ADVANCE CARE PLANNING DOCUMENTS

Legal Documents to Assure Your Future Health Care Choices

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by

THE NEVADA CENTER FOR ETHICS & HEALTH POLICY
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ADVANCE DIRECTIVES
THE PATIENT'S RIGHT TO DECIDE

All adult individuals in hospitals, nursing homes, and other health care facilities have certain rights. Under the Patient Self-Determination Act, health care facilities are required to inform you of your rights as a patient and of their policies.

Each adult individual has the right to prepare legal documents known as "Advance Directives." These documents allow you to state in advance what kinds of treatment you want or do not want under medical circumstances that would prevent you from communicating your wishes to your doctor. We strongly encourage everyone to exercise their right to make choices surrounding the issues of dying and be mindful of their ability and responsibility to transform death into a subject openly discussed by all.

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ADVANCE DIRECTIVES IN NEVADA

HEALTH CARE DECLARATIONS

OVERVIEW

Nevada law gives you the option of completing two kinds of health care declarations. These are (1) a declaration appointing another person to make decisions on your behalf regarding withholding or withdrawal of treatment or treatment that only prolongs the dying process; and (2) a declaration in which you direct your attending physician to withhold or withdraw treatment that only prolongs the dying process under certain circumstances. In addition, you also have the option of completing a durable power of attorney for health care decisions, as discussed below.

SUGGESTED FORMS OF DECLARATION

Nevada law specifies two suggested forms of health care declaration. You are free to use either or both of these suggested forms, but you may also use language of your own choosing. The statutory forms, or information where they may be obtained, is usually available through your physician or other health care provider, or attorney.

The document titled "Declaration" is the one traditionally known as the "Directive to Physician" or "Living Will." You may complete a declaration directing your physician to withhold or withdraw lifesustaining treatment.

The declaration allows you to document what kind of life-saving measures you either want or do not want done if you have an incurable and irreversible condition that, without the administration of lifesustaining treatment, will cause death within a relatively short time. When you complete a "Declaration," you should give copies to your family, attorney, and primary physician.

STEPS FOR COMPLETING A DECLARATION

Any person 18 years of age or older and of sound mind may execute a declaration. A declaration must be signed by the person completing it, or by another person acting at the first person's direction, and witnessed by two other persons. After completing a declaration, an original or copy should be provided to your physician or other health care provider, who will then make it part of your medical record.

IF YOU WISH TO REVOKE YOUR DELCARATION

If you have completed a health care declaration and later wish to revoke it, you may do so at any time and in any manner, without regard to your mental or physical condition at the time of revocation. A revocation is effective when it is communicated to your attending physician (the physician primarily responsible for your care and treatment), or other health care provider.

GIVING OR WITHHOLDING CONSENT FOR ANOTHER

If a person in a terminal condition has not made an effective health care declaration and is no longer able to make decisions regarding administration of life-sustaining treatment, then health care decisions concerning withholding or withdrawal of care may be made with the consent of a representative authorized by law to act for the person. Such a representative is selected in the following order of priority: (1) the patient's spouse; (2) an adult child of the patient, or if there are more than one of them, a majority of them available for consultation; (3) the parents of the patient; (4) an adult sibling of the patient or, if there are more than one of them, a majority of them available for consultation; or (5) the nearest other adult relative of the patient by blood or adoption who is available for consultation.

SAFEGUARDS

In addition, Nevada law affords the following protections:

1. A declaration only becomes effective when it is communicated to the attending physician and the person is determined by that physician to be **in a terminal condition and no longer able to make decisions** regarding administration of life-sustaining treatment.
2. Under the law, forms of artificially administered nutrition and hydration must be withheld or withdrawn from a person who has executed a declaration and is later in a terminal condition, **unless that person has expressed a different desire in writing**.
   Similarly, in the case of a patient who has no effective declaration, artificial nutrition and hydration must not be withheld or withdrawn unless a different desire is expressed in writing by the patient's authorized representative or the family member having authority to consent or withdraw consent.
3. The declaration of a woman known to be pregnant will not be given effect so long as the fetus could develop to the point of a live birth with the continued application of lifesustaining treatment.
4. If a physician or other health care provider is unwilling to comply with the terms of a declaration, he or she must promptly advise the person making the declaration or any person designated to act for that person, and must in addition take prompt steps to transfer care of the person to another physician or health care provider who is willing to comply.
5. It is improper to either require or prohibit the completion of a declaration as a condition for receiving health care insurance or other services.
6. A declaration executed in another state in compliance with the law of that state is also valid for purposes of Nevada law.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

OVERVIEW

Nevada law also allows you to complete a Durable Power of Attorney for Health Care Decisions, appointing another person to make health care decisions for you if, at a later time, you are unable to make those decisions for yourself.

SUGGESTED FORM

Nevada law specifies that a Durable Power of Attorney for Health Care Decisions must be substantially in the form set forth in the statutes. A copy of that form, or information on where it may be obtained, is usually available through your physician, other health care provider, or attorney. A Durable Power of Attorney for Health Care Decisions allows you to state what you want done in certain life-threatening circumstances, and who will serve as your attorney-in-fact, or proxy, and any alternative you name. You must share this document with your attorney-in-fact and any alternates you name. You should also share it with your family, your attorney and your primary physician or other health care provider. In reading the document, you will note that there are provisions for witnesses and a notary. You must use at least one of these options.

STEPS FOR COMPLETING A DURABLE POWER OF ATTORNEY FOR HTEALTH CARE DECISIONS The Durable Power of Attorney for Health Care Decisions as provided by NRS 449.800 must be witnessed by two adults who know you personally. Neither witness may be:

a. The attending physician;
b. An employee of the attending physician or of the hospital or of any health care facility in which you are a patient;
c. The Attorney-in-fact, or proxy; and
d. At least one of the witnesses needs to be unrelated to you by blood, marriage or adoption, and not entitled to any part of your estate.

WHO MAY SERVE AS YOUR ATTORNEY-IN-FACT

You may **not** appoint as your attorney-in-fact a health care provider or employee, or a health care facility operator or employee, unless the person you appoint is also your spouse, legal guardian or next of kin.

SAFEGUARDS

The law also provides the following protections:

1. You may also include in the document specific limitations you wish to place on the authority of your attorney-in-fact to give or withhold consent.
2. Your attorney-in-fact must make decisions concerning the use or non-use of lifesustaining treatment in a manner consistent with your desires as made known. You may state these desires in your Durable Power of Attorney for Health Care Decisions when you sign it.
3. You may designate an alternate to serve as attorney-in-fact if your first choice is unable or unwilling to serve.

QUESTIONS AND ANSWERS

DO I HAVE THE RIGHT TO MAKE DECISIONS ABOUT MY MEDICAL CARE?

Yes. NRS 449.680 provides that a patient retains the right to make decisions regarding the use of lifesustaining treatment, so long as he is able to do so. NRS 449.720 provides that a patient has a right to refuse treatment to the extent permitted by laws and to be informed of the consequences of that refusal.

DO I HAVE THE RIGHT TO REFUSE A TREATMENT?

Yes. NRS 449.720 provides that you have the right to refuse treatment if you are able to make that decision and to be informed of the consequences of that refusal. A qualified patient may also forego life-sustaining treatment if he is able to do so. Sometimes a patient is so ill that he cannot refuse treatment. Therefore, it is very important to have an advance directive if you wish to refuse some lifesustaining treatment during a terminal illness.

DO I HAVE TO WRITE AN ADVANCE DIRECTIVE UNDER THE LAW?

No. It is entirely up to you.

CAN I CHANGE MY MIND AFTER I WRITE A DECLARATION OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS?

Yes. You may change or cancel these 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 family doctor, or to others to whom you may have given copies of the original. If you wish to cancel an advance directive while you are in the hospital, 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 Declaration or Durable Power of Attorney for Health Care Decisions, as long as you can decide for yourself and can communicate your wishes. Be sure to state your wishes clearly and be sure that they are understood.

IF I AM IN A TERMINAL CONDITION (I AM DYING AND THERE IS NO HOPE OF A CURE) AND I AM NO LONGER ABLE TO MAKE DECISIONS REGARDING ADMINISTRATION OF LIFE-SUSTAINING TREATMENT AND HAVE NO ADVANCE DIRECTIVE, CAN LIFESUSTAINING TREATMENT BE WITHHELD OR WITHDRAWN?

Yes. If your spouse, an adult child or if more than one child, a majority of the adult children who are reasonable available for consultation, your parents, an adult brother or sister, or if there is more than one sibling (brother or sister) a majority of the adult siblings who are reasonably available for consultation, or the nearest other adult relative by blood or adoption who is reasonably available for consultation, in that order of priority, may in good faith and for your best interest, consent in writing attested by two witnesses to the withholding or withdrawal of treatment.

WHO DECIDES WHETHER I AM UNABLE TO MAKE A DECISION REGARDING TREATMENT?

Your attending physician.

MAY I MAKE AN ORAL ADVANCE DIRECTIVE?

No. An advance directive must be a formal written document and must be signed by at least two witnesses. However, you may orally revoke an existing advance directive. IS IT ADVISABLE TO HAVE A COMBINED DIRECTIVE (Declaration and Durable Power of Attorney for Health Care Decisions in one document)?

Nevada law does not specifically provide for a combined directive nor does it prohibit one. If possible, you should have a Declaration and a Durable Power of Attorney for Health Care Decisions, either combined or separately, so that your desires have the strongest basis for legal enforcement. IS IT ADVISABLE TO DISCUSS MY ADVANCE DIRECTIVE WITH MY HEALTH CARE PROVIDER?

Yes. Unless your wishes are known by those involved in your health care, your wishes cannot be honored. It is advisable to provide a copy of the Advance Directive to your healthcare provider. SHOULD I DISCUSS MY PLAN TO EXECUTE OR NOT EXECUTE AN ADVANCE DIRECTIVE WITH MY LAWYER?

Yes. Your lawyer can explain the function and advisability of having an Advance Directive to you.

SHOULD I DISCUSS MY ADVANCE DIRECTIVE WITH MY FAMILY OR LOVED ONES?

Yes. It is advisable that those who are dear to you be aware of your wishes and where your original Advance Directive is so that your wishes can be carried out.

MUST AN INSTITUTION WHERE I AM BEING CARED FOR ASCERTAIN WHETHER I HAVE EXECUTED AN ADVANCE DIRECTIVE?

Yes. Federal law requires that the provider or organization must "document" in the individual's medical record whether or not the individual has executed an Advance Directive. You should not wait until you are old or facing a serious illness to think about these issues. Thinking about them while you are in good health gives you and your loved ones the opportunity to prepare for the sort of medical crisis that could happen to anyone any time.

TODAY'S HEALTHCARE CHOICES

Years ago we didn't have the choices in medical care that we have today. Seriously ill people, old and young, were more likely to die quickly of natural causes than they are today. Now, medical technology can extend the life of seriously ill people for longer periods of time. It can even keep permanently unconscious people alive for many years. This has created the choices that just a few years ago wouldn't have seemed possible. Sometimes, the new technology seems truly miraculous in its ability to restore health to someone who is seriously ill. At other times, it only seems to prolong suffering and the dying process.

MEDICAL TREATMENTS

There are three kinds of life-prolonging care to consider; cardiopulmonary resuscitation (CPR); artificial provision of nutrition and fluids (tube feedings) and active treatment to fight disease.

CARDIOPULMONARY RESUSCITATION (CPR)

CPR is the act of reviving someone whose heart and/or breathing has stopped. CPR (sometimes called a "code") can include basic and advanced measures.

The basic measures are:

- Cardiac compression (repeatedly pressing on the chest to squeeze the heart so that blood begins to circulate again);
- Mouth-to Mouth breathing, to push air into the lungs.

The advanced methods are:

- Intubation (pushing a tube through the mouth or nose into the windpipe) and attaching a machine or device to do artificial breathing;
- Defibrillation (powerful electric shocks to the chest to start the heart beating again);
- Strong medications.

The success of CPR depends on the individual's previous health and on how soon the procedure is started. The best results occur in a generally healthy person whose heart stops unexpectedly, and when CPR is started promptly. The chance of restarting the heart is much less likely when it has stopped as the result of many chronic problems.

Prompt CPR can save a person's life and prevent damage to the body's tissues and organs. On the other hand, brain damage is likely if more than four minutes have elapsed before the procedure is started. Other risks include injuries to the chest and liver as a result of the force applied during chest compression.

Modern hospitals and nursing homes automatically attempt CPR on anyone whose heart and/or breathing stops, unless there is a Do Not Resuscitate – or "DNR" order on file for the patient. A DNR order (also called a "no code") can only be written by a doctor with the permission of the patient, his or her health care agent, or the family. (Note: A DNR order is not the same thing as an Advance Directive. If you want to limit CPR, your doctor must write a separate DNR order.)

ARTIFICIAL PROVISION OF NUTRITION AND FLUIDS

Artificial provision of nutrition and fluids, also called "tube-feeding," is used either temporarily or permanently when patients are unable to swallow. There are three ways to provide artificial nutrition and fluids:

- The nasogastric tube, which is inserted through the nose into the stomach;
- The gastronomy tube, which is inserted surgically through the stomach walls;
- Intravenous tubes, placed into veins in the arms or chest.
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Nevada law permits individuals to refuse tube-feeding, just as patients may refuse other medical treatments. However, some doctors are reluctant to withhold or withdraw tube-feeding from an unconscious patient unless the patient has left specific instruction to do so. Death usually occurs within two to 14 days after the tube-feeding is withheld or withdrawn. Many people worry that the lack of food and water will mean a painful death. Tube-feeding is most commonly withheld or withdrawn when people are unconscious or on the verge of death. By this stage, most patients have lost the desire for nourishment and the sensation of thirst or pain. As a precaution against discomfort, however, comfort care is routinely provided in the interim before death.

ACTIVE TREATMENT TO FIGHT DISEASE

Active treatment to fight disease includes intensive treatment (the kind of high-technology care usually provided in hospitals' intensive care units) and non-intensive treatment.

Intensive Treatment

VENTILLATORS, commonly called respirators, are machines that can breathe for a patient if lung function is inadequate. This is done through a tube inserted into the windpipe via the nose or mouth or through a tracheostomy, a hole cut in the windpipe at the front of the neck. Of the two procedures, passing a tube through the nose or mouth is the least comfortable because it prevents the patient from speaking and eating, and it triggers the gag reflex. The tracheostomy, on the other hand, requires anesthesia and surgery, but eventually allows the patient to take food by mouth and to talk for short periods off the ventilator.

A ventilator is particularly helpful in getting a patient through a short-term crisis. It also has risks and can cause complications.

KIDNEY DIALYSIS involves the use of a machine to clean the blood when the kidneys no longer function properly. Dialysis takes several hours several times a week, and can be quite uncomfortable.

Dialysis can be used on a temporary basis while a patient recovers from an acute illness or awaits a kidney transplant, or on a permanent basis in the case of more serious kidney problems. Complete kidney failure is a common part of the dying process.

INVASIVE monitoring involves the use of intravenous lines (to administer drugs or fluids and to take blood samples) and catheters (to monitor heart and kidney function). ELECTRICAL DEVICES such as pacemakers can be used to support the failing heart.

SURGERY can be used to restore function or relieve pain.

Non-Intensive Treatment

ANTIBIOTICS (available in pill form or by injection) to treat infections.

BLOOD TRANSFUSIONS

CHEMOTHERAPY (drug treatment and radiation (such as x-ray therapy) to fight cancer.

5 PRINCIPLES OF PALLIATIVE CARE

A Vision for Better Care at the End of Life

Death and dying are not easy to deal with. Perhaps you or someone you love is facing an illness that cannot be cured. Few of us are ready for the hard choices that may have to be made at the end of life. It can be hard for everyone involved – the dying person, their family and loved ones, and health care providers, too.

But there are ways to ease pain and make life better for people who are dying and their loved ones. It is called ***palliative care****.*

Palliative care means taking care if the whole person – body, mind, spirit – heart and soul. It looks at dying as something natural and personal. The goal of palliative care is that you have the best quality of life you can have during this time.

Some health care providers - doctors, nurses, social workers, pharmacists, clergy, and others – have learned how to give this special kind of care. But all health care providers should know how to give good palliative care or help you find someone who can.

FIVE PRINCIPLES OF PALLIATIVE CARE

The following Five Principles of Palliative Care describe what care can and should be like for everyone facing the end of life. Some of these ideas may seem simple or just common sense. But all together, they give a new and more complete way to look at the end-of-life.

1. Palliative care respects the goals, likes, and choices of the dying person. It…

- Respects your needs and wants as well as those of your family and other loved ones.
- Finds out from you who you want to help plan and give you care.
- Helps you understand your illness and what you can expect in the future.
- Helps you figure out what is important.
- Tries to help you meet your likes and dislikes: where you get health care, where you want to live, and the kinds of services you want.
- Helps you work with your health care provider and health plan to solve problems.

2. Palliative care looks after the medical, emotional, social, and spiritual needs of the dying person. It…

- Knows that dying is an important time for you and your family.
- Offers ways for you to be comfortable and ease pain and other physical discomfort.
- Helps you and your family make needed changes if the illness gets worse.
- Makes sure you are not alone.
- Understands there may be difficulties, fears and painful feelings.
- Gives you the chance to say and do what matters most to you.

- Helps you look back on your life and make peace, even giving you a chance to grow.

3. Palliative care supports the needs of the family members. It…

- Understands that families and loves ones need help, too.
- Offers support services to family caregivers, such as time off for rest, and advice and support by telephone.
- Knows that caregiving may put some family members at risk of getting sick themselves.
  It plans for their special needs.

- Finds ways for family members to cope with the costs of caregiving, like loss of income, and other expenses.
- Helps family and loved ones as they grieve.

4. Palliative care helps gain access to needed health care providers and appropriate care settings. It…

- Uses many kinds of trained care providers – doctors, nurses, pharmacists, clergy, social workers, and personal care givers.
- Makes sure, if necessary, someone is in charge of seeing that your needs are met.
- Helps you use hospitals, home care, hospice and other services, if needed.
- Tailors options to the needs of your family.

5. Palliative care builds ways to provide excellent care at the end of life. It…

- Helps care providers learn about the best ways to care for dying people. It gives them the education and support they need.
- Works to make sure there are good policies and laws in place.
- Seeks funding by private health insurers, health plans and government agencies.

The Five Principles are a vision for better care at the end of life. They were developed for people who are dying, their families, and their loved ones by the ***Last Acts*** Task Forces on Palliative Care and the Family. ***Last Acts*** is a coalition of more than 300 organizations representing health care providers and consumers nationwide.

The organizations involved in ***Last Acts*** believe that everyone can make a difference in the care given to dying people and their families. We need to work together toward a health care system that offers all Americans, when they are dying,

- the services that meet their individual needs,
- health care plans that cover care, and
- health care providers well-trained in palliative care

That would make the Five Principles of Palliative Care a reality.

What You Can Do

The role you can play in making this come about is to share this vision of end-of-life care with your family, friends and health care providers. Discuss with them the care you want and who will provide it. To find good palliative care services in your community, talk to your doctor or local hospital, hospice, nursing home, or home health agency. Make sure that they know about the Five Principles, too.