Advance Directives (Living Wills)

What is an Advance Directive?

An advance directive is a written document that sets out guidelines for your future health care. In other words, an advance directive is a declaration about your preferences for future health care in the event you lose the ability to communicate with your doctors. It is often referred to as a "living will." But it shouldn't be confused with a living trust or a last will and testament, which are different planning documents from an advance directive. A power of attorney for health care might also include provisions commonly seen in an advance directive.

Why do I need an Advance Directive?

Advance directives protect your right to determine your medical treatment if you can no longer make the decision for yourself when it's needed. If you lose the ability to make decisions regarding health care treatment, an advance directive may provide specific instructions on your medical care. An advance directive typically speaks to whether you want medical procedures or interventions which would serve only to maintain permanent unconsciousness or postpone the moment of death. An advance directive can speak to the withholding of artificial nutrition and hydration; that is, food and water provided through a tube inserted into the stomach, intestines, or veins. An advance directive can also take into account any religious preferences for your care and treatment.

An advance directive is only effective with regard to life-sustaining treatment when you can no longer communicate a health care decision and you are either terminally ill or permanently unconscious. An advance directive does not allow for the following:

1. Withdrawal of life-sustaining treatment from a pregnant woman in some circumstances.
2. Withholding of "comfort care" or treatment to alleviate pain.
3. Require doctors to deviate from accepted medical standards, either.

As long as you are able to communicate health care decisions, you can do so without the need for a written document. An advance directive takes effect at a point in time when you have lost the ability to make your own health care decisions.

What happens if I do not have an advance directive?

If you do not have an advance directive and are unable to make decisions for yourself, South Dakota law prescribes who will make your healthcare decisions for you. Generally, this means spouses or family members, or if no family members are available to act, then a close friend. However, these individuals may be unavailable, unwilling or incapacitated themselves. There may also be a disagreement over what your wishes actually were. If there is nobody available to make a decision, or a decision cannot be reached, a court may order health care or direct a healthcare decision.

Another outcome may be that the court appoint a guardian. Or if you have a health care power of attorney, you may designate someone through that document to make decisions for you.

What is required to create an Advance Directive?

Advance directives are generally required to be written, signed, and witnessed. An advance directive cannot be executed once you have lost capacity, unless you later regain capacity. That's why an advance directive is called an "advance" directive – it must be signed in advance of an incapacity in order to direct care when you are no longer able to do so.

How do I change my Advance Directive?

An advance directive may be revoked at any time, in any manner, and without regard to mental or physical condition. An advance directive can also be replaced by a newer advance directive. Keep in mind, revoking an advance directive is only effective once it is communicated to the health care provider.

How do I ensure my Advance Directive is carried out?

Advance directives involve important health care decisions. Consult with your doctor or an attorney to ensure that any advance directive is enforceable in South Dakota and accurately conveys your health care preferences.

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