

Your Legal Right
To Make Decisions
About Health Care
and Advance
Directives in
Washington State
1999

**Written for Consumers, Their
Families, and Family Surrogate
Decision-Makers**



Aging and Adult Services Administration
Department of Social and Health Services

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These materials were developed as a general guide and are not intended as legal advice.

The information in this brochure contains Washington State Law. DSHS Aging and Adult Services Administration convened the Task Force on the Patient Self-Determination Act to develop this brochure. The Task Force included advocates, lawyers, nursing home administrators, nursing home residents, and state employees.

**ALL ADULTS
RECEIVING
HEALTH
CARE HAVE
CERTAIN
RIGHTS.**

The Patient Self-Determination Act

All adults receiving health care have certain rights. For example, you have a right to confidentiality of your personal and medical records and to know about and consent to the services and treatment you may receive.

This booklet answers some questions related to a federal law called “The Patient Self Determination Act” (PSDA). This law says that certain health care providers must give each consumer information about the right to make choices about their health care. Each health care provider is required to give you information about making health care decisions in advance (advance directives) and information about your legal choices in making decisions about your health care under Washington State law.

Health care providers covered by the PSDA are:

- Hospitals
- Nursing homes
- Hospices
- Home health care
- Personal care programs
- Health maintenance organizations (HMO's)
- Residential Habilitation Centers
- Adult Family Homes
- Psychiatric hospitals or facilities
- Mental health providers
- Boarding Homes
- Other care facilities licensed in Washington State

This brochure can help you make decisions in advance of treatment. Because these are important matters, you may want to talk with family, close friends, clergy, your attorney, or your doctor before deciding if you want an advance directive.

Introduction

You have the right to make choices about your medical care. When you enter a long-term care facility (such as a nursing home, boarding home, or adult family home) or receive services, such as personal care services, you may face some tough, very important decisions. Other people may give you advice, but remember the decision is yours. No matter where you live, you still have the right to control your health care. No one – a doctor, nurse, or family member – can force you to accept treatment, services, or medicines, except in limited circumstances.

In this booklet, you will learn about:

- Your right to make decisions about your own medical care;
- Informed Consent;
- Advance Directives, including:
 - Living Will (Health Care Directive)
 - Durable Power of Attorney for Health Care
 - Code/No Code or Do Not Resuscitate (DNR)
 - Organ or tissue donation

What is Informed Consent?

Informed consent is a process of communication between you and your health care provider and/or your doctor. It is your right to make decisions about what care or treatment is to be done to your body. You must be given oral or written information about what could happen to you if you accept or refuse the treatment your doctor or health care provider is suggesting. This information must include other possible forms of treatment and the possible complications and expected benefits involved in the treatment.

If you are asked to sign a form to consent or to document your refusal of medical treatment, make sure you clearly understand your choices before signing. You can refuse treatment and you can refuse to sign a document.

According to Washington State law, you have the right to tell your doctor that you do not want to be told of the risks and benefits of medical treatments.

Is informed consent necessary if I live in a long-term care facility?

Yes. It does not matter where you live or whether your stay is temporary or permanent. You have the right to control your care and medical treatment.

*YOU HAVE
THE RIGHT TO
CONTROL
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AND MEDICAL
TREATMENT.*

How will I know what treatment I want?

Your doctor and/or health care provider must tell you about your options when your doctor suggests a new treatment or a significant change in your treatment. The law requires that the following be explained to you:

- Your medical condition
- The purpose of the treatment
- Why you need the treatment
- What the treatment is expected to do for your condition
- What could or will happen if you choose not to have the treatment
- What could or will happen if you choose to have the treatment
- Other possible treatments you could choose and their risks and benefits

After you know all about the suggested treatment, you can decide (informed consent). Before making such a decision, you have the right to discuss the treatment with

your family, a different doctor, a close friend, clergy, a family lawyer, or anyone else with whom you feel comfortable.

Does my health care provider have to tell me every time they want to change my medical treatment?

Yes. Each time a physician/healthcare provider suggests new treatment, a different medication, surgery, or other medical procedure that may significantly impact your health care, you must be given the information to help you make an informed choice. You stay in control.

How do I tell my health care provider what I want?

You should tell your health care provider your decision after you have all the information to make a choice. You can put your decision in writing and ask that it go in your medical file. You also have the right to read your medical file to be sure your decisions are recorded.

*YOU STAY
IN CONTROL
OF YOUR
HEALTH
CARE.*

Can I refuse medical treatment?

Yes. You have the right to decide not to accept medical treatment after you have been told the risks and benefits. You also have the right to decide that you do not want to be told of any potential risks of medical treatment.

Can I refuse to be tied into a chair or bed; can I refuse medication that makes me sleepy?

Yes. Devices such as poseybelts, seat belts, hand mitts, and bed rails are called *physical restraints*. Some medications which make you sleepy are called *chemical restraints*. Just like any other medical treatment, you may refuse the use of these devices. In many long-term care settings, restraints cannot be used at all. In some settings, restraints can only be used with your informed consent and under very limited circumstances.

What if I am unable to give consent for health care?

If a medical decision is necessary and you are unable to give consent for treatment, the following people (surrogates) can give consent or refuse consent for medical care on your behalf. The law identifies who will be your surrogate decision-maker by using the list below. The surrogate(s) must be considered in the specific order from the following list:

1. Your guardian with health care authority; if none then
2. Your Durable Power of Attorney for Health Care; if none then
3. Your spouse; if none then
4. Your adult children; if none then
5. Your parents; if none then
6. Your adult siblings; if none, a guardian may be necessary.

The listed order must be followed. The health care provider may not “jump” a group, add another category to the list (such as nieces), or not recognize the decision of an appropriate decision-maker. If there is more than one person in a group (for example, several adult children) they must all agree on the decision. If agreement can not be reached it may be necessary to ask the

A SURROGATE IS SOMEONE WHO IS DESIGNATED TO MAKE DECISIONS ON BEHALF OF A PERSON WHO IS INCAPABLE OF MAKING DECISIONS. A SURROGATE MAY BE APPOINTED THROUGH A DURABLE POWER OF ATTORNEY FOR HEALTH CARE; APPOINTED AS GUARDIAN BY A COURT OF LAW; OR SELECTED BY A HEALTH CARE PROVIDER FROM THE LIST OF FAMILY SURROGATES IN THE INFORMED CONSENT STATUTE.

court to appoint a guardian.

The consenting group member(s) must try to do what you would want done. If they do not know, they must do what they think is in your best interest.

In an emergency, if you are unable to give informed consent and have not made an advance directive, and the treatment is life-saving, your consent to treatment is implied.

What if my health care provider and I disagree?

You can still make your health care decisions. If you are refusing to consent, you may continue to refuse, and the doctor/healthcare provider must follow your decision. The court might be in the best position to determine whether you have the capacity to choose.

What if I do not have a surrogate to make the necessary decision?

Washington State law requires each healthcare provider to have policies and procedures that explain what will be done if you are not capable of making a decision. The superior court is responsible for determining who should make health care decisions for you if you become mentally incapacitated and do not have access to assistance from a surrogate. You should ask to see the facility's policies.

What is an Advance Directive?

Advance Directives are instructions (*directive*) written to a health care provider, before (*in advance*) the need for medical treatment. An Advance Directive anticipates that an illness or accident may happen in the future which would make it impossible to consent to medical treatment at the time it is needed. Some Advance Directives are specific to terminal illness or a permanent unconscious state. In Washington the following Advance Directives are common:

- Living Will (also known as a Health Care Directive);
- Durable Power of Attorney for Health Care;
- Code/No Code or Do Not Resuscitate (DNR);
- Anatomical Gifts

What is a Living Will (or Health Care Directive)?

The information in this section contains the language and requirements of the Washington Natural Death Act as amended in 1992 by the state legislature.

The Living Will, also known as a Health Care Directive, is allowed under a law in Washington State called the Natural Death Act. This is a written document that enables you to tell your doctor

**THE LIVING
WILL IS
ALLOWED UNDER
A LAW IN
WASHINGTON
STATE CALLED
THE NATURAL
DEATH ACT.**

what you do or do not want if you are diagnosed with a terminal condition or are permanently unconscious. You may choose not to prolong the process of dying from an incurable and irreversible condition.

You must sign and date your Living Will in the presence of two witnesses, who must also sign. These two witnesses may not be, at the time of signing, any of the following:

- Related to you by blood or marriage;
- Entitled to inherit your money or property if you die;
- People to whom you owe money;
- Your doctor or your doctor's employees;
- Employee of the health care facility where you are a patient or resident.

What if I change my mind?

You can change your Living Will (Health Care Directive) any time if you are mentally

capable. If you are not mentally capable, you can cancel or revoke your Living Will any time, but you cannot change what you have written or make a new one.

You can cancel your Living Will (Health Care Directive) by:

- Destroying it or having someone else destroy it in your presence; or
- Signing and dating a written statement that you are canceling the Living Will; or
- Verbally telling your doctor, or instructing someone to tell your doctor, that you are canceling it.

You, or someone you have instructed, must tell your attending doctor before the cancellation is effective.

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AND DATE YOUR
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Are health care providers and/or my doctor still required to inform me of my choices if I have put what I want in my Living Will?

Yes. The informed consent process is required when any significant treatment is recommended.

Will my health care provider and/or my doctor honor my decisions?

You should ask them directly. Your health care provider must give you their written policies on how they will handle Advance Directives. Some health care providers may have policies against carrying out your wishes based on moral, religious, or ethical concerns.

Washington State law says that a doctor or health care provider who will not honor your Advance Directive must tell you and give you the choice of keeping the doctor or the facility as your health care provider. If you choose to stay with the doctor and/or facility, there must be a written plan attached to your health care directive explaining what the facility and doctor will do to make sure your Advance Directive will be honored. This may mean that if your health condition changes, the doctor/healthcare provider will make arrangements with another doctor and/or facility to carry out your wishes.

Since the Living Will law changed in 1992, is my old Living Will still valid?

Yes. As long as your Health Care Directive generally follows the state law, it can be used. You may want to review your old Living Will. The law was expanded and allows you to make advance decisions about artificially provided nourishment (food and water).

Can someone make me write an Advance Directive?

No. It is against the law for a health care provider, including residential homes, to require that you have an Advance Directive. You have the right to choose whether or not to sign an Advance Directive. No health care provider can require that you sign or have any kind of Advance Directive as a condition of admission to a facility or as a condition of receiving service.

**SOME HEALTH
CARE PROVIDERS
MAY HAVE
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CONCERNS.**

Where should I keep my Living Will (Health Care Directive)?

You should make several copies of your completed document. Keep a copy in your papers and give copies to:

- Your power of attorney for health care (if you have one);
- Your doctor;
- Your health care provider; and
- A family member or trusted friend.

What is a Durable Power of Attorney for Health Care?

This is another type of Advance Directive in Washington State. The Durable Power of Attorney for Health Care (DPOAHC) is a document that you write stating who you want to make health care decisions for you if you are unable to make your own. You can also write what type of health care decisions you want made for you and what the decisions should be.

Why wouldn't I be able to make my own decisions about health care?

An accident or illness could make you temporarily unable to understand or talk about your medical treatment choices. Sometimes illness causes permanent loss of mental capacity and may limit your

ability to understand the risks and benefits of suggested medical treatment. Mental illness can cause temporary loss of capacity.

What do I need to do to make a Durable Power of Attorney for Health Care?

You should think carefully about what is important to you. Talking with a close friend, family member, clergy, or your doctor may help you think through your future health care decisions.

You should decide what type of health care is important. You should think about what you would want and what you wouldn't want if medical treatment, surgery or medication is proposed.

You should decide when the Durable Power of Attorney for Health Care can be used. It is important to be specific. You can have a Durable Power of Attorney for Health Care go into effect right after you sign it, or you can have it go into effect only when (or if) you are unable to make your own decisions.

If you decide to use a Durable Power of Attorney for Health Care (which becomes effective only when you become incapacitated), you should think about who should decide whether you are incapacitated and under what circumstances. For example, *“My incapacity will be decided by my treating physician and my cousin, Mary Smith. They must document their agreement and review my*

***YOU DON'T
NEED
WITNESSES
FOR A
DURABLE
POWER OF
ATTORNEY FOR
HEALTH CARE.***

ability to make my own decisions on a regular basis.”

You should think about whom you trust to make your medical decisions for you and you should talk about it with the person you choose. The person you choose is also called your “agent”. Sometimes the person you choose is called your “attorney in fact”, although the person does not have to be a lawyer.

The person you choose will be the person your health care provider will talk to when you need treatment or when it is time to implement your written directive(s) if you are incapacitated. This person will provide the informed consent for treatment or refuse treatment on your behalf. See Informed Consent.

You do not need witnesses for a Durable Power of Attorney for Health Care. However, witnesses can be important since they

“witness” that you understand what you are signing.

You may want to have the Durable Power of Attorney for Health Care notarized because some health care providers require it be notarized. However, state law does not require this unless the document also includes powers for financial matters.

Can someone make me write a Durable Power of Attorney for Health Care?

No. It is against the law for a health care provider, including any residential home, to require that you have an advance directive. You have the choice to have one or not. No provider of health care can require that you sign or have a Durable Power of Attorney for Health Care as a condition of being admitted to a facility or as a condition to receive services.

*YOU CAN
CANCEL A
DURABLE
POWER OF
ATTORNEY FOR
HEALTH CARE.
THIS IS CALLED
“REVOKING THE
POWER OF
ATTORNEY”.*

Where should I keep my Durable Power of Attorney?

You should keep a copy with your papers and give copies to:

- Your agent
- Your doctor
- Your health care provider
- Your family or trusted friend.

What if I want to cancel it?

You can cancel a Durable Power of Attorney for Health Care. This is called “revoking the power of attorney”. Any person or health care provider who believes your old Power of Attorney document is still in effect should be informed. This can be done in writing or verbally, regardless of your capacity. However, you may only appoint a new Power of Attorney if you are mentally capable.

If the Power of Attorney for Health Care was recorded with the county clerk, the document revoking the Power of Attorney for Health Care must also be recorded with the county clerk.

What if I disagree with my Durable Power of Attorney’s decisions about my health care?

If you and your agent disagree, you still get to decide for yourself. If you are unable to work out the disagreement with your agent, you can revoke the Power of Attorney or you can change it to limit

your agent's powers. If, however, a court of law has appointed a guardian to make health care decisions and you disagree, you must ask the court to review the guardian's decision. You can see an attorney for advice about going to court or you can request the court review the guardianship.

What if I fill out an Advance Directive in one state and receive health care in a different state?

The laws about honoring an Advance Directive from another state are unclear. Because an Advance Directive tells your wishes regarding medical care, it may be honored wherever you are, if it is made known. But if you spend much time in more than one state, you may wish to consider having your Advance Directive meet the laws of each state, as much as possible.

*CPR IS A
FORM OF
MEDICAL
TREATMENT;
YOU DECIDE
IF YOU WANT
IT OR NOT.*

What happens in an emergency? If my breathing or heart stops, will CPR be used on me?

CPR means cardiopulmonary resuscitation. It is an emergency procedure used when your breathing and/or heart has stopped. CPR is a form of medical treatment; you decide if you want it or not. You should make your decision after considering your specific medical condition, your values, your doctor's opinion, and further information about the procedure.

Why wouldn't a person want CPR?

Sometimes CPR can cause other medical problems. If a person is frail, pressing on the chest can break ribs and puncture internal organs. Sometimes after a period of not breathing, the brain can be permanently damaged. Often, lung resuscitation results in the person being placed on a respirator.

What do “Code/No Code” and “Do not Resuscitate” (DNR) mean?

These terms are used by doctors to tell staff your decision about whether or not to use CPR. “Code” means *use CPR*. “No Code” and “Do Not Resuscitate” (DNR) mean *do not use CPR*. Your health care decision is a part of the plan for your care.

Do I have to sign a form?

No. You do not have to sign a form indicating your choice for the use of CPR. If you want to document your choice, a signed form known as Code/No Code or DNR form is sometimes used to state under what circumstance you would or would not want CPR. This is put in your medical file to be followed by all medical staff. Most nursing facilities and hospitals have policies that require CPR if your heart stops and you have not previously indicated what you want. Some residential facilities are required by state law to call 911. Facility staff will give your directive to medical emergency staff upon their arrival.

What is organ or tissue donation?

Washington State law allows, upon your death, for a gift of specific body parts (like your eyes).

This is called tissue donation. You may also donate your entire body for medical research purposes. You can make a written statement witnessed

by two people that says what body parts you wish to donate for which purposes or check the back of your driver's license for easy instructions. You can also make this statement in your will.

If you have not made your wishes known, your relatives may be asked to make a decision at the time of your death.

Additional Resource Material

Please call 1-800-422-3263 to request:

- A values history form – this form is used to document your values about the end of life and medical care.
- Glossary of terms related to the information in this booklet
- Decision Making Chart – “Who Decides?”

For more information on your right to control your health care, contact:

- Your Health Care Administrator, Owner or Manager;
- The State Long-Term Care Ombudsman (1-800-562-6028);
- Your local Area Agency on Aging;
- Your local Legal Services Office;
- Your local Department of Social and Health Services (DSHS) Aging and Adult Services Administration Offices (call 1-800-422-3263 to get the number).

For assistance and/or referral in making an Advance Directive, contact:

- AARP (American Association of Retired Persons)
1-800-424-3410
- Your hospital social services department;
- Washington Bar Association Lawyer Referral Service
1-800-759-4357

If you believe your rights have been violated regarding health care decision-making and advance directives, you may be able to get help by calling the specific agency or organization listed below:

- People living in nursing homes, adult family homes, and boarding homes, call the Aging and Adult Services (AASA) Hotline (1-800-562-6078);
- State Long Term Care Ombudsman (1-800-562-6028);
- Your local AASA office (ask for Adult Protective Services);
- People with developmental disabilities or mental disabilities, call the Washington Protection and Advocacy System (1-800-562-2702).

How can I obtain further copies?

This brochure can now be accessed via the Internet at:

<http://www.aasa.dshs.wa.gov/Library/legalrights.htm>

You may also obtain additional copies free of charge by directing your written request to:

DSHS Warehouse

P.O. Box 45816

Olympia, WA 98504-5816

FAX: (360) 664-0597 E-Mail: DSHSFPW@dshs.wa.gov

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- The name of this brochure
- The publication number [DSHS 22-015(X)]
- The number of copies requested (providers, please limit your request for this publication to a maximum of 50 copies per order).
- Your name (or facility name), mailing address, and a daytime phone number.

This brochure is available in alternate format, as well as Russian and Spanish translation. Please call 1-800-422-3263 for more information.



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