

Advance Directives

What are they?

The Patient Self-Determination Act

The Patient Self-Determination Act is a federal law that requires hospitals to “provide written information” to adult inpatients concerning “an individual’s right under state law...to make decisions concerning...medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate Advance Directives.” To help patients make these choices, Kansas law provides for Advance Directives. This write-up outlines what Advance directives are and what Kansas statutes require. Kansas statutes recognize both a living will and a durable power of attorney for healthcare.

Advance Directives

Advance directives are documents that state a patient’s choices about treatment including decisions like refusing treatment, being placed on life-support, and stopping treatment at a point the patient chooses. It also includes requesting life-sustaining treatment if that is wanted.

There are several kinds of Advance Directives. There are two that are mentioned most often. One is called a living will and the other is called a durable power of attorney (SPOA) for healthcare. Through Advance Directives, patients can make legally valid decisions about their medical treatment.

The Living Will

The Kansas living will is found in a statute titled “The Natural Death Act.” The statute allows any adult to sign a form (related to themselves only) which states that life-sustaining procedures should be withheld or withdrawn when decision making capacity is lost and when such procedures would merely prolong death. Medical procedures deemed necessary to provide comfort or alleviate pain are not considered “life sustaining” under the act.

For the living will or Natural Death Act Declaration to be effective, two physicians must personally examine the patient and determine that the patient has a terminal illness. The physicians must agree that death will occur whether or not the medical procedure or intervention is done. The form is not effective if the patient is pregnant.

The living will must be witnessed by two adults who are not related to, will not inherit from the person making the living will, and are not financially responsible for the patient.

The Durable Power of Attorney for Health Care

A durable power of attorney for health care is a document in which a person gives someone else the right to make decisions about health care for him/her. The person who would make the decisions is known as an “agent” and can be any adult except a physician or other health care provider (including people who work, own, or are directors for hospitals and other health institutions) unless the health care provider is related by blood or marriage to the person signing the document.

The powers which can be granted include: the power to make decisions, give consent, refuse consent or withdraw consent for organ donation, autopsy or the treatment of any physical or mental condition. The agent may also make all necessary arrangements for hospitalization, physicians or other care, and to request and receive all information and records and to sign releases for records.

The person signing the DPOA for health care can choose which of the above powers the agent will have. Specific instructions can be given. For example, a specific treatment may be prohibited. Requests for treatment, including life-sustaining care, can also be included. The special instructions allow the DPOA for health care to be specific for each individual's needs.

The agent and the health care providers must follow the patient's expressed wishes. This means that they must also respect any wishes that are stated in the living will. Unless limited, the DPOA for health care allows the agent to make decisions about withholding or withdrawing life-sustaining treatment in all types of illnesses (including comas or persistent vegetative states) and is not limited to terminal illness.

To be effective, the document must be notarized or witnessed by two adults who are not related to and who will not inherit from the person signing the document.

Here's How It Works

1. You have the right to information about your medical condition, diagnosis, prognosis and possible treatments. You also have the right to refuse any treatment including lifesaving medical treatment
2. A representative of Salem Home will talk with you about your rights outlined above and your right to make Advance Directives. *You also have the right not to make Advance Directives. That is your choice.*
3. You may choose between a DPOA for health care and a living will, or you may have both. The basic difference between the two is that the DPOA for health care designates a particular person to make decisions for you when you are not able to decide for yourself and can cover *all health care decisions*. A living will states your wishes about withholding or withdrawing life-sustaining care.
4. If you choose to make Advance Directives, Salem Home may provide the necessary forms for making a living will or assigning a DPOA for health care. Forms are also available from other resources, such as your local extension office. You do not need a lawyer in order to make an Advance Directive. However, legal advice is certainly appropriate. There are options other than the forms provided in the Kansas statute that are legal and can be used.
5. A living will must be witnessed by two adult people. A DPOA for health care may be witnessed or notarized. Although it is not necessary for the forms to be legal, it is recommended that the documents be both witnessed and notarized. This is in case you travel to another state that might require Advance Directives to be notarized.
6. If you make Advance Directives, you should discuss them with your *physician*. You are responsible for making copies available to him/her and all other doctors you may deal with. You should also discuss and share copies of your Advance Directives with your family members. It is always a good idea to keep copies for yourself.
7. If you wish to change your mind about your Advance Directives at a later date, you may do so. You can revoke to old document(s) and make new Advance Directives that must also be witnessed or notarized. A living will may be revoked by destroying the document, signing a written revocation or by telling an adult that the document no longer expresses your wishes. For a verbal revocation to be effective, the adult who heard the verbal revocation must confirm it in writing. This document must be given to the attending physician. DPOA for health care must be formally revoked in writing with a witness or notarized statement.