health care powers of attorney, our state legislators chose to include health care in SB 5635. The Uniform Law Commission establishes requirements for health care powers of attorney separately in its [Uniform Health-Care Decision Act](#).

As a result, powers of attorney for health care now must meet the same requirements as those for powers of attorney that authorize decision-making in matters involving property and finances.

The biggest change on the ground will be that a power of attorney for health care will have to be witnessed by two individuals or notarized by a notary public. The law states that the witnesses:

- Must be competent (meaning the witnesses have the mental capacity to understand what they're being asked to do and the consequences of their actions).

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- Must not be home care providers for the principal or care providers at an adult family home or long-term care facility if the patient lives there.
- Must not be related to the principle or the agent by blood, marriage or state-registered domestic partnership.

However, SB 5635 appears to allow physicians and staff to serve as witnesses if they work at a non-residential facility, such as a medical clinic or hospital.

The new legislation provides added security to help prevent fraud or duress in completion of the power of attorney document, which can grant peace of mind for all concerned. However, the WSMA recognizes that the new requirements place an additional burden on patients completing the document and will monitor the implementation of the new law.

**The new Washington law requires specific language in order to make the power of attorney for health care “durable.” A durable power of attorney for health care document must include words substantially similar to “This power of attorney shall not be affected by the disability of the person signing the document,” or “This power of attorney shall become effective upon the disability of the person signing this document,” or similar words indicating the intent of the patient to have the document become or remain effective upon the patient’s incapacity.*

For further information

You are encouraged to discuss the directives with your physician. Any legal questions you may have about the use and effect of these directives may be answered by an attorney.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Notice to Person Executing This Document

This is an important legal document. Before executing this document you should know these facts:

- This document gives the person you designate as your Health Care Agent the power to make MOST health care decisions for you if you lose the capability to make informed health care decisions for yourself. This power is effective only when you lose the capacity to make informed health care decisions for yourself. As long as you have the capacity to make informed health care decisions for yourself, you retain the right to make all medical and other health care decisions.
- Your Health Care Agent should be someone you trust to make health care decisions on your behalf. Your Health Care Agent may be any adult, including relatives such as your spouse, state registered domestic partner, father, mother, adult child, or adult brother or sister. Unless they are one of the relatives listed above, your Health Care Agent may not be any of your physicians or your physicians' employees, or the owners, administrators or employees of a health care facility or long-term facility (as defined by RCW 43.190.020) where you reside or receive care.
- You may include specific limitations in this document on the authority of the Health Care Agent to make health care decisions for you.
- Subject to any specific limitations you include in this document, if you do lose the capacity to make an informed decision on a health care matter, the Health Care Agent **GENERALLY** will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the Health Care Agent to make health care decisions for you **GENERALLY** will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical condition. You can limit that right in this document.
- When exercising authority to make health care decisions for you on your behalf, the Health Care Agent will have to act consistent with your wishes, or if they are unknown, in your best interest. You may make your wishes known to the Health Care Agent by including them in this document or in another manner.
- When acting under this document the Health Care Agent **GENERALLY** will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

1. Creation of Durable Power of Attorney for Health Care

I intend to create a power of attorney (Health Care Agent) by appointing the person or persons designated herein to make health care decisions for me to the same extent that I could make such decisions for myself if I was capable of doing so, as recognized by Washington law. This power of attorney shall become effective when I become disabled and I cannot make health care decisions for myself as determined by my attending physician or designee, such as if I am unconscious, or if I am otherwise temporarily or permanently incapable of making health care decisions. The Health Care Agent's power shall cease if and when I regain my capacity to make health care decisions.

2. Designation of Health Care Agent and Alternate Agents

If my attending physician or his or her designee determines that I am not capable of giving informed consent to health care, I _____, designate and appoint:

Name _____ Address _____

City _____ State _____ ZIP _____ Phone _____

as my attorney-in-fact (Health Care Agent) by granting him or her the Durable Power of Attorney for Health Care recognized in Washington law and authorize her or him to consult with my physicians about the possibility of my regaining the capacity to make treatment decisions and to accept, plan, stop, and refuse treatment on my behalf with the treating physicians and health personnel.

In the event that _____ is unable or unwilling to serve, I grant these powers to

Name _____ Address _____

City _____ State _____ ZIP _____ Phone _____

In the event that both _____ and _____

are unable or unwilling to serve, I grant these powers to

Name _____ Address _____

City _____ State _____ ZIP _____ Phone _____

3. General Statement of Authority Granted.

My Health Care Agent is specifically authorized to give informed consent for health care treatment when I am not capable of doing so. This includes but is not limited to consent to initiate, continue, discontinue, or forgo medical care and treatment including artificially supplied nutrition and hydration, following and interpreting my instructions for the provision, withholding, or withdrawing of life-sustaining treatment, which are contained in any Health Care Directive or other form of "living will" I may have executed or elsewhere, and to receive and consent to the release of medical information. When the Health Care Agent does not have any stated desires or instructions from me to follow, he or she shall act in my best interest in making health care decisions.

The above authorization to make health care decisions does not include the following absent a court order:

- (1) Therapy or other procedure given for the purpose of inducing convulsion;
- (2) Surgery solely for the purpose of psychosurgery;
- (3) Commitment to or placement in a treatment facility for the mentally ill, except pursuant to Chapter 71.05 RCW;
- (4) Sterilization.

I hereby revoke any prior grants of durable power of attorney for health care.

4. Special Provisions

DATED this _____ day of _____, _____
(Year)

GRANTOR: _____ GRANTOR'S SIGNATURE _____

NOTE: Washington state requires this directive to be witnessed by two people or acknowledged by a notary public.

WITNESS REQUIREMENTS: The witnesses to this document must be competent and must NOT be:

- Related to you or your health care agent by blood, marriage, or state registered domestic partnership.
- Your home care provider or a care provider at an adult family home or long-term care facility where you live.
- Your designated health care agent(s).

WITNESS _____ WITNESS _____

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____,

by _____
(Name of individual)

(Signature of notary public)

(Stamp)

(Title of office)

My commission expires: _____

HEALTH CARE DIRECTIVE

Directive made this _____ day of _____, _____
(Year)

I, _____ being of sound mind, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

- (A) If at any time I should have an incurable and irreversible condition certified to be a terminal condition by my attending physician, and where the application of life-sustaining treatment would serve only to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand "terminal condition" means an incurable and irreversible condition caused by injury, disease or illness that would, within reasonable medical judgment, cause death within a reasonable period of time in accordance with accepted medical standards.
- (B) If I should be in an irreversible coma or persistent vegetative state, or other permanent unconscious condition as certified by two physicians, and from which those physicians believe that I have no reasonable probability of recovery, I direct that life-sustaining treatment be withheld or withdrawn.
- (C) If I am diagnosed to be in a terminal or permanent unconscious condition, [*Choose one*]
I want _____ do not want _____
artificially administered nutrition and hydration to be withdrawn or withheld the same as other forms of life-sustaining treatment. I understand artificially administered nutrition and hydration is a form of life-sustaining treatment in certain circumstances. I request all health care providers who care for me to honor this directive.
- (D) In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family, physicians and other health care providers as the final expression of my fundamental right to refuse medical or surgical treatment, and also honored by any person appointed to make these decisions for me, whether by durable power of attorney or otherwise. I accept the consequences of such refusal.
- (E) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.
- (F) I understand the full import of this directive and I am emotionally and mentally competent to make this directive. I also understand that I may amend or revoke this directive at any time.
- (G) I make the following additional directions regarding my care:

SIGNED: _____

Note: Washington state requires this directive to be witnessed by two people or acknowledged by a notary public.

WITNESS REQUIREMENTS: The witnesses to this document must be competent and must NOT be:

- Related to you by blood or marriage.
- Entitled to any portion of your estate upon your death.
- Your attending physician or an employee of your attending physician or health care facility where you are a patient.
- Any person who has claim against any portion of your estate at the time of signature of this document.

The declarer has been personally known to me or has provided proof of identity. I believe him or her to be capable of making health care decisions.

WITNESS: _____ WITNESS: _____

STATE OF WASHINGTON)

)

COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, _____

by _____.

(Name of individual)

(Stamp)

(Signature of notary public)

(Title of office)

My commission expires: _____