



WEST VIRGINIA NETWORK OF ETHICS COMMITTEES

Frequently Asked Questions

Advance Directives for Health Care Decision-Making in West Virginia



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This booklet is based on the amended West Virginia Health Care Decisions Act passed by the West Virginia Legislature in March 2022 and effective June 2022. The West Virginia Network of Ethics Committees (WVNEC) hopes that this booklet will help West Virginians with advance care planning. The WVNEC website at <http://www.wvnec.org/forms-laws/> contains a copy of the West Virginia Health Care Decisions Act and downloadable advance directive forms. The information in this booklet and on this website does not, and is not intended to, constitute legal advice; all content and materials are for general informational purposes only. For legal advice, please consult your attorney. Words for which meanings are provided in the back are noted with a •.

Frequently Asked Questions about Advance Care Planning

1. What is advance care planning?

A process of communication among the patient, the patient's family and friends, and the health care team in which the patient's wishes for future medical care are determined in advance (sometimes including the completion of a written advance directive or medical order), updated from time to time, and respected when the patient no longer is able to participate in medical decision-making.

An advance directive• is often part of the advance care planning process. It helps you have a voice in the care you receive when you are too sick to talk to your doctors. It puts your wishes in writing, and it is recognized in the law. You can say in your advance directive who you want to make decisions for you. You can also say what treatment you want and do not want. Completing an advance directive or medical order is always voluntary.

2. What forms can I obtain from the WV Network of Ethics Committees for advance care planning?

WVNEC makes available the living will, medical power of attorney, combined living will and medical power of attorney, and mental health advance directive forms in the state law.

3. I am a young person in good health. Do I really need to create a formal advance directive?

Yes. Advance care planning• is recommended for everyone age 18 years and older, including mature minors• and emancipated minors• who can make decisions for themselves. Advance care planning lets you outline what you do and do not want in your medical care if you are unable to speak for yourself. We never know when an accident or serious illness will leave us incapable of making our own health care decisions. It is best to plan and prepare for these decisions early.

4. Who should witness my signature on my advance directive?

Your witnesses must be at least 18 years of age and not related to you by blood or marriage. Choose individuals who will not inherit any of your property. Do not choose the person you named as your medical power of attorney representative• or your successor representative• or your health care provider as your witness.

5. How can I find a Notary Public to complete my advance directive forms?

Businesses such as banks, insurance agents, government offices, hospitals, doctors' offices, and automobile associations have or can direct you to a notary public. A notary public witnesses the signing of important documents. Contact your local National 2-1-1 hotline by calling 211 for more assistance and location of a Notary Public.

6. Will another state honor my advance directive? Will WV honor my advance directive from another state?

Laws differ from state to state, but in general, a patient's expressed wishes will be honored state-to-state. It is highly recommended that you contact your non-WV health care providers to ask if they will honor your WV advance directive. In WV, health care providers must honor non-WV advance directives and medical orders as of June 7, 2022, if the forms were completed correctly per that state's laws.

7. How can the process of advance care planning help to make certain that my wishes expressed in my advance directive will be followed?

The documentation of one's wishes in advance directives and medical orders and giving these completed forms to your doctor, the hospital where you receive treatment, and the West Virginia e-Directive registry makes your wishes known throughout the healthcare system. Just in case, bring a copy with you if you are admitted to a health care facility. Tell people where you keep your advance directive. Fax or mail a copy of your advance directive to the WV e-Directive Registry at 844-616- 1415 or 64 Medical Center Drive, PO Box 9022 Health Sciences North, Morgantown, WV 26506-9022, so that your wishes will be known to the provider treating you in a medical emergency.

8. What if I live or receive medical care outside of West Virginia?

We recommend completing the WV forms and the state-approved forms for your other state. Laws vary from state to state, so it is not guaranteed that other states will honor your WV forms. However, all non-WV forms must be honored in WV as of June 7, 2022, if the forms were completed correctly by state law. Please contact your local, non-West Virginian state agency to locate non-WV advance directive forms.



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9. Are there any advance directives in WV specifically related to mental/psychiatric health?

Yes. The WV Mental Health Advance Directive• (MHAD, pronounced like “mad”) is a legal advance directive that allows individuals with mental illness(es) to state their mental health treatment preferences in advance of a crisis. The MHAD provides a way to protect a person’s autonomy• and ability to self-direct care for treatment of mental health disorders like other advance directives used to direct care for medical disorders in palliative care• and end-of-life care.

10. I completed advance directives and/or medical orders previously. Do I have to do anything else?

It is highly recommended that advance directives and medical orders are reviewed regularly to ensure they still match your wishes for medical care. You also want to make sure there are no inconsistencies between your forms.

Once you have ensured your forms accurately reflect your wishes, you are highly encouraged to submit the forms to the WV e-Directive Registry by faxing it to 844-616-1415 or mailing a copy to PO Box 9022, Morgantown, WV 26506.

You should consider putting a copy of your advance directive in the West Virginia e-Directive Registry because it allows your forms to be available in the event of a health care emergency. Therefore, your medical wishes can be translated into patient care.

Frequently Asked Questions about Advance Directives

1. What is a living will?

A living will is a legal document, a type of advance directive, that tells your doctor how you want to be treated if you are terminally ill and cannot make decisions for yourself. A living will states that life-prolonging medical interventions that would serve to prolong your dying should not be used. A living will only applies if you are terminally ill AND too sick to make decisions for yourself.

2. What is a medical power of attorney?

A medical power of attorney is a legal document, a type of advance directive, that allows you to name a person to make health care decisions for you if you are unable to make them for yourself. The medical power of attorney only goes into effect if you are too sick to make decisions for yourself. If you regain decision-making ability, the medical power of attorney is no longer in effect, and you will be able to speak for yourself again.

The medical power of attorney allows your representative to respond to medical situations that you might not have anticipated and to make decisions for you based on knowledge of your values and wishes. Medical power of attorney representatives (the people you select to make decisions for you) can never override your written, expressed wishes.

3. How is the medical power of attorney different from the living will?

A living will only applies if you are terminally ill AND too sick to make decisions for yourself. A living will only tells your health care provider what you do not want unless you write in other specific instructions. A living will is a written record of decisions that you have made yourself.

The medical power of attorney allows you to choose someone else to make health care decisions for you if you are too sick to make them for yourself. This person is called your medical power of attorney representative. A medical power of attorney allows you to give specific instructions to your representative about the type of care you would want to receive. The medical power of attorney allows your representative to respond to medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes.

On all WV advance directive forms, you can write specific wishes in the Special Directives and Limitations section of the form. Your medical power of attorney representative can never override the wishes you write in this section.



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4. What if I already have a living will? Do I need to create a medical power of attorney?

Most West Virginians create both a medical power of attorney and a living will. Since the medical power of attorney is a more flexible document and allows you to name someone to make decisions for you, it is advisable to create a medical power of attorney even if you have already signed a living will.

The representative you appoint as your medical power of attorney representative can help ensure that the preferences expressed in your living will are carried out. Some people, however, do not have someone they trust or who knows their values and preferences. These people should consider creating a living will•.

If you choose to sign both documents, you should see that they are stored in the same place to help ensure that your representative will know to respect all your wishes. Alternatively, you may choose to complete a combined living will and medical power of attorney• document.

5. If I decide to create a medical power of attorney, how should I choose my representative?

Choose someone who knows your values and wishes, and whom you trust to make decisions for you. Do the same for a successor representative. Have a conversation with both representatives to be sure they understand your wishes and agree to be your representative.

You may, but do not have to, choose a family member to be your representative. Regardless of your choice, your representative should be someone who will be available if needed and who will decide matters the way you would decide.

Name only one person each as your representative and your successor representative. Do not choose your health care provider or another person who is likely to be your future health care provider as your representative or successor representative.

6. What if I change my mind about who I want to be my representative or about the kind of treatment I want?

It is common for wishes to change over time as different events and priorities occur in your life. You should review your advance directives periodically to make sure they still reflect your wishes. The best way to change your advance directive is to create a new one. The new document will automatically cancel the old one. Be sure to notify all people who have copies of your advance directive that you completed a new one. Collect and destroy all copies of the outdated version. Send the updated version to the e-Directive Registry so that your current one is available to treating health care providers.

Remember to submit your new advance directive to the WV e-Directive Registry by faxing it to 844-616-1415 or mailing a copy to the WV e-Directive Registry, 64 Medical Center Drive, PO Box 9022 Health Sciences North, Morgantown, WV 26506-9022.

7. What instructions should I give my representatives concerning my health care?

You may give very general instructions and preferences or be quite specific. It would be helpful to your representatives to have directions from you about medical conditions in which you would NOT want life prolonging intervention•, particularly medically administered food, and water (tube feedings), cardiopulmonary resuscitation (CPR), and the use of machines to help you breathe (ventilators). You should also tell your representative if you want to be an organ and tissue donor.

Many people choose to write their representatives a letter stating their personal values and wishes, their feelings about life and death, and any specific instructions, and to attach a copy of this letter to their medical power of attorney.

Talk with your representatives about your choices and personal values and beliefs. Make sure they know what is important to you. This information will help them make the decisions you would make if you spoke for yourself.

8. Can I write my wishes for funeral arrangements on my advance directive?

Yes, you can make decisions about funeral arrangements or cremation. The way to do so is to write instructions in the Special Directives or Limitations section of your advance directive.

9. What should I NOT put in the Special Directives or Limitations section of my advance directive?

It is strongly recommended that you do NOT put requests for cardiopulmonary resuscitation (CPR, also referred to as “chest compressions”) or do-not-resuscitate (DNR) status in your advance directive. What unfortunately tends to happen is that forms with these wishes do not get updated as wishes change. If you change your mind regarding CPR or DNR and lose the ability to speak for yourself, your health care providers will honor your written wishes even if they have not been updated. This could result in you receiving unwanted treatment.

Living Will (specifically) – Requests for cardiopulmonary resuscitation (CPR) or breathing machines are inconsistent with the purpose of the living will and could be held to be invalid. West Virginia Code §16-30-4(g)

Combined Medical Power of Attorney and Living Will (specifically) – As of June 7, 2022, the combined medical power of attorney and living will form has two qualifying sections for special directives and limitations. The first section is where you can write the wishes you want followed if you are terminally ill and the living will is in effect. In this section, it is inconsistent to request CPR or breathing machines. The second section is where you can write the wishes you want followed if you are not terminally ill and the living will portion of the form is not in effect.

10. What if my doctor or my family does not agree with my treatment choices or health care decisions?

You should talk with your family and health care providers about your decisions and personal values and beliefs. If others understand your choices and the reasons for them, there is less of a chance that they will challenge them later.

If you have made your wishes known in an advance directive and a disagreement does occur, your doctors and your representatives must respect your wishes. You have a right to refuse or consent to health care. If your doctors cannot comply with your wishes, they must transfer your care to other doctors.

The consent or refusal of your medical power of attorney representative is as meaningful and valid as your own. The wishes of other family members will not override your own clearly expressed choices or those made by your representative on your behalf.

Meaning of Words Used in this Booklet•

Advance Care Planning: A process of communication among the patient, the patient’s family and friends, and the health care team in which the patient’s wishes for a medical power of attorney representative and for future medical care are determined in advance (sometimes including the completion of a written advance directive or medical order), updated from time to time, and respected when the patient no longer is able to participate in medical decision-making.

Advance Directive: An advance directive in West Virginia can be one of the following documents; a living will, medical power of attorney, combined medical power of attorney and living will, or the mental health advance directive.

Advance Directive Revocation Form: The advance directive revocation form helps identify the specific forms you wish to revoke, or cancel, in the WV e-Directive Registry. This form is only for the e-Directive Registry and will not be made available to treating health care providers. It is important to notify your doctor of the forms you wish to revoke as well. You must retrieve and destroy, verbally revoke, or provide a written notice to revoke all copies of your advance directives.

Autonomy: The right of competent adults to make informed decisions about their medical care.

Combined Living Will and Medical Power of Attorney: This one document combines both the living will and medical power of attorney documents and should be used if you want to name a health care decision maker and do not want machines and other medical interventions to keep you alive when you are dying.

DNR (Do Not Resuscitate) Order: A DNR order• is created before an emergency occurs. It specifies that a person does not want to receive cardiopulmonary resuscitation if they or their heart stops beating.

e-Directive Registry Opt-In Form: If your advance directive or medical order is older and does not contain an “Opt-In” box at the top, the e-Directive Registry must have your permission to include your documents in the Registry. Additional information about you is also needed to place your forms in the Registry so that you will not be confused with another person who has the same name.

Emancipated Minor: A person less than 18 years of age who is free from parental or legal guardian control and can legally consent to or refuse medical care.

Life Prolonging Intervention: Life-prolonging interventions are any medical treatment that serves only to extend the dying process. If you complete a living will or combined medical power of attorney and living will, you are directing your health care providers to withhold life-prolonging interventions if you have a terminal condition. These forms state that you wish to die naturally and only be kept comfortable. Life-prolonging interventions include cardiopulmonary resuscitation (CPR), breathing machines (ventilator), dialysis, and medically administered food and fluids.

Living Will: A living will is a document that tells your doctor how you want to be treated if you are terminally ill and cannot make decisions for yourself.

Mature Minor: A person less than 18 years of age who can make health care decisions, without parental consent.

Medical Power of Attorney: A medical power of attorney is a legal document that allows you to name a person to make health care decisions for you if you are too sick to make them for yourself.

Mental Health Advance Directive: A mental health advance directive (MHAD, pronounced “mad”), also known as a psychiatric advance directive, it is a legal tool that allows persons with mental illness to state their preferences for treatment in advance of a crisis. MHAD provides a way to protect a person’s autonomy and ability to self-direct care for treatment of mental health disorders.

Notary Public: A public officer who witnesses important document signings and verifies signers’ identities.

Palliative Care: Palliative care is specialized medical care for people living with serious illnesses, such as cancer. Palliative care focuses on providing relief from the symptoms and stress of the illness.

POST (Portable Order for Scope of Treatment) Form: A POST form is a medical order that documents a person’s treatment preference as medical orders that can be easily understood by health care providers.

Representative: A representative is a person named as the health care decision-maker for another person.

Successor Representative: This is the person who would be contacted if the first person listed as representative is not available.

Terminally Ill: A person is terminally ill when they have a health condition that cannot be cured.