



Before You Sign That Document!

What You Need To Know About **Advance Directives for Health Care**

What Is an Advance Directive?

A written advance directive is a document that communicates what you want your health care providers to know if you ever become unable to express your wishes directly. With an advance directive, you may:

- decide in advance whether to choose or forego life-sustaining treatment,
- appoint one or more trusted representatives (called a “health care proxy”) to make health care decisions on your behalf,
- donate body parts or your entire body for transplantation or research, and
- give other instructions regarding your health care, such as opting for hospice care or asking for a specific level of pain treatment.

Why Do I Need To Complete an Advance Directive Now?

You need to complete an advance directive while you still have the mental capacity to make decisions. Once a person is unable to make medical decisions and needs an advance directive, it is too late to complete one.

If you are ever unable to make or communicate your own decisions about your medical treatment, Oklahoma law presumes you want life-sustaining treatment, including a feeding tube,

In the center of this handout is a blank Advance Directive for Health Care form you may choose to complete. The form includes language clarifying the authority of the health care proxy that is not found in the statutory form.

Oklahoma law does NOT automatically recognize the authority of spouses or other family members to make health decisions for you if you are ever not able. It is your responsibility to appoint a person that you trust to know and advocate for your wishes.

unless you have clearly expressed your wishes to refuse such treatment. By putting your own wishes in writing, you can give your doctors the legal authority to carry out your treatment as you direct.

Even if you have told others that you would not want a feeding tube or other treatment, Oklahoma law does not automatically allow them to direct your care, not even your spouse. An advance directive can be used to empower others to carry out your choices and make health care decisions on your behalf. Without a legal document such as an advance directive, your spouse or other loved ones may not be able to participate in decisions about your care.

A written advance directive is the safest and most effective way to make your wishes known, to legally empower your doctors to follow your directions, and to give the people you select the authority to act on your behalf.

When Will My Advance Directive Go Into Effect?

If you never experience an injury or illness that prevents you from making and communicating your own medical decisions, your advance directive will never go into effect.

Your advance directive only takes effect if your attending physician and another doctor both determine you are no longer able to make medical decisions.

What Is a Living Will?

An advance directive may include a Living Will, which allows you to express your treatment preferences if you are ever unable to make or communicate decisions in the future. The living will section in Oklahoma's advance directive form addresses three medical situations: terminal condition, persistent unconsciousness, and end-stage condition.

A **Terminal Condition** is caused by an illness or injury that is incurable and will not improve. Two physicians must agree that, even with medical treatment, death will likely occur within six months.

Persistent Unconsciousness is a deep and permanent state of unconsciousness. Patients may have open eyes, but they have very little brain activity and are only capable of involuntary movements. Confirming a diagnosis requires many tests that may take several months. Unlike patients in a coma, patients in a persistent unconscious state will never "wake up."

An **End-Stage Condition** is a condition caused by injury or illness that results in an irreversible loss of mental and physical abilities. A person with an end-stage condition may be unable to speak, walk, or control bodily functions. He or she may have difficulty swallowing and may not recognize loved ones. A patient with an end-stage condition is not predicted to improve or recover, even with treatment.

For each of these conditions, you can choose to receive all life-sustaining treatment, no life-sustaining treatment except artificial nutrition and hydration, or no life-sustaining treatment.

If you use Oklahoma's advance directive form, mark your choices with your initials.

What Is Life-Sustaining Treatment?

Life-sustaining treatment is any kind of medical treatment designed to prolong a patient's life. For example, a ventilator, feeding tube, or dialysis can assist the body to function if the body's natural systems fail.

In addition to life-support systems, any medication, procedure, or treatment that is necessary to sustain a person's life is a life-sustaining treatment. Examples are cardiac medications, chemotherapy, surgery, and antibiotics.

Medical care designed to treat pain and keep a patient comfortable, but not to extend life, is not considered life-sustaining treatment.

What is Artificial Nutrition and Hydration?

Artificial nutrition and hydration is sometimes called tube feeding. When a person cannot eat or drink by mouth, a feeding tube can deliver liquids and nutrients artificially.

On a short-term basis, this type of treatment may allow a patient to recover from a serious injury or illness. However, tube feeding procedures can be uncomfortable and may increase the risk of infection, bloating, liver damage, and other complications. Tubes can become dislodged and must be replaced. Physical restraints may be used to prevent an incapacitated

Cardiopulmonary Resuscitation (CPR) is used in an emergency when a person's heart stops beating or when the person stops breathing. Even if you have an Advance Directive, you will still likely receive CPR unless you also have a Do-Not-Resuscitate (DNR) order.

patient from removing the tubes. It is recommended that you talk with a doctor about the pros and cons of tube feeding at the end of life.

What Will Happen If I Choose All Life-Sustaining Treatment?

If you choose to receive all life-sustaining treatment, you will most likely receive all treatment available unless your doctors determine, under certain limited circumstances, that the treatment will not benefit you in any way or would cause you harm.

What Will Happen If I Choose Not To Receive Life-Sustaining Treatment?

If there is no chance of recovery, life-sustaining treatment may be withheld or withdrawn to

allow a natural death. However, even if you choose not to receive life-sustaining treatment, you will still receive pain treatment to keep you as comfortable as possible.

What Happens If I Choose Not To Receive Artificial Nutrition and Hydration?

As long as you are able to eat or drink by mouth, you will still be offered food and water. Also, until you are determined by two doctors to be terminally ill, persistently unconscious, or in an end-stage condition, you will be given artificial nutrition and hydration if you cannot eat or drink by mouth, unless you specify otherwise in your advance directive.

Oklahoma Advance Directive for Health Care

If I am incapable of making an informed decision regarding my health care, I, _____, direct my health care providers to follow my instructions below.

I. Living Will

If my attending physician and another physician determine that I am no longer able to make decisions regarding my health care, I direct my attending physician and other health care providers, pursuant to the Oklahoma Advance Directive Act, to follow my instructions as set forth below:

(1) If I have a terminal condition, that is, an incurable and irreversible condition that even with the administration of life-sustaining treatment will, in the opinion of the attending physician and another physician, result in death within six (6) months:

(Initial only one option)

Initial here if you DO NOT want life-sustaining treatment, but you DO want tube feeding.

_____ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

Initial here if you DO NOT want life-sustaining treatment and you DO NOT want tube feeding.

_____ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

Initial here if you DO want BOTH life-sustaining treatment and tube feeding.

_____ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

Initial here only if you have written instructions regarding tube feeding or other treatment in the event of a terminal illness.

(Initial only if applicable)

_____ See my more specific instructions in paragraph (4) below.

Can I Write Specific Wishes or Instructions About My Care?

You can personalize your advance directive by writing specific instructions, such as:

- **Pain Management** – You can specify the level and type of pain management care you would like to receive. For example, you may want to authorize the use of pain medications, including narcotics, without regard to risk of addiction or side effects that may hasten death. Or, if you would prefer, you may state your preference to receive less pain treatment if necessary to remain alert.
- **HIPAA Authorization** – If you are concerned that your health care proxy may have difficulty accessing your medical information, you can expressly authorize your health care proxy to access your records. For convenience, we have included HIPAA language in the form provided with this handout.
- **Time Limit on Treatment** – You can authorize life-sustaining treatment to be continued for a specific or reasonable period of time to allow for the possibility of recovery and authorize its withdrawal after that time had lapsed.
- **Particular Procedures** – You can authorize or decline particular medical procedures or treatments, such as blood transfusions, dialysis, or antibiotics.
- **Authorization of Proxy** – If you wish to allow your health care proxy to make all treatment decisions based on his or her

State laws and private organizations have created many different advance directive forms. If you use a preprinted form, read it carefully to be sure it expresses your personal preferences regarding medical treatment.

understanding of your preferences, you may state that you intentionally leave the living will section blank. Or, you may include instructions that the living will is to provide guidance only and not limit the authority of your health care proxy to make the final decisions about your medical treatment. For convenience, we have included language regarding the effect of leaving the living will section blank in the form provided.

- **Quality of Life** – You can describe what an acceptable quality of life is to you in order to guide your health care proxy and doctors. For example, an acceptable quality of life might include the ability to recognize family and friends, take care of daily needs, go outside, listen to music, etc. These statements should be based on your individual views regarding a life worth living.
- **Authorization of Hospice** – You can request that you be placed on hospice as soon as it becomes appropriate.
- **Refusal of Hospitalization** – You can express your wish to receive care at home or to pass away at home, if possible.
- **Exceptional Circumstances** – You can specify particular circumstances when you would want medical treatment to extend life for a limited time even when recovery is not possible, such as to allow time for a religious rite or for family members to arrive.
- **Pregnancy** – In the event that you are pregnant and incapacitated, you will be provided with life-sustaining treatment, including artificially administered nutrition and hydration, unless you specifically authorize in your own words that such treatment should be withheld or withdrawn even if you are pregnant.

If you are using Oklahoma's standardized advance directive form, initial next to any specific instructions you write.

Oklahoma Advance Directive for Health Care

If I am incapable of making an informed decision regarding my health care, I, _____, direct my health care providers to follow my instructions below.

I. Living Will

If my attending physician and another physician determine that I am no longer able to make decisions regarding my health care, I direct my attending physician and other health care providers, pursuant to the Oklahoma Advance Directive Act, to follow my instructions as set forth below:

(1) If I have a terminal condition, that is, an incurable and irreversible condition that even with the administration of life-sustaining treatment will, in the opinion of the attending physician and another physician, result in death within six (6) months:

(Initial only one option)

_____ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

_____ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

_____ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

_____ See my more specific instructions in paragraph (4) below.

(2) If I am persistently unconscious, that is, I have an irreversible condition, as determined by the attending physician and another physician, in which thought and awareness of self and environment are absent:

(Initial only one option)

_____ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

_____ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

_____ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

_____ See my more specific instructions in paragraph (4) below.

(3) If I have an end-stage condition, that is, a condition caused by injury, disease, or illness, which results in severe and permanent deterioration indicated by incompetency and complete physical dependency for which treatment of the irreversible condition would be medically ineffective:

(Initial only one option)

_____ I direct that my life not be extended by life-sustaining treatment, except that if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

_____ I direct that my life not be extended by life-sustaining treatment, including artificially administered nutrition and hydration.

_____ I direct that I be given life-sustaining treatment and, if I am unable to take food and water by mouth, I wish to receive artificially administered nutrition and hydration.

(Initial only if applicable)

_____ See my more specific instructions in paragraph (4) below.

(4) OTHER. Here you may:

(a) describe other conditions in which you would want life-sustaining treatment or artificially administered nutrition and hydration provided, withheld, or withdrawn,

(b) give more specific instructions about your wishes concerning life-sustaining treatment or artificially administered nutrition and hydration if you have a terminal condition, are persistently unconscious, or have an end-stage condition, or

(c) do both of these:

Initial

II. My Appointment of My Health Care Proxy

If my attending physician and another physician determine that I am no longer able to make decisions regarding my health care, I direct my attending physician and other health care providers pursuant to the Oklahoma Advance Directive Act to follow the instructions of _____, whom I appoint as my health care proxy. If my health care proxy is unable or unwilling to serve, I appoint _____ as my alternate health care proxy with the same authority. My health care proxy is authorized to make whatever health care decisions I could make if I were able, except that, to the extent I have indicated my wishes in the foregoing sections, decisions regarding life-sustaining treatment and artificially administered nutrition and hydration can be made by my health care proxy or alternate health care proxy only as I have indicated. If I fail to designate a health care proxy in this section, I am deliberately declining to designate a health care proxy.

I authorize my health care proxy to make all decisions about life-sustaining treatment, including artificial nutrition and hydration, on my behalf based on what my health care proxy determines would be my wishes under the circumstances. If I have left part or all of the Living Will section blank, I do so with the intent of delegating the decision(s) to my health care proxy.

My health care proxy acts as my agent for the purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), CFR Secs. 160-164, and related provisions of law, either state or federal, and is specifically authorized by me to both give and receive information to or from health care providers, hospital staff, insurance companies and all others interested or involved in my medical care or treatment so that he/she may faithfully, fully, and competently carry out the terms of his/her role as my health care proxy, being fully informed and in the best manner possible.

III. Anatomical Gifts

Pursuant to the provisions of the Uniform Anatomical Gift Act, I direct that at the time of my death my entire body or designated body organs or body parts be donated for purposes of:

(Initial all that apply)

_____ transplantation

_____ advancement of medical science, research, or education

_____ advancement of dental science, research, or education

Death means either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem. If I initial the "yes" line below, I specifically donate:

_____ My entire body

or

_____ The following body organs or parts:

_____ lungs

_____ blood/fluids

_____ brain

_____ pancreas

_____ arteries

_____ bones/marrow

_____ kidneys

_____ liver

_____ tissue

_____ skin

_____ heart

_____ eyes/cornea/lens

IV. General Provisions

- a. I understand that I must be eighteen (18) years of age or older to execute this form.
- b. I understand that my witnesses must be eighteen (18) years of age or older and shall not be related to me and shall not inherit from me.
- c. I understand that if I have been diagnosed as pregnant and that diagnosis is known to my attending physician, I will be provided with life-sustaining treatment and artificially administered hydration and nutrition unless I have, in my own words, specifically authorized that during a course of pregnancy, life-sustaining treatment and/or artificially administered hydration and/or nutrition shall be withheld or withdrawn.
- d. In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this advance directive shall be honored by my family and physicians as the final expression of my legal right to choose or refuse medical or surgical treatment including, but not limited to, the administration of life-sustaining procedures, and I accept the consequences of such choice or refusal.
- e. This advance directive shall be in effect until it is revoked.
- f. I understand that I may revoke this advance directive at any time.
- g. I understand and agree that if I have any prior directives, and if I sign this advance directive, my prior directives are revoked.
- h. I understand the full importance of this advance directive and I am emotionally and mentally competent to make this advance directive.
- i. I understand that my physician(s) shall make all decisions based upon his or her best judgment applying with ordinary care and diligence the knowledge and skill that is possessed and used by members of the physician's profession in good standing engaged in the same field of practice at that time, measured by national standards.

Signed this _____ day of _____, 20 ____.

Signature

City

County, Oklahoma

Date of birth (Optional for identification purposes)

The advance directive was signed in my presence.

Signature of Witness

Signature of Witness

_____, OK
Residence

_____, OK
Residence

What Is a Health Care Proxy?

If you are ever unable to make health care decisions, your health care proxy is the person who will have the authority to make all health care decisions (both life-sustaining and non-life-sustaining) that you would make if you were able. Oklahoma's advance directive form provides space for you to appoint a primary health care proxy and an alternate health care proxy.

Your health care proxy will be able to access your medical information and talk with your doctors about treatment options. He or she may consent to or refuse tests or treatments, including life-sustaining treatment. Your proxy may also admit you to a health care facility or select your physicians.

How Do I Choose My Health Proxy?

Your health care proxy must be at least 18 years old and of sound mind. He or she should also be someone you trust, who knows you well, and who will honor your wishes.

Often a spouse or adult child is appointed. However, you may choose anyone you wish, including other family members or friends. Make sure that the person you choose is willing and able to carry out your wishes.

If your first proxy is your age or older, you may want to name a younger person as the alternate.

Make sure your proxies know your wishes and understand the values that guide your decisions. Talk to everyone who will be concerned about your treatment. This may help to prevent disputes among those who care about you.

Can I Leave These Decisions Up To My Health Care Proxy?

If you wish to leave part or all of your living will blank in order to delegate decisions to your health care proxy, write your intention clearly

When choosing a health care proxy, consider the following criteria:

- Is the person willing to serve as your health care proxy?
- Will the person be available when needed?
- Will the person be able to carry out your wishes?
- How well does this person know you and understand your values?
- Does this person share your preferences about end-of-life care?
- Is this someone you trust?
- Is this person willing to talk with you about sensitive issues?
- Will the person be able to ask doctors questions and advocate on your behalf?
- How will the person handle conflict if there is disagreement about care?

either in your living will or proxy appointment section. (Oklahoma law allows you to complete the living will, the appointment of a health care proxy, or both.) For your convenience, language giving authority to the health care proxy if part or all of the living will is blank is included in the form provided with this handout.

Can My Health Care Proxy Go Against My Wishes?

When making decisions, your health care proxy is required to follow the instructions you gave in your living will unless you specify otherwise. He or she must also honor what is otherwise known about your treatment wishes.

What Is an Anatomical Gift?

In your advance directive, you may express your wish to donate your body or body parts for transplantation or research. Organs, skin, bone marrow, and even eyes can be donated to help people suffering from illness or injury.

Your family will not be charged for organ or tissue donation. Your estate may still be responsible for your medical and funeral costs.

If you would like to donate your body to science, contact the medical organization of your choice to make arrangements in advance.

Medical schools and research facilities study bodies to educate students and better understand the effects of disease. Generally, you cannot donate your body for medical education or research if you also wish to donate your organs.

If you wish to donate your body to science, you will need to make arrangements in advance with the university or institution.

Aren't I Too Old To Be a Donor?

You are never too old to be an organ or tissue donor. Each donor will be evaluated for suitability when the occasion arises.

Will Being an Organ Donor Affect My Care While I Am Living?

Being an organ donor will not affect the medical care you receive while you are alive. Organ and tissue donation will only occur after death. Be aware that it may be necessary to place a donor on a machine temporarily to keep blood and oxygen flowing to the organs.

III. Anatomical Gifts

Pursuant to the provisions of the Uniform Anatomical Gift Act, I direct that at the time of my death my entire body or designated body organs or body parts be donated for purposes of:

(Initial all that apply)

Initial next to transplantation if you want to be an organ donor.

transplantation

Initial next to advancement of medical science and/or dental science if you want to donate your body or body parts for research or education.

advancement of medical science, research, or education

advancement of dental science, research, or education

Initial here if you want to donate your entire body.

Death means either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem. If I initial the "yes" line below, I specifically donate:

My entire body

Initial here if you want to specify which parts you want to donate.

or
 The following body organs or parts:

Only if you have opted to specify which parts to donate, initial next to each part that you would like to donate.

<input type="checkbox"/> lungs	<input type="checkbox"/> blood/fluids	<input type="checkbox"/> brain
<input type="checkbox"/> pancreas	<input type="checkbox"/> arteries	<input type="checkbox"/> bones/marrow
<input type="checkbox"/> kidneys	<input type="checkbox"/> liver	<input type="checkbox"/> tissue
<input type="checkbox"/> skin	<input type="checkbox"/> heart	<input type="checkbox"/> eyes/cornea/lens

What Will Happen To My Body If I Am a Donor?

An organ donor can still have an open casket and be buried or cremated. Bodies donated for education or research will be cremated.

How Do I Complete My Advance Directive?

You must be of sound mind and at least 18 years old to complete an advance directive. Your advance directive must be signed by you in front of two witnesses who are at least 18 years old, are not related to you, and will not inherit from you.

Does My Advance Directive Need To Be Notarized?

In Oklahoma, an advance directive does not need to be notarized. It just needs to be signed by you and the two witnesses.

What Should I Do With My Advance Directive After I Sign It?

Once you have completed your advance directive, keep it in a place where it can be easily found. Do not keep your advance directive in a safe deposit box or locked away unless others can access it in an emergency.

Copies are just as good as the original. Consider putting a copy on your refrigerator and another copy in your glove compartment. Emergency responders are trained to look in these places for medical information.

You may also want to carry a card in your wallet indicating that you have an advance directive, where a copy can be located, and the contact information for your physician and health care proxies.

Give copies of your advance directive to your health care proxy and alternate proxy, your physician, and your attorney, if you have one.

If you live in an assisted living facility or nursing home, give a copy to a staff member who can make it a part of your file.

When Should I Review My Advance Directive?

Review your advance directive every few years, especially after a major life change such as the death of a loved one, divorce, or a diagnosis of a serious medical condition.

What If I Change My Mind?

You can revoke all or part of your advance directive at any time and in any manner that indicates your intention to revoke, including tearing, crossing out, or destroying the form.

It is best to document your revocation by writing “I Revoke” across each page and keeping it for your records. Tell everyone who has a copy that it has been revoked and ask them to destroy their copies.

Tell your attending physician that you revoked your advance directive and to make your revocation part of your medical record.

Completing a new advance directive automatically revokes your old one. Remember to give copies of your new advance directive to your physician, health care proxies, and attorney.

The best way to make changes to an advance directive is to complete a new form. Do not alter the original document. Making changes to the original document may cause confusion and could even invalidate the document.

Can Doctors Go Against My Wishes?

Oklahoma law requires physicians and other health care providers to promptly inform you if they are not willing or able to comply with your advance directive.

Show your advance directive to your physicians and other health care providers to confirm that they will honor your advance directive. Your doctor should tell you whether he or she can honor your wishes when you give your doctor a copy for your file.

If you are incapacitated, a physician may refuse to honor your advance directive, but he or she must promptly transfer you to a doctor who will honor your wishes.

Where Can I Get More Information?

You can get more information about health care planning from the following organizations:

Oklahoma Palliative Care Resource Center
www.okpalliative-care.com

Senior Law Resource Center
(405) 528-0858
e-mail: info@senior-law.org
www.senior-law.org

Legal Aid Services of Oklahoma
(888) 534-5243
www.legalaidok.org

Oklahoma Bar Association
(405) 416-7000
(800) 522-8065
www.okbar.org

**Department of Human Services
Aging Services Division**
(800) 211-2116
www.okdhs.org

Oklahoma Hospice and Palliative Care Association
(405) 606-4442
(800) 356-0622
www.okhospice.org

Advance directive forms are widely available at no charge from most hospitals, nursing homes, hospices, and Area Agencies on Aging.

This handout was produced by the Senior Law Resource Center, a non-profit organization that provides legal information and services to elders, caregivers, and professionals.

The information in this handout is based on Oklahoma law. This handout provides general information only and is not intended to serve as legal or medical advice, nor does it create an attorney-client relationship. If you have questions, consult a physician or attorney about your specific situation.

The information in this handout was originally published in "Your Right To Decide: Oklahoma's Advance Directive & Other Health Care Planning Tools." This handout as well as the original "Your Right To Decide" booklet are both available at no charge in PDF format from the Senior Law Resource Center's website, www.senior-law.org.

Funding for this publication was provided by the Hospice Foundation of Oklahoma Affiliated Fund, Inc., an endowment administered by the Oklahoma City Community Foundation. Additional funding for the Senior Law Resource Center's educational programs is provided by the Oklahoma City Community Foundation iFund Grant program, the Oklahoma Bar Foundation, the Oklahoma County Bar Foundation, and contributions from individual supporters.



For more information about Advance Directives for Health Care and other legal issues, contact the **Senior Law Resource Center** at **(405) 528-0858** or **info@senior-law.org**, or go to **www.senior-law.org**.



Before You Sign That Document!

What You Need To Know About

Durable Powers of Attorney

What Is a Durable Power of Attorney?

A durable power of attorney is a document you can use to allow another person to act on your behalf. You, as the person signing the durable power of attorney, are the “principal.” The person you name to act on your behalf is called the “attorney-in-fact” or “agent.”

Even though we call this person an attorney-in-fact, your agent does not need to be a lawyer. You can choose any adult to act for you.

What Will My Agent Be Able To Do?

Each durable power of attorney is different. Some only deal with property and financial matters. Others include medical care. It is up to you to decide what powers you want to give to your agent.

Common powers in a durable power of attorney include:

- banking and paying bills
- maintaining and selling real property
- making most health care decisions

While there are standard forms available, it is a good idea to talk to an attorney about drafting a document that fits your needs. State laws vary, so a standardized form may not comply with Oklahoma law.

Do I Need a Durable Power of Attorney?

Durable powers of attorney are powerful tools. They can be a good way to give your

loved ones the ability to take care of you without going to court for a guardianship. However, they can also be abused and cause significant financial and personal hardship.

Before signing a durable power of attorney, consider the following:

- *How trustworthy and responsible is your chosen agent?*
- *Do you want to give this person the power to make decisions about your property? Your medical and personal care? Both?*
- *Do you want to put any limitations or safeguards in place for certain decisions?*

Who Should I Appoint As My Attorney-In-Fact?

Choose your agent carefully and make sure it is someone you trust. This person may have the power to sell your home, write checks, place you in a nursing home or make other significant decisions for you.

When choosing your attorney-in-fact, consider the following:

- *Can this person legally act as your attorney-in-fact?* An attorney-in-fact must be at least 18 years old and have sufficient mental capacity to make decisions.
- *Is this person willing to serve?* Ask permission to name someone as your attorney-in-fact.
- *Will this person be available?* Does the person live nearby? Does the person have other responsibilities that would prevent him or her from being available?

- *Does this person have the necessary skills?* This will depend on the complexity of your financial or medical affairs.
- *Will this person act for your benefit?* Can this person be trusted to act only on your behalf and not in his or her own interest?
- *Can you talk to this person about your medical conditions?* If you are giving this person power over medical decisions, make sure you feel comfortable sharing your personal health information.
- *Will this person be able to handle conflict?* Make sure your agent can handle conflicts that might arise if loved ones or others disagree about your medical care or finances.

You may want to appoint more than one person to serve as your agents. You can appoint co-agents, who will both be able to act for you. You can also appoint one primary agent and an alternate person as a backup.

When Will My Durable Power of Attorney Take Effect?

You can choose when your durable power of attorney will take effect. One option is to make your durable power of attorney take effect as soon as you sign it. If you do this, your agent could immediately use the document to act on your behalf.

After you sign, you can continue to do things for yourself. Signing an immediate durable power of attorney does not mean you lose the right to control your own life.

Some durable powers of attorney only take effect when the person who signed it can no longer make decisions. If the durable power of attorney takes effect when the principal is incapacitated (called a “springing” durable power of attorney), it should clearly describe the standard used to determine incapacity. Of-

Immediate vs. Springing

Immediate - takes effect as soon as you sign it

Springing - only takes effect when you can no longer make your own decisions or manage your affairs

ten this type of durable power of attorney will require letters written by one or more doctors stating that the principal is incapacitated.

If you want assistance now but are still able to act for yourself, an immediate durable power of attorney may make sense. Immediate durable powers of attorney are also easier to use because they do not require getting evidence of incapacity from a doctor.

On the other hand, you may prefer a springing durable power of attorney if you only want your agent to step in if you can no longer make decisions or handle your own affairs. While it may be more difficult to use a springing durable power of attorney, the required medical documentation makes it less likely the durable power of attorney will be used before it is necessary.

Another option is to execute a durable power of attorney that takes effect immediately, but not give a copy to your attorney-in-fact until you are ready for your agent to use it. If you do this, make sure your attorney-in-fact knows where to find the document if needed.

Does My Durable Power of Attorney Need To Be Notarized or Witnessed?

Unless the durable power of attorney is the Uniform Statutory Form (see below), it will need to be witnessed by two people and notarized. The witnesses must be at least 18 years

old and cannot be related by blood or marriage to either you or your agent.

There is a standardized durable power of attorney form under the *Uniform Statutory Form Power of Attorney Act* (15 O.S. §§ 1001-1020). This statutory form lists 13 powers over financial matters and property that you may select by placing a check next to each. This kind of durable power of attorney cannot be used for health care decisions.

If you use the Uniform Statutory form, you do not need to have the document witnessed. However, it will still need to be notarized.

Are Others Required To Honor My Power of Attorney?

There is no law that requires someone to honor your power of attorney. Check with your bank and other institutions with which you do business to make sure your durable power of attorney meets their requirements and will be accepted. Your bank may be able to provide you with a durable power of attorney form that they prefer (or require) you to use.

Some government agencies, such as Social Security, may not honor your durable power of attorney. Instead, they use their own system to appoint a Representative Payee. If you

Requirements For Most Durable Powers of Attorney

Signed by you (the principal) while you still have mental capacity
Witnessed by two adults who are not related by blood or marriage to you or anyone you have appointed as your attorney-in-fact
Notarized

become incapacitated, your agent may need to apply to be your Representative Payee in order to manage your government income.

Can My Agent Go Against My Wishes?

The purpose of a durable power of attorney is to help with financial and/or health matters. It does not give your agent the power to go against your wishes or take actions that are harmful to you.

Can I Limit My Agent's Powers?

To protect yourself, it may be a good idea to include limits or safeguards in your durable power of attorney. For example, you can require that your agent send a copy of your bank statement each month to someone else. This may help your agent resist the temptation to borrow or otherwise mishandle your money.

You can also require that more than one person be involved in certain actions. This may be a good idea for major decisions, such as selling a house or nursing home placement.

Can My Agent Make All Medical Decisions For Me?

A general durable power of attorney can give your attorney-in-fact the authority to make most medical decisions on your behalf. However, unless the durable power of attorney meets specific requirements, it cannot grant the power to make life-sustaining treatment decisions, such as withholding or withdrawing a feeding tube or respirator.

If you would like to authorize your agent to make all medical decisions, including life-sustaining treatment decisions, you should have a knowledgeable attorney draft the durable power of attorney for you.

Another document that can be used to authorize someone to make all medical decisions, including life-sustaining treatment decisions, is an Advance Directive for Health Care. This is a standardized form that allows you to express your wishes about end-of-life treatment and appoint agents (called “health care proxies”) to make all medical decisions if you are ever unable to. For more information, see the publication *Your Right To Decide*, available from the Senior Law Resource Center.

What If I Change My Mind?

As long as you can still make decisions, you can change or cancel your durable power of attorney at any time.

You can make changes to your durable power of attorney in a separate document, sometimes called an amendment. This amendment should be signed, witnessed and notarized in the same way as your original durable power of attorney. If you wish to make significant changes, it may be easier to execute a new durable power of attorney.

You can revoke your durable power of attorney by crossing out or destroying the form. You may also sign a new document stating that you revoke your durable power of attorney.

Never cross out or add words to any legal document after it is signed. These changes may not be effective and could void the document.

ney. If you do a new durable power of attorney, usually this will revoke your older one.

You must tell your agent, preferably in writing, that your durable power of attorney has been changed or revoked. It is also a good idea to inform anyone to whom the durable power of attorney has been shown, such as your bank.

Can My Agent Use My Durable Power of Attorney After My Death?

Your durable power of attorney is only in effect while you are living. After your death, your agent will no longer have the legal authority to handle your affairs.

Why Is It Called a “Durable” Power of Attorney?

The word “durable” means that your agent will be able to act for you even if you can no longer make decisions on your own. If the power of attorney is not durable, it will end as soon as you are unable to act for yourself.

This brochure was produced by the Senior Law Resource Center, a non-profit organization providing legal information and services to elders, caregivers, and professionals. The information provided is general and is not intended to create an attorney-client relationship with the reader. Please consult an attorney or other advisor about your specific situation.

Funding for this brochure and our other educational programs is generously provided by the Oklahoma City Community Foundation iFund Grant program, the Oklahoma Bar Foundation, the Oklahoma County Bar Foundation, the Hospice Foundation of Oklahoma, and contributions from individual supporters.



For more information about durable powers of attorney and other legal issues, contact the **Senior Law Resource Center** at **(405) 528-0858** or **info@senior-law.org**, or go to **www.senior-law.org**.

DURABLE POWER OF ATTORNEY (WITH HEALTH CARE POWERS ONLY)

NOTICE: The powers granted by this document are broad and sweeping. If you have any questions about these powers, obtain competent legal advice. Free legal information regarding construction of the powers granted by this document and completion of this form may be obtained by calling the Legal Services Developer, Aging Services, Oklahoma Department of Human Services, (405) 522-3069, or your local legal aid or legal services office. This document authorizes your agent to make medical and other health care decisions for you. You may revoke this power of attorney if you later wish to do so.

I _____
(insert name and address)

appoint _____
(insert name and address of the person appointed)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects. If my agent is unable or unwilling to serve, I appoint _____

_____ (insert name and address)

as my alternate agent with the same authority.

Once effective pursuant to section III on the back of this form, this power of attorney will continue to be effective even though I become disabled, incapacitated or incompetent, and shall not be affected by lapse of time.

I. Grant of Health Care Powers

To grant all of the following powers, initial the line in front of (f) and ignore the lines in front of the other powers.

To grant one or more, but fewer than all, of the following powers, initial the line in front of each power you are granting. To withhold a power, do not initial the line in front of it. You may, but need not, cross out each power withheld.

1. If I am unable to decide or speak for myself, my agent has the power to:

Initial

- _____ a. Make health and medical care decisions for me, including serving as my representative under the Oklahoma Do-Not-Resuscitate Act, but excluding signing an advance directive, making decisions reserved to a health care proxy under an advance directive, or other life-sustaining treatment decisions.
- _____ b. Choose my health care providers.
- _____ c. Choose where I live and receive care and support when these choices relate to my health care needs.
- _____ d. Review my medical records and have the same rights that I would have to give my medical records to other people.
- _____ e. Elect hospice treatment.
- _____ f. All of the powers listed above.

You need not initial any other lines if you initial line (f).

2. It is my intention that my agent's acts on my behalf are to be honored by my family members and health care providers as an expression of my legal right to manage my health care. The directions and decisions of my agent are superior to and shall take precedence over any decision made by any member of my family. To the extent appropriate, my agent may discuss health care decisions with my family and others to the extent they are available.

II. Additional Guidance and Information

NOTE: This section, while very helpful to your agent, is optional and choices may be left blank.

a. My goals for my health care: _____

b. My fears about my health care: _____

c. My spiritual or religious beliefs and traditions: _____

d. My thoughts about how my medical condition might affect my family: _____

e. My thoughts about living and receiving health care at home versus in a nursing home or other institution: _____

Special Instructions: On the following lines, you may give special instructions limiting or extending the powers granted to your agent. _____

(Attach additional pages if needed.)

III. When Power Becomes Effective

Please initial one statement below regarding the effective date of this power of attorney.

Initial

_____ This power of attorney is effective immediately and shall continue until it is revoked.

_____ This power of attorney shall be effective when my attending physician determines that I am no longer able to manage my person. This determination shall be provided in writing and attached to this form.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed: _____
(principal's signature)

City County, and State of Residence

The principal is personally known to me and I believe the principal to be of sound mind. I am eighteen (18) years of age or older. I am not related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage. The principal has declared to me that this instrument is his power of attorney granting to the named attorney-in-fact the power and authority specified herein, and that he has willingly made and executed it as his free and voluntary act for the purposes herein expressed.

Witness: _____

Witness: _____

STATE OF OKLAHOMA)
) SS.
COUNTY OF _____)

Before me, the undersigned authority, on this _____ day of _____, 20____, personally appeared _____ (principal), _____ (witness), and _____ (witness), whose names are subscribed to the foregoing instrument in their respective capacities, and all of said persons being by me duly sworn, the principal declared to me and to the said witnesses in my presence that the instrument is his or her power of attorney, and that the principal has willingly and voluntarily made and executed it as the free act and deed of the principal for the purposes therein expressed, and the witnesses declared to me that they were each eighteen (18) years of age or over, and that neither of them is related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage.

Notary Public

My Commission Expires: _____

By accepting or acting under the appointment, the agent assumes the fiduciary and other legal responsibilities of an agent.



RESOURCE LIST FOR CAREGIVERS AND SENIORS, part 2

1. Oklahoma Department of Human Services: Alternatives to Guardianship
<http://www.okdhs.org/services/dd/Pages/agtoolbox.aspx>
2. National Resource Center for Supported Decision-Making:
<http://www.supporteddecisionmaking.org/>
3. Supported Decision-making Frequently Asked Questions:
https://www.aclu.org/sites/default/files/field_document/faq_about_supported_decision_making.pdf
4. Supported Decision-making Agreement (form):
https://www.aclu.org/sites/default/files/field_document/aclu_supported_decision-making_agreement.pdf

Contact information:

Carol Beatty, Staff Attorney

Legal Aid Services of Oklahoma, Inc.

Phone: (918) 295-9451

Email: carol.beatty@laok.org

DURABLE POWER OF ATTORNEY (WITH HEALTH CARE POWERS ONLY)

NOTICE: The powers granted by this document are broad and sweeping. If you have any questions about these powers, obtain competent legal advice. Free legal information regarding construction of the powers granted by this document and completion of this form may be obtained by calling the Legal Services Developer, Aging Services, Oklahoma Department of Human Services, (405) 522-3069, or your local legal aid or legal services office. This document authorizes your agent to make medical and other health care decisions for you. You may revoke this power of attorney if you later wish to do so.

I _____
(insert name and address)

appoint _____
(insert name and address of the person appointed)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects. If my agent is unable or unwilling to serve, I appoint _____

_____ (insert name and address)

as my alternate agent with the same authority.

Once effective pursuant to section III on the back of this form, this power of attorney will continue to be effective even though I become disabled, incapacitated or incompetent, and shall not be affected by lapse of time.

I. Grant of Health Care Powers

To grant all of the following powers, initial the line in front of (f) and ignore the lines in front of the other powers.

To grant one or more, but fewer than all, of the following powers, initial the line in front of each power you are granting. To withhold a power, do not initial the line in front of it. You may, but need not, cross out each power withheld.

1. If I am unable to decide or speak for myself, my agent has the power to:

Initial

- _____ a. Make health and medical care decisions for me, including serving as my representative under the Oklahoma Do-Not-Resuscitate Act, but excluding signing an advance directive, making decisions reserved to a health care proxy under an advance directive, or other life-sustaining treatment decisions.
- _____ b. Choose my health care providers.
- _____ c. Choose where I live and receive care and support when these choices relate to my health care needs.
- _____ d. Review my medical records and have the same rights that I would have to give my medical records to other people.
- _____ e. Elect hospice treatment.
- _____ f. All of the powers listed above.

You need not initial any other lines if you initial line (f).

2. It is my intention that my agent's acts on my behalf are to be honored by my family members and health care providers as an expression of my legal right to manage my health care. The directions and decisions of my agent are superior to and shall take precedence over any decision made by any member of my family. To the extent appropriate, my agent may discuss health care decisions with my family and others to the extent they are available.

II. Additional Guidance and Information

NOTE: This section, while very helpful to your agent, is optional and choices may be left blank.

a. My goals for my health care: _____

b. My fears about my health care: _____

c. My spiritual or religious beliefs and traditions: _____

d. My thoughts about how my medical condition might affect my family: _____

e. My thoughts about living and receiving health care at home versus in a nursing home or other institution: _____

Special Instructions: On the following lines, you may give special instructions limiting or extending the powers granted to your agent. _____

(Attach additional pages if needed.)

III. When Power Becomes Effective

Please initial one statement below regarding the effective date of this power of attorney.

Initial

_____ This power of attorney is effective immediately and shall continue until it is revoked.

_____ This power of attorney shall be effective when my attending physician determines that I am no longer able to manage my person. This determination shall be provided in writing and attached to this form.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed: _____
(principal's signature)

City County, and State of Residence _____

The principal is personally known to me and I believe the principal to be of sound mind. I am eighteen (18) years of age or older. I am not related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage. The principal has declared to me that this instrument is his power of attorney granting to the named attorney-in-fact the power and authority specified herein, and that he has willingly made and executed it as his free and voluntary act for the purposes herein expressed.

Witness: _____

Witness: _____

STATE OF OKLAHOMA)
) SS.
COUNTY OF _____)

Before me, the undersigned authority, on this _____ day of _____, 20____, personally appeared _____ (principal), _____ (witness), and _____ (witness), whose names are subscribed to the foregoing instrument in their respective capacities, and all of said persons being by me duly sworn, the principal declared to me and to the said witnesses in my presence that the instrument is his or her power of attorney, and that the principal has willingly and voluntarily made and executed it as the free act and deed of the principal for the purposes therein expressed, and the witnesses declared to me that they were each eighteen (18) years of age or over, and that neither of them is related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage.

Notary Public

My Commission Expires: _____

By accepting or acting under the appointment, the agent assumes the fiduciary and other legal responsibilities of an agent.

