

October 29, 2008

INSTRUCTIONS

Summary of State Law Regarding Advanced Directives

(Rule No. 560-X-28-.02 Summary of State Law Regarding Advanced Directives New Rule)

Deciding about your health care

If you are 19 or older, the law says you have the right to decide about your medical care.

If you are very sick or badly hurt, you may not be able to say what medical care you want.

If you have an advance directive, your doctor and family will know what medical care you want if you are too sick or hurt to talk or make decisions.

What is an advance directive?

An advance directive is used to tell your doctor and family what kind of medical care you want if you are too sick or hurt to talk or make decisions. If you do not have one, certain members of your family will have to decide on your care.

You must be at least 19 years old to set up an advance directive. You must be able to think clearly and make decisions for yourself when you set it up. You do not need a lawyer to set one up, but you may want to talk with a lawyer before you take this important step.

Whether or not you have an advance directive, you have the same right to get the care you need.

Types of advance directives

In Alabama you can set up an Advance Directive for Health Care. The choices you have include:

A living will is used to write down ahead of time what kind of care you do or do not want if you are too sick to speak for yourself.

A proxy can be part of a living will. You can pick a proxy to speak for you and make the choices you would make if you could. If you pick a proxy, you should talk to that person ahead of time. Be sure that your proxy knows how you feel about different kinds of medical treatments.

Another way to pick a proxy is to sign a durable power of attorney for health care. The person you pick does not need to be a lawyer.

You can choose to have any or all of these three advance directives: Living will, proxy and/or durable power of attorney for health care.

Hospitals, home health agencies, hospices and nursing homes usually have forms you can fill out if you want to set up a living will, pick a proxy or set up a durable power of attorney for health care. If you have questions, you should ask your own lawyer or call your local Council on Aging for help.

When you set up an advance directive

Be sure and sign your name and write the date on any form or paper you fill out. Talk to your family and doctor now so they will know and understand your choices. Give them a copy of what you have signed. If you go to the hospital, give a copy of your advance directive to the person who admits you to the hospital.

What do I need to decide?

You will need to decide if you want treatments or machines that will make you live longer even if you will never get better. An example of this is a machine that breathes for you.

Some people do not want machines or treatments if they cannot get better. They may want food and water through a tube or pain medicine. With an advance directive, you decide what medical care you want.

Talk to your doctor and family now

The law says doctors, hospitals and nursing homes must do what you want or send you to another place that will.

Before you set up an advance directive, talk to your doctor ahead of time. Find out if your doctor is willing to go along with your wishes. If your doctor does not feel he or she can carry out your wishes, you can ask to go to another doctor, hospital or nursing home.

Once you decide on the care you want or do not want, talk to your family. Explain why you want the care you have decided on. Find out if they are willing to let your wishes be carried out.

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Family members do not always want to go along with an advance directive. This often happens when family members do not know about a patient's wishes ahead of time or if they are not sure about what has been decided. Talking with your family ahead of time can prevent this problem.

You can change your mind any time

As long as you can speak for yourself, you can change your mind any time about what you have written down. If you make changes, tear up your old papers and give copies of any new forms or changes to everyone who needs to know.

For help or more information:

Alabama Commission on Aging (800) 243-5463

Choice in Dying, (800) 989-9455

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Statutory Authority: Alabama Medicaid Agency Administrative Code; Title XIX, Social Security Act; and §41-22-1 et seq., Code of Ala. 1975.

History: Rule effective October 1, 1982, June 17, 1988, October 7, 1988, October 12, 1988, January 10, 1989, July 13, 1991, March 13, 1992, January 13, 1993, and May 13, 1994.

Amended: Filed April 20, 1999; effective July 13, 1999.

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Section 22-8A-3

Definitions.

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) **ADULT.** Any person 19 years of age or over.
- (2) **ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.** A medical treatment consisting of the administration of food and water through a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily. Artificially provided nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.
- (3) **ADVANCE DIRECTIVE FOR HEALTH CARE.** A writing executed in accordance with Section 22-8A-4 which may include a living will, the appointment of a health care proxy, or both such living will and appointment of a health care proxy.
- (4) **COMPETENT ADULT.** An adult who is alert, capable of understanding a lay description of medical procedures and able to appreciate the consequences of providing, withholding, or withdrawing medical procedures.
- (5) **HEALTH CARE PROVIDER.** A person who is licensed, certified, registered, or otherwise authorized by the law of this state to administer or provide health care in the ordinary course of business or in the practice of a profession.
- (6) **HEALTH CARE PROXY.** Any person designated to act on behalf of an individual pursuant to Section 22-8A-4.
- (7) **LIFE-SUSTAINING TREATMENT.** Any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to the patient, would serve only to prolong the dying process where the patient has a terminal illness or injury, or would serve only to maintain the patient in a condition of permanent unconsciousness. These procedures shall include, but are not limited to, assisted ventilation, cardiopulmonary resuscitation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs and antibiotics. Life-sustaining treatment shall not include the administration of medication or the performance of any medical treatment where, in the opinion of the attending physician, the medication or treatment is necessary to provide comfort or to alleviate pain.
- (8) **LIVING WILL.** A witnessed document in writing, voluntarily executed by the declarant, that gives directions and may appoint a health care proxy, in accordance with the requirements of Section 22-8A-4.

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(9) PERMANENT UNCONSCIOUSNESS. A condition that, to a reasonable degree of medical certainty:

- a. Will last permanently, without improvement; and
- b. In which cognitive thought, sensation, purposeful action, social interaction, and awareness of self and environment are absent; and
- c. Which condition has existed for a period of time sufficient, in accordance with applicable professional standards, to make such a diagnosis; and
- d. Which condition is confirmed by a physician who is qualified and experienced in making such a diagnosis.

(10) PERSON. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(11) TERMINALLY ILL OR INJURED PATIENT. A patient whose death is imminent or whose condition, to a reasonable degree of medical certainty, is hopeless unless he or she is artificially supported through the use of life-sustaining procedures and which condition is confirmed by a physician who is qualified and experienced in making such a diagnosis.

(Acts 1981, No. 81-772, p. 1329, §3; Acts 1997, No. 97-187, p. 287, §1.)

Frequently Asked Questions

Who can set up an advance directive?

You must be at least 19 years old to set up an advance directive. You must be able to think clearly and make decisions for yourself when you set it up.

Do I need a lawyer to set up an advance directive?

You do not need a lawyer to set one up, but you may want to talk with a lawyer before you take this important step.

What types of advance directives are available in Alabama?

In Alabama you can set up an Advance Directive for Health Care. The choices you have include a living will, a proxy and/or a durable power of attorney for health care.

What is a living will?

A living will is used to write down ahead of time what kind of care you do or do not want if you are too sick to speak for yourself.

What is a proxy?

A proxy can be part of a living will. You can pick a proxy to speak for you and make the choices you would make if you could. If you pick a proxy, you should talk to that person ahead of time. Be sure that your proxy knows how you feel about different kinds of medical treatments.

What is a durable power of attorney for health care?

Another way to pick a proxy is to sign a durable power of attorney for health care. The person you pick does not need to be a lawyer.

What do I need to decide?

You will need to decide if you want treatments or machines that will make you live longer even if you will never get better. An example of this is a machine that breathes for you.

I completed an advance directive, now what?

Be sure and sign your name and write the date on any form or paper you fill out. Talk to your family and doctor now so they will know and understand your choices. Give them a copy of what you have signed. If you go to the hospital, give a copy of your advance directive to the person who admits you to the hospital.

How do I know my wishes will be carried out?

The law says doctors, hospitals and nursing homes must do what you want or send you to another place that will. Before you set up an advance directive, talk to your doctor ahead of time. Find out if your doctor is willing to go along with your wishes. If your doctor does not feel he or she can carry out your wishes, you can ask to go to another doctor, hospital or nursing home.

Once you decide on the care you want or do not want, talk to your family. Explain why you want the care you have decided on. Find out if they are willing to let your wishes be carried out.

Family members do not always want to go along with an advance directive. This often happens when family members do not know about a patient's wishes ahead of time or if they are not sure about what has been decided. Talking with your family ahead of time can prevent this problem.

What if I change my mind?

As long as you can speak for yourself, you can change your mind any time about what you have written down. If you make changes, tear up your old papers and give copies of any new forms or changes to everyone who needs to know.