

Lieutenant Governor's
Office on Aging



Advance Directives

**A Consumer's Guide for the Decision
Making Process and Choices that Affect
You**

South Carolina and federal law gives all competent adults, 18 years or older, the right to make their own health care decisions. These rights include the ability to decide what medical care or treatment to accept, reject or discontinue. If they do not want to receive certain types of treatment or they wish to name someone to make health care decisions for them, they have the right to make these desires known to their doctor, hospital or other health care providers, and in general, have these rights respected. They also have the right to be told about the nature of their illness, in terms that they 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 them.

The best way to make your wishes known is to:

1. Discuss them with your health care provider and family members
2. Execute an Advance Directive

South Carolina law recognizes the following Advance Directive Documents:

1. Living Will
2. Health Care Power of Attorney
3. Five Wishes

Full Text of the law can be found in the:

S.C. Code of Laws

Title 44, Chapter 66, Section 10

YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS THAT AFFECT YOU

As written into both State and Federal Law, you have the right to make all decisions about health care you receive. If you do not want treatments to prolong life, you have the right to tell your doctor, either orally or in writing. If you want to refuse treatment, but you do not have someone to name as your agent you can sign a Living Will.

THE PURPOSE OF THE ADVANCE DIRECTIVES

Most patients can express their wishes to their doctor, but some who are badly injured, unconscious or very ill cannot. People need to know your wishes about health care in the event you become unable to speak for yourself. These wishes can be expressed through advance directives.

In a Living Will, you tell your doctor that you do not want to receive certain treatments while in a Health Care Power of Attorney, you name an agent who will tell the doctor what treatment should or should not be provided.

In the “Five Wishes” document, wish one is the Health Care Power of Attorney and wish two is the Living Will. This document along with the other forms of Advance Directives empowers you to control a very important aspect of your health care—especially in the event that you are seriously ill.



The decision to sign an advance directive is very personal and very important. These documents will be followed only if you are unable to make decisions for yourself due to illness or injury. While you are pregnant, these documents will not cause life support to be withheld. If you do not have an advance directive that tells what you want done, you do not know what decisions will be made or who will make them. Decisions may be made by certain relatives designated by South Carolina Law by the *Health Care Consent Act*, by a person appointed by the court, or by the court itself.

The best way to make sure your wishes are followed is to state them in an Advance Directive. If do not have someone to name as your agent, you can sign a Living Will.

If you have questions about signing Advance Directives, talk with your doctor, minister, priest, rabbi or other health or religious professional.

It is very important that you discuss your feelings about life support with your family. A Health Care Power of Attorney should also be discussed with the people you intend to name as your agent or alternate agents to make sure they are willing to serve and that they know your wishes.

This pamphlet will now answer some frequently asked questions regarding this procedure.

ARE THERE FORMS FOR ADVANCE DIRECTIVES IN SOUTH CAROLINA?

Yes. The South Carolina legislature has approved forms for a Living Will, Health Care Power of Attorney and “Five Wishes”. The Living Will form that the legislature approved is called a *Declaration of a Desire for a Natural Death*. You may get these forms by calling:

**Your Area Agency on Aging
Your Local Council on Aging
Lieutenant Governor’s Office on Aging
1-800-868-9095 or 803-734-9900
1-800-5wishes (594-7437)**

HOW ARE A HEALTH CARE POWER OF ATTORNEY AND A LIVING WILL DIFFERENT?

The agent named in a Health Care Power of Attorney can make decisions about your health care. If you want to state your wishes concerning medical treatment at the end of life you can sign a Living Will. A Living Will only tells the doctor what to do if you are **permanently unconscious** or if you are **terminally ill and close to death**. A Health Care Power of Attorney is not limited to these situations.

Permanently unconscious means that you are in a persistent vegetative state in which your body functions but your brain does not. This is different from a coma because a person in a coma usually wakes up; permanently unconscious persons do not.

A Living Will states what treatment you **do not** want. A Health Care Power of Attorney states what treatment you **do** want, as well as what you do not want.

With a Living Will, you must decide what should be done in the future without knowing exactly what the circumstances will be when the decision is put into effect. With a Health Care Power of Attorney, the agent can make the decisions when the need arises, and will know what the circumstances are.

An Ombudsman Witness designated by the Lieutenant Governor’s Office on Aging must be a witness if you

sign a Living Will when you are in a hospital or nursing home. An Ombudsman witness does not, however, have to be a witness if you sign a Health Care Power of Attorney or Five Wishes in a hospital or nursing home.

The Health Care Power of Attorney contains a HIPAA statement and the notary is optional.

The Five Wishes is an easy to use legal document that lets your family and doctors know which person you want to make health care decisions for you when you can't make them; the kind of medical treatment you want or do not want; how comfortable you want to be treated and what you want your loved ones to know.

I WANT TO BE ALLOWED TO DIE A NATURAL DEATH AND NOT BE KEPT ALIVE BY MEDICAL TREATMENT, HEROIC MEASURES, OR ARTIFICIAL MEANS. HOW CAN I MAKE THIS HAPPEN?

The best way to be sure you are allowed to die a natural death is to sign a Health Care Power of Attorney that states the circumstances in which you would not want treatment. On the South Carolina form, you should specify your wishes in items six (6) and seven (7).

WHICH DOCUMENT SHOULD I SIGN IF I WANT TO BE TREATED WITH ALL AVAILABLE LIFE-SUSTAINING PROCEDURES?

You should sign a Health Care Power of Attorney and not a Living Will. The South Carolina Health Care Power of Attorney form allows you to say either that you do or that you do not want life sustaining treatment.

WHAT IF I HAVE AN OLD HEALTH CARE POWER OF ATTORNEY OR LIVING WILL OR SIGNED ONE IN ANOTHER STATE?

If you have previously signed a Living Will or Health Care Power of Attorney, even in another state, it is probably valid. However, it may be a good idea to sign the most current forms. For example, the current SC Living Will form covers artificial nutrition and hydration whereas the older forms do not.

HOW IS A HEALTH CARE POWER OF ATTORNEY DIFFERENT FROM A DURABLE POWER OF ATTORNEY?

A Health Care Power of Attorney is a specific form of Durable Power of Attorney that names an agent only to make health care decisions. A Durable Power of Attorney may or may not allow the agent to make health care decisions. It depends on what the document says.

The agent may only be able to make decisions about property and financial matters.

WHAT ARE THE REQUIREMENTS FOR SIGNING A LIVING WILL?

You must be eighteen years old to sign a Living Will. Two persons must witness your signing the Living Will form. A notary public must also sign the Living Will form. If you sign the form while you are a patient in a hospital or resident in a nursing home, an Ombudsman witness must be present for your signing.

There are certain people who cannot serve as a witness. Please read the Living Will form carefully to be sure your witnesses are qualified.

WHO SHOULD I APPOINT AS MY AGENT? WHAT IF MY AGENT CANNOT SERVE?

You should appoint a person you trust and who knows how you feel about health care. You should also appoint at least one alternate who will make decisions if your agent is unable or unwilling to make these decisions. You should talk to the people you choose as your agent and alternate agents to be sure they are willing to serve.

IS THERE ANYTHING I NEED TO KNOW ABOUT COMPLETING THE LIVING WILL OR HEALTH CARE POWER OF ATTORNEY FORMS?

Each form contains spaces for you to state your wishes about life support and tube feeding. If you do not put your initials in either blank, tube feeding may be provided, depending on your condition. Be sure to read the form carefully and follow the instructions.

WHERE SHOULD I KEEP MY FORMS?

Keep the originals in a safe place where your family members can get them. You should also give a copy to as many of the following people as you are comfortable with:

- Family Members/Agents
- Your Health Care Providers/Lawyers
- Your Minister/Priest/Rabbi

Do not put your only copy of these forms in your safe deposit box

WHAT IF I CHANGE BY MIND AFTER I HAVE SIGNED AN ADVANCE DIRECTIVE?

You make revoke (cancel) your advance directive at any time. The forms contain instructions for doing so. You must tell your doctor and anyone else who has a copy

that you have changed your mind and you want to revoke your documents.

WHEN DID THE “FIVE WISHES “BECOME VALID IN SOUTH CAROLINA?

The “Five Wishes” met the legal requirement in South Carolina and was signed into law by Governor Mark Sanford in June 2005.

HOW DO I ORDER “FIVE WISHES”?

You may visit the web at www.agingwithdignity.org or call 1-888-5WISHES (594-7437). The cost is \$5.00 per individual copy or \$1.00 per copy for an order of 25 or more copies.

