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**Advance Directives:  
What Nursing Facility Residents  
Need to Know**



**NAWROCKI CENTER**  
For Elder & Family Law

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## **Advance Directives: What Nursing Facility Residents Need to Know**

Nursing facility residents have many rights, such as the right to vote, the right to receive visitors, and the right to manage their own financial affairs. They also have the right to make their own health care decisions, including the right to accept or refuse medical treatment. When you enter a nursing facility as a resident, you will be notified of your right to complete an advance directive, which states in advance what kind of treatment you want or do not want under special, serious medical conditions-conditions that would prevent you from telling your doctor how you want to be treated. For example, if you were to suffer a stroke and become incapacitated, would you want the facility's staff to know your specific wishes about decisions affecting your treatment? The information in this brochure can help you make these decisions in advance of treatment. Since this is an important matter, you may wish to talk to family, close friends, and your doctor before deciding whether you want an advance directive. Finally, it is important to remember that state laws differ about the legal choices available to you for treatment options that can be honored by nursing facilities. Check with your facility for information on your state's advance directive law.

### **What is an Advance Directive?**

Generally, an advance directive is a written statement, which you complete in advance of serious illness, about how you want medical

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decisions made. The two most common forms of advance directives are living wills and durable powers of attorney for health care. An advance directive allows you to state your choices for health care or to name someone to make those choices for you if you become unable to make decisions about your medical treatment. In short, an advance directive can enable you to make decisions about your future medical treatment. You can say "yes" to treatment you want or say "no" to treatment you don't want.

### *What is a Living Will?*

A living will generally states the kind of medical care you want (or do not want) if you become unable to make your own decision. It is called a "living will" because it takes effect while you are still living. Most states have their own living will forms, each somewhat different. It may also be possible to complete and sign a pre- printed living will form available in your own community, draw up your own form, or simply write a statement of your preferences for treatment. You may also wish to speak to an attorney or your physician to be certain you have completed the living will in a way that your wishes will be understood and followed.

### *What is a Durable Power of Attorney for Health Care?*

In many states, a durable power of attorney for health care is a signed, dated, and witnessed paper naming another person, such as a husband, wife, daughter, son, or close friend, as your "agent" or "proxy" to make medical decisions for you if you should become unable to make them for yourself.

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You can include instructions about any treatment you want or wish to avoid. Some states have specific laws allowing a health care power of attorney and provide printed forms.

### **Which is Better: A Living Will or a Durable Power of Attorney for Health Care?**

In some states, laws may make it better to have one or the other. It may also be possible to have both, or to combine them in- to a single document that describes treatment choices in a variety of situations (ask your doctor about these) and names someone (called your "agent" or "proxy") to make decisions for you, should you be unable to make decisions for yourself.

### **Am I Required to Write an Advance Directive?**

No. There is no requirement for anyone to write an advance directive. The decision to write one or not to write one is entirely up to you.

### **Can I Change My Mind After I Write a Living Will or Health Care Power of Attorney?**

Yes. You may change or cancel these I documents at any time in accordance with state law. Any change or cancellation should be written, signed, and dated in accordance with state law, and copies should be given to your doctor or to others to whom

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you may have given copies of the original. In addition, some states allow you to change an advance directive by oral statement. If you wish to cancel an advance directive while you are in a nursing facility, you should notify your doctor, your family, and others who may need to know. Even without a change in writing, your wishes stated in person directly to your doctor generally carry more weight than a living will or durable power of attorney, as long as you can decide for yourself and can communicate your wishes. But be sure to state your wishes clearly and be sure that they are understood.

### **What if I Fill Out an Advance Directive in One State and Move into a Nursing Facility in a Different State?**

The law on honoring an advance directive from another state is 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 a great deal of time in more than one state, you should consider having your advance directive meet the laws of both states and be on record in both localities.

### **What Should I Do with my Advance Directive if I Choose to Have One?**

Make sure that someone, such as your lawyer or family member, knows that you have an advance directive and knows where it is located. You should also consider the following:

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- If you have a durable power of attorney, give a copy or the original to your agent or proxy.
  - Give your physician and the nursing facility a copy of your advance directive and ask them to make it part of your permanent medical record.
  - Keep a second copy of your advance directive in a safe place where it can be found easily, if it is needed.
  - Keep a small card in your purse or wallet, which states that you have an advance directive, where it is located, and who your agent or proxy is, if you have named one.

Under federal law, when you enter a Medicare or Medicaid nursing facility or hospital, receive home health or hospice care from a Medicare or Medicaid provider, or enroll in a Medicare- or Medicaid-certified HMO, you will be asked whether you have an advance directive. If you have one, the medical facility will request that you provide a copy to be placed on record at the facility.

### **Where Can I Obtain Additional Information on Advance Directives?**

For more information, contact the Nawrocki Center for Elder and Family Law, your nursing facility, or Choice in Dying, 250 West 57th Street, New York, NY 10107, (212) 246-6973.



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