

ADVANCED DIRECTIVES

YOUR RIGHT TO MAKE HEALTH CARE DECISIONS UNDER THE LAW IN NEW MEXICO

INTRODUCTION

New Mexico and federal law give every competent adult, 18 years or older, the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject, or discontinue. If you do not want to receive certain types of treatment, or you wish to name someone to make health care decisions for you, you have the right to make these desires known to your doctor, hospital, or other health care providers, and in general, have these rights respected. You also have the right to be told about the nature of your illness in terms that you can understand, the general nature of the proposed treatments, the risks of failing to undergo these treatments and any alternative treatments or procedures that may be available to you.

However, there may be times when you cannot make your wishes known to your doctor or other health care providers. For example, if you were taken to the hospital in a coma, would you want the hospital's medical staff to know what your specific wishes are about the medical care that you want or do not want to receive.

This booklet describes what New Mexico and federal law have to say about your rights to inform your health care providers about medical care and treatment you want, or do not want, and about your right to select another person to make these decisions for you, if you are physically or mentally unable to make them yourself.

To make these difficult issues easier to understand, we have presented the information in the form of questions and answers. Because this is an important matter we urge you to talk to your spouse, family, close friends, personal advisor(s), your doctor, and your attorney before deciding whether or not you want an advance directive.

QUESTIONS AND ANSWERS

GENERAL INFORMATION ABOUT ADVANCE DIRECTIVES

What are “Advance Directives”?

Advance directives are documents which state your choices about medical treatment, or name someone to make decisions about your medical treatment, if you are unable to make these decisions or choices yourself. They are called “advance” directives, because they are signed in advance to let your doctor and other health care providers know your wishes concerning medical treatment. Through advance directives you can make legally valid decisions about your future medical care.

New Mexico law recognizes 2 types of advance directives:

1. A Living Will Declaration
2. A Durable Power of Attorney for Health Care

Do I have to have an Advance Directive?

No, it is entirely up to you whether you want to prepare any documents. But if questions arise about the kind of medical treatment that you want or do not want, advance directives may help to solve these important issues. Your doctor or any health care provider cannot require you to have an advance directive in order to receive care; nor can they prohibit you from having an advance directive. Moreover, under New Mexico law, no health care provider or insurer can charge a different fee or rate depending on whether or not you have executed an advance directive.

What will happen if I do not make an Advance Directive?

You will receive medical care even if you do not have any advance directives. However, there is a greater chance that you will receive more treatment or more procedures than you may want.

If you cannot speak for yourself and you do not have any advance directives, your doctor or other health care providers will generally look to your family or friends for decisions about your care. But if your doctor or your health care facility is unsure, or if your family members cannot agree, they have to

ask the court to appoint a person (called a guardian) to make those decisions for you.

How do I know what treatment I want?

Your doctor must inform you about your medical condition and what different treatments can do for you. Many treatments have serious side effects. Your doctor must give you information, in language that you can understand, about serious problems that medical treatment is likely to cause. Often, more than one treatment might help you and different people might have different ideas on which is best. Your doctor can tell you the treatments that are available to you, but he cannot choose for you. That choice depends on what is important to you.

Whom should I talk to about Advance Directives?

Before writing down your instructions, you should talk to those people closest to you and who are concerned about your care and feelings. Discuss them with your family, your doctor, friends, and other appropriate people, such as a member of your clergy or your lawyer. These are the people who will be involved with your health care if you are unable to make your own decisions.

When do Advance Directives go into effect?

It is important to remember that these directives only take effect when you can no longer make your own health care decisions. As long as you are able to give “informed consent”, your health care provider will rely on **YOU** and **NOT** on your advance directives.

What is “Informed Consent?”

Informed consent means that you are able to understand the nature, extent and probable consequences of proposed medical treatments and you are able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures **AND** you are able to communicate that understanding in any way.

How will my health care providers know if I have any Advance Directives?

Doctors, hospitals, and other health care providers must ask you if you have an advance directive(s), and if so, they must see that it is made part of your medical records.

Will my Advance Directives be followed?

Generally, yes, if they comply with New Mexico law. Federal law requires your health care providers to give you their written policies concerning advance directives. It may happen that your doctor or other health care provider cannot or will not follow your advance directives for moral, religious or professional reasons, even though they comply with New Mexico law. If this happens, they must immediately tell you. Then they must also help you transfer to another doctor or facility that will do what you want.

Can I change my mind after I write an Advance Directive?

Yes, at any time, you can cancel or change any advance directive that you have written. To cancel your directive, simply destroy the original document and tell your family, friends, doctor and anyone else who has copies that you have canceled them. To change your advance directives, simply write and date a new one. Again, give copies of your revised documents to all the appropriate parties, including your doctor.

Do I need a lawyer to help me make an Advance Directive?

A lawyer may be helpful and you might choose to discuss these matters with him, but there is no legal requirement in New Mexico to do so. You may use the form that is provided to execute your advance directives.

Will a New Mexico Advance Directive(s) be honored in another state?

The laws on advance directives differ from state to state, so it is unclear whether New Mexico advance directive will be valid in another state. Because an advance directive is a clear expression of your wishes about medical care, it will influence that care no matter where you are admitted. However, if you plan to spend a great deal of time in another state, you

might want to consider signing an advance directive that meets all the legal requirements of that state.

Will an Advance Directive from another state be valid in New Mexico?

Yes. An advance directive executed in compliance with another state's laws will be valid.

**NEW MEXICO DURABLE POWER OF ATTORNEY
FOR HEALTH CARE**

I, _____
(Name and Address of Principal)

appoint as my attorney-in-fact (hereinafter referred to as
"Agent")

to make any health care decision for me when, in the judgment of my attending physician, I am unable to make or communicate the decision myself and my agent consents to make or communicate the decision on my behalf.

My agent has the power to make any health care decision for me. This power includes the power to give consent, to refuse consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat my physical or mental condition, including giving me food or water by artificial means. My agent has the power, where consistent with the laws of New Mexico, to make a health care decision to withhold or stop health care necessary to keep me alive. It is my intention that my agent or my alternative agent has a personal obligation to me to make health care decisions for me consistent with my expressed wishes. I understand, however, that my agent or my alternative agent has no legal duty to act.

My agent and any alternative agents have consented to act as my agent.

My agent must act consistently with my desires as stated in this document or as otherwise made known by me to my agent.

My agent has the same right as I would have to receive, review, and obtain copies of my medical records and to consent to disclosure of those records.

DESIGNATION OF ALTERNATE AGENT (OPTIONAL)

(You are not required to designate one or more alternate agents, but you may do so. An alternate agent may make the same health care decisions as your designated agent, if the designated agent is unable or unwilling to act as your agent.) If my agent named by me shall die, become legally disabled, incapacitated or incompetent, or resign, refuse to act, or be unavailable, I name the following (each to act successively in the order named) as my alternate agent.

FIRST ALTERNATE AGENT:

Name: _____

Address: _____

SECOND ALTERNATE AGENT:

Name: _____

Address: _____

SPECIAL INSTRUCTIONS (OPTIONAL)

(You may give your agent(s) any special instructions in this section. If you do not wish to do so, put "None" on the lines provided.)

LIMITATIONS (OPTIONAL)

(You may wish to put additional limitations on your agents in this section. If you do not wish to do so, put "None" on the lines provided.)

OTHER SPECIFIC DIRECTIONS

(You may give your health care providers any other specific directions concerning medical care or treatment that you want or do not want to receive. If none, write "None" on the lines below.)

DECLARANT SIGNATURE

I understand the full import of this Declaration and I am emotionally and mentally competent to make this Declaration.

Signature

Address

WITNESS SIGNATURES

(Two witnesses must sign this document)

We believe the person who signed this document to be of sound mind and under no constraint or undue influence.

On this _____ day of _____, 20____, the person who signed this document, signed the foregoing document, in our sight and presence and declared the same to be his/her document under the New Mexico Right to Die Act, and at his/her request and in his/her sight and presence and in the sight and presence of each other, we have signed our names as witnesses.

Witness

Address

Witness

Address

NEW MEXICO LIVING WILL DECLARATION

Declaration made this _____ day of _____, 20____.

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

1. If at any time I should be certified in writing by two physicians, one of whom is my attending physician, to be suffering from a terminal illness or be in an irreversible coma, I direct that maintenance medical treatment shall not be utilized for the prolongation of life.
2. By maintenance medical treatment I mean any medical treatment that is designed solely to sustain the life processes without effecting a real improvement in my condition. I mean to include within maintenance medical treatment the administration of antibiotics and the artificial provision of nutrients and hydration, but I do not mean to include medication or other measures administered for the purpose of easing pain and discomfort.
3. In the absence of my ability to give directions regarding the use of such medical treatment, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical and surgical treatment and accept the consequences from such refusal.
4. If my attending physician declines to participate in the withholding or withdrawal of maintenance medical treatment, my attending physician shall take steps to transfer me to another physician who will honor my wishes.
5. I will keep the original of this document at:

Name and address where original document is kept: _____

6. Copies of this document have been given to the following individuals: (Name and Address)

- 7. I understand that I may revoke this Living Will Declaration at any time.

DECLARANT SIGNATURE

I understand the full import of this Declaration and I am emotionally and mentally competent to make this Declaration.

Signature

Address



Mimbres Memorial Hospital And Nursing Home

900 West Ash Street Deming, New Mexico 88031 (575)546-2761 Fax (575)5469734

AUTHORIZATION FOR DO NOT RESUSCITATE

**THIS IS TO CERTIFY THAT DR _____
TALKED WITH THE PATIENT AND/OR THE FAMILY
AND ALL ARE IN AGREEMENT ON A NO
RESUSCITATION ORDER FOR THIS PATIENT AND
PATIENT IS DESIGNATED “NO CODE”.**

Signature of patient or responsible party

Relationship to patient

Physician Signature

Witness

Witness

Date



EMERGENCY MEDICAL SERVICES (EMS) DO NOT RESUSCITATE (DNR) FORM

AN ADVANCE DIRECTIVE TO LIMIT THE SCOPE OF EMS CARE

NOTE: THIS ORDER TAKES PRECEDENCE OVER A DURABLE HEALTH CARE POWER OF ATTORNEY FOR EMS TREATMENT ONLY

I, _____, request limited EMS care as described in this document. If my heart stops beating or if I stop breathing, no medical procedure to restore breathing or heart functioning will be instituted, by any health care provider, including but not limited to EMS personnel.

I understand that this decision will not prevent me from receiving other EMS care, such as oxygen and other comfort care measures.

I understand that I may revoke this Order at any time.

I give permission for this information to be given to EMS personnel, doctors, nurses and other health care professionals. I hereby agree to this DNR Order.

Signature

OR _____
Signature/Authorized
Health Care Decision Maker

Relationship

I affirm that this patient/authorized health care decision maker is making an informed decision and that this is the expressed directive of the patient. I hereby certify that I or my designee have explained to the patient the full meaning of the Order, available alternatives, and how the Order may be revoked. I or my designee have provided an opportunity for the patient/authorized health care decision maker to ask and have answered any questions regarding the execution of this form. A copy of this Order has been placed in the medical record. In the event of cardiopulmonary arrest, no chest compressions, artificial ventilations, intubation, defibrillation, or cardiac medications are to be initiated.

Physician's Signature / Date

Physician's Name - PRINT

Physician's Address / Phone

WALLET CARDS FOR NEW MEXICO ADVANCE DIRECTIVES

Cut out and complete the cards below. Put one card in the wallet or purse you carry most often, along with your driver's license or health insurance card. You may keep the second card on your refrigerator, in your motor vehicle glove compartment, a spare wallet or purse, or other easy-to-find place.

ATTN: NEW MEXICO HEALTH CARE PROVIDERS

I have created the following Advance Directives:
(Check one or more, as appropriate)

New Mexico Living Will Declaration
 Durable Power of Attorney for Health Care
 Other _____

Please contact _____
(Name)

_____ (Address)

_____ (Telephone) for more information.

_____ (Date) _____ (Signature)

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(Check one or more, as appropriate)

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Please contact _____
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