

Advance Directives Answers to Commonly Asked Questions

1. Why do I need a legal document? Can't my family just make the decisions for me if they need to?

- In the absence of an advance directive naming the person you would want as your health care agent, the law in most states (including DC, MD, and VA) would give *surrogate agent(s)* status to your next of kin (or guardian) in the following order of priority: court-appointed guardian (if one exists); spouse; adult children; parents; adult siblings; or friend or relative who can attest to ongoing contact close enough to have some idea about your preferences and beliefs. All members of the highest class would share equally in this designation, which might lead to family conflicts.
- However, a person who becomes your surrogate agent solely by virtue of this default status does not have all of the powers that you can grant your agent in an advance directive.

2. What is the difference between an Advance Directive and a Do Not Resuscitate order (DNR)?

- Doctors are the only people who can actually write *orders* to either initiate or stop treatment, at the time that the treatment is needed or suggested. An advance directive is about your wishes for care under certain circumstances, and *your choice of the health care agent* who should make decisions about care in your behalf if you are unable to do so. It is not a doctor's order.
- You or your agent can almost always decline treatment at the time it is offered, even if a doctor has written an order for it. However, there are some emergency treatments that must proceed without stopping for orders or clarification from an agent about preferences if they are to be successful, such as cardiopulmonary resuscitation (CPR) for a person who is found without pulse or spontaneous breathing. For this reason, if you are in a health care facility or if someone calls 911 on your behalf, it is presumed that you would want to have CPR if your heart stops or you are unable to breathe, UNLESS there is already a "do not resuscitate" order written in advance by a doctor for you. You or your agent can ask your doctor to write such an order. The form on which such an order is written is filled out by the doctor, and is completely different from an advance directive.

3. Is the new Maryland document good in DC and in Virginia?

- The document itself is good in all three jurisdictions but there are different requirements among the jurisdictions with regard to the agent you select and the witnesses who sign the document.
- In Maryland, anyone (including your doctor) can be named as your agent as long as he or she is not an owner, operator, or employee of a health care facility where you get your care, unless he or she is also your relative, spouse, or close friend. In the District of Columbia, you may not appoint your doctor or other health care provider. In Virginia, there are no limitations on your choice. It would be wise for most residents of Montgomery County to have an advance directive that would be credible anywhere in the Washington metropolitan area, so choose a person who would satisfy all of these limitations – not your doctor and not an owner, operator, or employee of a health care facility where you get your care unless that person is also a relative, spouse, or close friend.

- In Maryland, any competent adult may serve as a witness except the person you named as your agent, but at least one of the two of them may not be in a position to receive money or property after your death and is not the person you have named to administer your estate after your death. The witness has to sign that upon personal observation, the person who made the advance directive appears to be competent. In DC, witnesses must be at least 18 years old, believe you to be of sound mind, not be the person who signed the document on your behalf and at your direction, and not be a member of any of these classes of people: relatives by blood or marriage; those who stand to inherit from your estate; anyone financially responsible for your medical care; your attending physician or an employee of your attending physician; or an employee of a health care facility in which you are a patient. In Virginia, there are no limitations. Again, it would be wise to choose witnesses who would satisfy all of these requirements in order to make your document credible in all three jurisdictions.
- It is because of these differing requirements that it may be wise to write in the extra requirements for the witnesses before they sign, or to use a personalized version or an alternative such as “Five Wishes,” which has such limitations written in.
- In addition to the above, the “living will” or “declaration” part of an advance directive that is executed in DC has an additional stipulation: If he or she is a patient in an intermediate care or skilled nursing care facility (nursing home), one of the witnesses must be a patient advocate or ombudsman.

4. Is there any one advance directive document that is good in all 50 states?

- No. A document that satisfies the requirements for Maryland, DC, and VA would be honored in most of them, though 4 states (Missouri, North Carolina, Tennessee, and West Virginia) require the document to be notarized. “Five Wishes” is considered legal in all but 12 states as of January 2007. Those 12 states either require the use of a state-specific document or require that the person executing the document read a mandatory notice prior to doing so. If you frequently spend time in another state you should look up the requirements for that state and make certain that your document satisfies them or, in the case that it is one of the states that requires its own form, you execute that document in addition to one that is more general.

5. I can't get anyone in my family to talk about this.

- Tips:
 - Bring it up in the course of a discussion about a relative or friend who is or has been seriously ill.
 - Instead of telling the person you would like to convince to prepare an advance directive or discuss the matter that you would like for them to do it for their own good, ask if he/she would do it for you. Let him/her know that it could be burdensome for you and other family members to do what would need to be done for them if there was no written directive appointing an agent or no guidance in the form of discussion about what his/her wishes might be.
 - Prepare an advance directive yourself and ask your family members if you could tell them what your thoughts are about the elements of life you consider important and/or the way you envision a good death. Then ask them about their own thoughts and guide them toward getting them in writing.
 - Point out that advance directive are not just for old people and that they are like insurance – you may hope you never need to use it, but if you do, you would want to have it in place.