

Designating another person

If an adult person does not choose to make any treatment decisions and/or declaration, the law permits him/her to designate another person to make such treatment decisions and declaration for him/her in the event that he/she is diagnosed as having a terminal and irreversible condition and is unable to participate actively in medical decisions in his/her own behalf. In such circumstances, the person may execute a Durable Power of Attorney. The person designated need not be a lawyer. You should know that if you do not make a decision, the law will not presume that you desire that life-sustaining measures be maintained. In fact, the law allows certain other people to make a declaration for you if you are diagnosed as having a terminal and irreversible condition, unable to act on your own behalf, and have not made a declaration.

What about a Minor?

If a minor has been diagnosed and certified as having a terminal and irreversible condition, or as being in a continual profound comatose state with no reasonable chance of recovery, the following persons may voluntarily make a declaration relative to withholding or withdrawal of medical treatment or life-sustaining procedures on the minor's behalf:

1. The spouse, if he/she has reached the age of majority, or
2. The parent or guardian of the minor if there is no spouse, or if the spouse is not available, or is a minor, or is otherwise unable to act

Such declaration on behalf of a minor must be signed by the person making the declaration in the presence of two competent witnesses, as described previously, who must also sign the declaration. However, an individual named above may not make a declaration if he/she has actual notice of contrary indications by the terminally ill minor, or if, as a parent or guardian, he/she has actual notice of opposition by another parent, or guardian, or a spouse who has attained the age of majority.

More about a "Living Will"

Louisiana provides a suggested form, but it is only that – suggested. You are free to use your own words, and you can make your instructions as specific as you desire. The form is not as important as the content of your declaration, that is, the law is more concerned with your desires and your instructions than with the form of the declaration.

This patient information booklet was developed to provide you with written information on Advance Directives. This is not meant to be legal advice, nor is it intended to replace the counsel which can be provided by an attorney. This booklet is not a complete explanation of your rights under the law. If you have questions or would like a detailed explanation, you should seek the advice of an attorney.

For additional information and assistance before reaching a decision, you are urged to consult with a physician, attorney, clergyman and family.

References: American Hospital Association, LA Dept. of Health and Hospitals, LA Hospital Association, Omnibus Budget Reconciliation Act of 1990

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LOUISIANA ADVANCE DIRECTIVES



As required by the Patient Self-Determination Act of 1991,
A Federal Law

Your right to a Living Will and other Declarations

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What are Advance Directives?

Advance Directives are documents that allow people to state their healthcare preferences *while they are able to communicate them* in the event they become incapacitated. Such documents can also name another person, called an “agent” or “proxy”, to make medical decisions on their behalf, if they are unable to make them for themselves.

The two (2) types of advance directive documents are the **Living Will** and the **Durable Power of Attorney**. The Living Will is also called the **Living Will Declaration**. The Durable Power of Attorney is also called the **Durable Power of Attorney for Health Care** or **Health Care Proxy**.

The Patient Self-Determination Act (PSDA) of 1991 requires that most healthcare institutions do the following:

1. Give you at the time of admission a written summary of:
 - your health care decision-making rights
 - the facility’s policies with respect to recognizing advance directives
2. Ask you if you have an advance directive, and document that fact in your medical record if you do. (It is up to you to make sure they get a copy of it)
3. Educate their staff and community about advance directives
4. Never discriminate against patients based on whether or not they have an advance directive. Thus, it is against the law for them to require either that you have or not have an advance directive

Patient Rights

Louisiana law upholds the fundamental right of all persons to control the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition. The laws provide a means through which the rights of patients may be respected even after they are no longer able to participate actively in medical decisions in their own behalf, also known as a Declaration Concerning Life-Sustaining Procedures (Living Will).

What is a Living Will?

A Living Will in Louisiana is a legal document which describes the medical care a person would wish to have should he/she either become terminally and irreversibly ill or be in a continual profound comatose state with no reasonable chance of recovery, and no longer competent or able to participate in the decisions regarding his/her medical care.

Who may execute a Living Will?

Any adult person may, at any time, make a *written* declaration instructing his/her physician to withhold or withdraw life-sustaining measures in the event he/she should have a terminal and irreversible medical condition, or be in a continual profound comatose state with no reasonable chance of recovery with the following conditions:

1. The *written* declaration must be signed by the person making it in the presence of two (2) witnesses, who must also sign the declaration.
2. The witnesses must be competent adults who are not related by blood or marriage to the person making the declaration and must not be entitled to any portion of the person’s estate upon his/her death.

An oral or nonverbal declaration may also be made by an adult in the presence of two witnesses, as described above, by any *non-written* means of communication. However, while a written declaration may be made at any time, an oral or nonverbal declaration may be made only AFTER the diagnosis of a terminal and irreversible condition has been made.

Responsibility to notify Physician

It is the responsibility of the person making the declaration to notify his/her attending physician that a declaration has been made. In the event, however, that the person who made the declaration is mentally or physically incapable of communication, any other person may notify the physician of the declaration (i.e., that a Living Will exists).

Who else may execute a Living Will?

Providing that a patient has not previously made a declaration, the laws give the following persons, in the following order of priority, the right to make a declaration on an adult patient’s behalf to withhold or withdraw life-sustaining measures should the patient be diagnosed and certified as having a terminal and irreversible condition, or be in a continuous profound comatose state with no reasonable chance of recovery, or be incompetent, or physically or mentally incapable of communication.

1. The court-appointed guardian of the patient, if one has been appointed
2. The patient’s spouse (not legally separated)
3. The patient’s adult children, as a class
4. The patient’s parents, as a class
5. The patient’s brothers and sisters, as a class
6. The patient’s relatives, ascending or descending, as a class

In any case where the declaration is made by other than a court-appointed guardian, the decision must be a *unanimous* one on the part of those members of the class reasonably available for consultation. Furthermore, at least two witnesses, as described earlier, must be present at the time of the declaration is made.

Does a Living Will affect insurance?

NO. The making of declaration of a Living Will by an insured, qualified patient in accordance with Louisiana laws shall not affect the sale, procurement, or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy, regardless of what the policy may say to the contrary. Furthermore, the removal of life support systems according to these laws shall not, for any purpose, constitute suicide, nor shall it be deemed the cause of death for purposes of insurance coverage.

Can a Living Will be revoked?

YES. Louisiana law provides that a Living Will declaration may be revoked at any time by the person who made the declaration without regard to his/her mental state or competency by any of the following methods: cancellation, defacing, obliterating, burning, tearing, or otherwise destroying by the person who made the declaration or by some person in his/her presence and at his/her direction; or by a written document by the person who made the declaration expressing the intent to revoke, signed and dated by the person; or by an oral or nonverbal expression by the person who made the declaration of the intent to revoke the declaration.

Note: revocation of a Living Will declaration by any of the above methods shall become effective upon communication to the attending physician.

Other specific directions

A person may add other specific provisions to the Living Will in the area of the document above the signature. For example, he/she might want to include such as the following: tissue or organ donation (i.e., “If any of my tissues or organs are sound and would be of value as transplants to other people, I freely give my permission for such donation.”)