

Advance Health Care Planning in Kansas

Do you worry about the medical care you would receive if you became ill and were unable to speak for yourself? By stating your health care preferences in writing before a health crisis occurs, you can ensure that you will receive the type or degree of care that you want. There are many different and unique documents to help you plan for your future. This booklet will guide you through these valuable tools and give you the resources to plan for your future needs.

Why should I plan ahead?

As long as you are able, you have the right to be informed and decide your medical treatment. But what happens if you become unable to speak for yourself during a health care crisis? Advance directives allow you to voice your future healthcare wishes and appoint someone to be your voice should you become unable to speak for yourself. Unless you have these documents in place, decisions can be made on your behalf that don't align with your wishes. Sadly, less than one in four American adults have advance directives in place. Don't be a statistic. Take an active role, and complete your advance directives while you're still able. Doing so is often considered a gift by family members and friends faced with making decisions about your future care.

When should I plan for my future health care needs?

Advance health care planning is not only for older adults. A person at any age can experience an accident, serious disease, or surgery that leaves them incapacitated and unable to make their own health care decisions. In Kansas, any competent person 18 years of age or older can plan for their health care in advance.

Can I change my mind?

Yes! Any of your advance health care planning forms can be revised at any

time, provided you are still competent to do so. It is recommended that you review your documents once a year to ensure that they still align with your preferences and that your health care agent is still able and willing to make decisions on your behalf. You should also review your documents any time you go through a major life event, such as a marriage, divorce, or separation.

If you need to make changes, you should complete a new form and ensure that old documents are shredded or destroyed. You should give an updated copy to anyone (physician, family, and friends) who has a copy of your old forms.

Communication is key.

Some people prefer to keep their legal documents private and disclose little or no information regarding their personal decisions. With end-of-life issues, however, communication is key.

Initiating a conversation with others about their end-of-life wishes can be unsettling, but having these conversations will ensure that future health care plans are made and that the appropriate parties are aware of those plans. If you are initiating a conversation with your loved one, remember to be patient and understanding — these conversations can be tough. Make a plan for your conversation, practice it with a friend, and bring paper to take notes. If you are unsure of how to start the conversation, saying “I need your help

Will my advance directive be honored in another state?

That depends. Each state has unique advance directive forms. Some states will honor advance directives completed in other states while others will not, and some states do not address the issue. Therefore, it is recommended that if you spend a significant amount of time in another state, complete your advance directives there, too. Also keep in mind that if you move to another state, you should create new forms with that state's statutes in mind. Ultimately, it will be easier for medical professionals to honor your directives if they are familiar with the form(s) unique to their state.

with something” or “I was thinking about what I would like the end of my life to look like. I want _____. What would your wishes be?” might help get the conversation going. For more information on starting these conversations, visit The Conversation Project at theconversationproject.org.

After completing your form(s), take the time to talk with your health care agent (if you've completed a durable power of attorney for health care), physician, family members, and close friends. Tell these individuals about your end-of-life wishes and desires. Don't forget to encourage your loved ones to do the same regarding their own future health care wishes and plans. These conversations are

certainly difficult, but are essential if you would like your wishes to be fulfilled.

Planning Ahead: Advance Directives

Legal documents, called advance directives, give you the opportunity to describe your wishes regarding future health care decisions. The most common advance directives are: durable power of attorney for health care, living will, and pre-hospital do not resuscitate directive.

A durable power of attorney for health care allows you to name the person you want to make health care decisions for you if you are not capable of making decisions yourself.

A living will allows you to record, in writing, what type of care you want at the end of your life, should you be diagnosed with a terminal illness. A living will is essentially an instructional guideline for your health care providers, family, and close friends.

A pre-hospital do not resuscitate (DNR) is a legal document that allows adults to communicate, in advance of a medical emergency, their desire to not have resuscitation attempted, should they stop breathing or their heart stops beating. Each state regulates the use of advance directives differently, and only the Kansas statutes for durable power of attorney for health care, living wills, and pre-hospital do not resuscitate directive will be described below.

Durable Power of Attorney for Health Care

A durable power of attorney for health care is also commonly referred to as a “health care proxy” or “appointment of a health care agent” in some states. In Kansas, you, “the principal,” will appoint an “agent” that will serve as your durable power of attorney for health care. This person, whom you appoint, will be able to make health

What’s the difference? “Durable power of attorney for health care”, “durable financial power of attorney,” and “financial power of attorney.”

The durable power of attorney for health care allows you to appoint an individual you trust to make medical decisions for you if you were to become temporarily or permanently incapacitated due to illness or injury. This person is referred to as your “agent.”

The durable financial power of attorney and financial power of attorney are legal documents that allow you to appoint an individual to make financial decisions on your behalf. There are two types of durable financial power of attorney: springing and non-springing. A springing durable financial power of attorney goes into effect only when you are incapacitated. A non-springing durable financial power of attorney takes effect immediately upon execution, or when you sign the document, and continues to be effective if you were to become incapacitated. A (non-durable) financial power of attorney is effective only when you are not disabled or incapacitated and when you can still make your own decisions. This document will not allow your agent to act on your behalf should you become incapacitated. To find out more information about financial power of attorneys, contact a financial or legal professional.

care decisions on your behalf. This person can speak for you only if you are either temporarily or permanently incapacitated due to illness or injury, as determined by your attending physician. If your attending physician determines that you are incapacitated and unable to make your own decisions, your durable power of attorney for health care will become effective.

Your durable power of attorney for health care, or agent, can make numerous decisions on your behalf. These include: the authority to make treatment decisions for you, including what health care personnel to hire or fire; decisions regarding from which medical facilities and institutions you will receive care; and decisions about organ donation, autopsy, and what to do with your body after death. However, your agent cannot revoke previously existing documents regarding wishes, such as a living will.

Your agent also has the right to receive and review medical records that pertain to your health status. However, federal law, particularly the Health Insurance Portability and Accountability Act of 1996 (HIPAA),

also outlines who has access to medical records. Therefore, it is recommended that you also complete a HIPAA Authorization to designate your “personal representative” the ability to access your medical records and other Protected Health Information (PHI). You can find a HIPAA Authorization on page 7 of this booklet.

Who should I appoint as my durable power of attorney for health care?

First, you should make sure that the person you would like to appoint meets all of the Kansas requirements. Your agent must be at least 18 years old and considered competent when the document is signed. Your agent cannot be your treating health care provider, employees of your treating health care provider, and employees, owners, directors or officers of certain types of health care facilities unless that person is related to you by blood, marriage, or adoption, or you and the agent have taken vows in the same religious community.

Aside from the legal requirements, the agent that you choose should be someone you trust, who knows you

well, who will advocate for you, and who will honor your wishes. Once you have identified someone you would like to be your agent, talk to that person. Ask the individual if she or he would be able to advocate for you and ensure that your wishes are carried out. Sometimes your wishes may be different than your agent's, and they may not be comfortable carrying out your desires. It is important to have an open and honest discussion with that person before you appoint them as your agent.

A final thing to consider is whether you want to appoint joint, or more than one, agents. If your first agent becomes unable to serve, appointing a joint agent provides you with a back-up plan. However, appointing joint agents introduces added complexity, particularly if they were to disagree on a medical decision. Therefore, it is generally not recommended that you appoint joint agents.

How do I appoint a durable power of attorney for health care?

In Kansas, you do not need an attorney to appoint a durable power of attorney for health care. Kansas offers a fill-in-the-blank form that you may complete on your own. It is recommended that you use this form if you are not using the services of an attorney.

The durable power of attorney for health care form must be dated and signed in the presence of two witnesses who are at least 18 years of age. The witnesses may not be related to you by blood, marriage, or adoption, entitled to your estate, or have direct financial responsibility for your health care. If you choose to not have two witnesses or cannot identify appropriate candidates, you can have your durable power of attorney for health care form acknowledged before a notary public.

I've completed my durable power of attorney for health care. Now what?

Now that you have completed your durable power of attorney for health care, you should talk to your family, friends, and health care providers about your wishes. Tell them who you have appointed as your agent and the location of your durable power of attorney for health care document. You should also consider giving copies to your family, close friends, and health care providers.

You should keep a copy of your document in your vehicle, in your home, and any place that you frequently visit for longer periods of time (for example, a relative that lives some distance from your home). Do not keep a copy of your document in a safe deposit box unless your named agent(s) has access to and authority to enter the box.

Finally, it is a great idea to keep a small card in your wallet that includes information on your durable power of attorney for health care (see page 9 for a card that you can complete, cut out, and store in your wallet). Having this card will give medical personnel the location of your document and who to contact if you were in an accident, for example. This card is not legally binding, and your durable power of attorney for health care document will need to be produced.

Living Will

A living will allows you to put in writing the wishes you have for your end-of-life care in the event that you cannot communicate those wishes directly. Unlike a durable power of attorney for health care, this document does not appoint someone to be your voice. Rather, you are able to state, in writing, what type of care you want at the end of your life. This document is an instruction list to your family,

Organ Donation in Kansas

You can identify your preference for organ donation in several ways in Kansas. First, with the assistance of an attorney, you can include your preferences in a living will. Secondly, if you have appointed an agent to act on your behalf, that person can make decisions regarding organ donation — so be sure to express your desires regarding organ donation with your agent. You can also sign up as an organ donor when you renew your driver's license or by visiting www.donatelifekansas.com.

friends, and health care providers that specifically outlines what type of care you want in certain situations, and what type of care you don't want. With a living will, you are preparing to have a voice in your medical care even if you are no longer able to cognitively make medical decisions.

Living wills address "life-sustaining procedures," or those that, according to your physician, prolong the dying process and do not prevent death regardless of whether the procedure is used or not. Examples of these procedures are using a ventilator to sustain life or artificial nutrition and hydration. The use of procedures or medication that provide comfort and ease pain are not included in this definition.

What else can a living will cover?

No one document can allow for every situation, so your living will should reflect your wishes as best as you know them at the time you complete the form. The Kansas fill-in-the-blank form does not allow for a great deal of specificity; however, you can add additional items to your living will.

Mechanical ventilation, tube feeding, dialysis, and antibiotics or antiviral medications are all directives that can be added to your living will. To add

What's the difference? "Will," "living trust," and "living will."

Your living will allows you to put your wishes regarding medical and health care needs in writing. Whereas wills (or last will and testament) and living trusts are complex legal documents that address your financial affairs. These documents allow you to plan who will receive your property and financial assets upon your death. Though Kansas does provide a fill-in-the-blank form for a living will, you will need to consult an attorney to complete a will or living trust.

your preferences regarding these and other options, you should consult an attorney. Other non-statutory forms exist that may allow you to designate more specific directives, but without the help of an attorney, it cannot be guaranteed that those documents will be legally binding.

When does a living will become effective?

A living will becomes effective after you have been diagnosed and are certified in writing to have a terminal condition by two physicians. These physicians must have personally examined you, and one must be your attending physician. There are generally two limitations to this. First, if you are pregnant, a living will will not be effective during the course of the pregnancy. Secondly, the effectiveness of a living will when an individual has been diagnosed as being in a persistent vegetative state is a complex issue under Kansas law, and it is recommended that you consult with an attorney.

How do I complete a living will?

In Kansas, you do not need an attorney to create a living will. Kansas offers a fill-in-the-blank form that

you may complete on your own. It is recommended that you use this form if you are not using the services of an attorney.

The living will form must be dated and signed in the presence of two witnesses who are at least 18 years of age. The witnesses may not be related to you by blood, marriage, or adoption, entitled to your estate, or directly responsible financially for your health care. If you choose to not have two witnesses or cannot identify appropriate candidates, you can have your living will acknowledged before a notary public.

I've completed my living will. Now what?

By law, it is your duty to inform your attending physician of your living will. After you inform that person, they will make it a part of your medical record.

It is also important to inform others about your living will. First, if you have appointed an agent in a durable power of attorney for health care, make sure that person has a copy of your living will. You may also want to talk to your family and friends about your wishes, the decisions that you have outlined, and the content and location of your living will document.

You should keep a copy of your document in your vehicle, in your home, and any place that you frequently visit for longer periods of time (for example, a relative that lives some distance from your home). Do not keep a copy of your document in a safe deposit box unless your named agent(s) or a trusted family member has access to and authority to enter the box. Finally, it is a great idea to keep a small card in your wallet that includes information on your living will (see page 11 for a card that you can complete, cut out, and store in your wallet). Having this card will give medical personnel the location of

your document and who to contact if you were in an accident, for example. This card is not legally binding, and your living will document will need to be produced.

Revoking a Living Will

You can revoke a living will in several ways: you can tear it up, burn it, or destroy it in some other way. You can also revoke it in writing or verbally in the presence of a witness who is at least 18 years of age. This witness must sign and date a document that attests that you made a statement describing your intention to revoke the living will. This verbal instruction becomes effective when your attending physician receives this signed and dated document. Your physician will make a note in your medical record of the time, date, and place of when he or she received this document. Anyone who does not know about the revocation is not liable criminally or civilly for actions they take regarding your living will instructions.

Other Advance Care Planning Documents: The DNR

In addition to advance directives, there are individual documents that address more specific issues. The most common of these is a do not resuscitate order, or a DNR. A DNR is a legal document that allows adults to communicate, in advance of a medical emergency, their desire to not have resuscitation attempted should they stop breathing or their heart stops beating. Having a DNR means that you do not want to have cardiopulmonary resuscitation (CPR) attempted by medical personnel. If you are found without a heartbeat or are not breathing, and you have a DNR directive, health care providers will not attempt resuscitation measures. For that reason, completing a DNR is a decision that should not be taken lightly.

Advance Planning for Your Pets

Kansas State University's Perpetual Pet Program is designed to provide animals with loving homes once an owner is no longer able to provide daily care. For details about the Perpetual Pet Care Program, contact a development professional at 785-532-4378 or perpetualpetcare@vet.k-state.edu.

Typically, only terminally ill or incredibly frail elderly have a DNR directive or order. If a healthy person has a DNR directive, it may prevent them from receiving medical care needed to save their life. The DNR directive also provides coverage for you when living at home. For example, if you are receiving hospice services or other end-of-life care at home and do not want to be resuscitated if your heart or breathing stops, then you may find the DNR form helpful.

How do I complete a DNR?

In Kansas, you do not need an attorney to create a DNR directive. Kansas offers a fill-in-the-blank form that you may complete on your own (see page 10). It is recommended that you use this form if you are not using the services of an attorney.

A DNR directive is a dated and witnessed document. The document must be signed by you and your physician. If you are unable to sign, it may be signed for you by someone else based upon your expressed direction. If someone else signs for you, they must do so in your presence and at your direction. A signature from a physician is not required if you are a member of a church which provides medical treatment by spiritual means, such as through prayer alone, and other care consistent with your church or religion.

In addition to your own signature and that of your physician (unless you fit

the exemption described above), your DNR must also be signed by a witness. The witness must be at least 18 years old and may not be related to you by blood, marriage, or adoption, entitled to your estate, financially responsible for your medical care, or the same person who signed the document for you at your direction if you are unable to sign for yourself.

Your physician could also write a DNR order as part of your medical record during an admission to a hospital or care facility. A durable power of attorney for health care may ask for a DNR order on your behalf if those were your wishes prior to the illness or injury. A health care provider who in good faith honors a DNR directive or order is not civilly liable, guilty of a crime, or of unprofessional conduct.

I've completed a DNR. Now what?

It is important to inform others about your DNR. First, if you have appointed an agent in a durable power of attorney for health care, make sure that person has a copy of your DNR. You may also want to talk to your family and friends about your decision to have a DNR, the location of your DNR document, and the physician who has signed it (unless you fit the exemption described above).

You should keep a copy of your document in your vehicle, in your home, and any place that you frequently visit for longer periods of time (for example, a relative that lives some distance from your home). Do not keep a copy of your document in a safe deposit box unless your named agent(s) or a trusted family member has access to and authority to enter the box. Finally, it is a great idea to keep a small card in your wallet that indicates you have a DNR and the location of the document (see page 11 for a card that you can complete, cut out, and store in your wallet). This card is not

legally binding, and you will still need to produce your pre-hospital DNR directive.

In an Emergency

Although medical professionals do want to honor your end-of-life preferences, they are likely to err on the side of caution if your wishes about resuscitation are not clear. The DNR directive must be given or shown to the person responding to the emergency before resuscitation is started. Therefore, you want to store the DNR directive someplace that is easily accessible to your family members or loved ones so that it may be given to the emergency response team when they arrive or to the hospital personnel when you are admitted.

DNR Insignia

Some private companies offer bracelets, anklets, necklaces, or other insignia for purchase to make your DNR wishes immediately apparent. Before you wear or keep such an item on your person, it is crucial that you have made the cognitive decision that you do not want to be resuscitated in the case of an emergency. If you have made that decision, wear your insignia and keep a copy of your legal DNR form in an accessible location, so it may be presented to medical personnel upon their arrival.

Can I revoke my DNR?

Yes. You can revoke your DNR at any time by signing the signature line below "I hereby revoke the above declaration" on your DNR form.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

GENERAL STATEMENT OF AUTHORITY GRANTED

K.S.A. 58-632

I, _____, _____, _____, designate and appoint:
name date of birth (optional) last four digits of SSN (optional)

Name _____

Address _____

Telephone Number _____

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

(2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well-being; and

(3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:

(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted).

LIMITATIONS OF AUTHORITY

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

(3) This durable power of attorney for health care decisions shall be subject to the additional following limitations:

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (*immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity*).

REVOCATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked.

(This durable power of attorney for health care decisions shall be revoked *by an instrument in writing executed, witnessed or acknowledged in the same manner as required herein or set out another manner of revocation, if desired.*)

EXECUTION

Executed this _____, at _____, Kansas.

_____ Principal.

This document must be: (1) Witnessed by two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care; OR (2) acknowledged by a notary public.

Witness _____ Witness _____

Address _____ Address _____

(OR)

STATE OF _____)

SS.

COUNTY OF _____)

by

This instrument was acknowledged before me on _____ By _____

Date

Name of person

Signature of notary public

(Seal, if any)

My appointment expires: _____

HIPAA PRIVACY AUTHORIZATION FORM

Authorization for Use or Disclosure of Protected Health Information
(Required by the Health Insurance Portability and Accountability Act – 45 CFR Parts 160 and 164)

I hereby authorize _____ to use and/or disclose the protected
name of health care provider

health information described below to _____
name of individual

2. Authorization for Release of Information. Covering the period of health care from

_____ to _____ **OR** all past, present, and future periods:

3. I hereby authorize the release of my complete health record (including records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse).

OR

I hereby authorize the release of my complete health record with the exception of the following:

Mental health records

Communicable diseases (including HIV and AIDS)

Alcohol/drug abuse treatment

Other (please specify): _____

4. This medical information may be used by the person I authorize to receive this information for medical treatment or consultation, billing or claims payment, or other purposes as I may direct.

5. This authorization shall be in force and effect until _____, at which time this authorization expires.
date or event

6. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

7. I understand that my treatment, payment, enrollment or eligibility for benefits will not be conditioned on whether I sign this authorization.

8. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

Signature of Patient or Personal Representative

Date

Print of Patient or Personal Representative

Relationship to Patient

LIVING WILL DECLARATION

K.S.A. 65-28,103

Declaration made this _____ day of _____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

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

Signed _____

City, County and State of Residence _____

Date of Birth (optional) _____

Last four digits of SSN (optional) _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness _____ Witness _____

(OR)

STATE OF _____)

SS.

COUNTY OF _____)

by

This instrument was acknowledged before me on _____ By _____
Date Name of person

Signature of notary public

(Seal, if any)

My appointment expires: _____

Feedback

As a reader of this publication, we value and appreciate your feedback. If you choose, please take a few moments to complete a short, 3-minute survey. You can access the survey by scanning the QR code below with your smartphone or by visiting: <https://goo.gl/LixVhI>.



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