

Frequently Asked Questions

1. What is an “advance directive”?

An advance directive is a written document in which a competent individual gives instructions about his or her health care, that will be implemented at some future time should that person lack the ability to make decisions for himself or herself.

2. Must I have an advance directive?

No. The decision to have an advance directive is purely voluntary. No family member, hospital, or insurance company can force you to have one, or dictate what the document should say if you decide to write one.

3. Are there different types of advance directives?

Yes. There are three types: a durable power of attorney for health care, a living will, and a do-not-resuscitate order. Living wills are not recognized in Michigan statute. However, in case of a dispute as to your health care desires, your written or oral statements regarding your wishes pertaining to health care or the withdrawal or refusal of treatment may be used as evidence in court, if you are unable to participate in health care decisions. You may wish to consult an attorney for further information regarding durable powers of attorney or living wills.

4. What is a “designation of patient advocate”?

In Michigan statute, a designation of patient advocate is the term used for a durable power of attorney for health care, also known as a health care proxy—a document in which you give another person the power to make medical treatment and related personal care and custody decisions for you.

5. Is a durable power of attorney for health and/or mental health care legally binding in Michigan?

Yes, based on a state law passed in 1990 (PA 312 of 1990), later replaced by PA 386 of 1998 and PA 532 of 2004 (sections 700.5506-700.5515 of the *Michigan Compiled Laws*).

6. Who is eligible to create a designation of patient advocate?

Anyone who is 18 years of age or older and of sound mind is eligible.

7. What is the title of the person to whom I give decision-making power?

That person is known as a “patient advocate.”

8. Who may I appoint as a patient advocate?

Anyone who is 18 years of age or older may be appointed. You should choose someone you trust who can handle the responsibility and who is willing to serve.

9. Does a patient advocate need to accept the responsibility before acting?

Yes, he or she must sign an acceptance. This does not have to be done at the time you sign the document. Nevertheless, you should speak to the person you propose to name as patient advocate to make sure he or she is willing to serve.

10. When can the patient advocate act in my behalf?

The patient advocate can make decisions for you only when you are unable to participate in medical treatment decisions. The patient advocate for mental health treatment can make decisions for you when you are unable to give informed consent for mental health treatment.

11. Why might I be unable to participate in medical and mental health treatment decisions?

You may become temporarily or permanently unconscious from disease, accident, or surgery. You may be awake but mentally unable to make decisions about your care due to disease or injury. In addition, you might have a temporary loss of ability to make or communicate decisions if, for example, you had a stroke. Others might suffer long-term or permanent loss through a degenerative condition such as Alzheimer's disease. Your doctor and a mental health professional, after examination, may determine that you are unable to give informed consent for mental health treatment.

12. Who determines that I am no longer able to participate in these decisions?

Your attending physician and one other physician or licensed psychologist must make that determination. If your religious beliefs prohibit an examination to make this determination, and this is stated in the designation document, you must indicate in the document how the determination will be made. For mental health treatment, your physician and a mental health professional must make that determination.

13. What powers can I give a patient advocate?

You can give a patient advocate the power to make those personal care decisions you normally make for yourself. For example, you can give your patient advocate power to consent to or refuse medical treatment for you, to arrange for home health care or adult day care, arrange care in a nursing home, or move you to a home for the aged. A patient advocate may also be empowered to make an anatomical gift of all or part of the patient's body. According to state law, if you were to become incompetent while pregnant, your patient advocate could not authorize a medical treatment decision to withhold or withdraw treatment that would result in your death. You can give your patient advocate for mental health the power to obtain and consent to mental health care and treatment that is in your best interest, including arranging for appropriate residential placement and making payments to secure the necessary treatment.

14. Can I give my patient advocate the authority to make decisions to withhold or withdraw life-sustaining treatment, including food and water administered through tubes?

Yes, but you must express in a clear and convincing manner that the patient advocate is authorized to make such decisions, and you must acknowledge that these decisions could or would allow your death. If you have specific desires as to when you want to forego life-sustaining treatment, you must describe in the document the specific circumstances in which he or she can act.

15. Do I have the right to express in the document my wishes concerning medical treatment and personal care?

Yes. You might, for example, express your wishes concerning the type of care you want during terminal illness. You might also express a desire not to be placed in a nursing home and a desire to die at home. Your patient advocate has a duty to try to follow your wishes.

16. Is it important to express my wishes in the designation of patient advocate document?

Yes. Your wishes might not be followed if others are unaware of them. It can also be a great burden for your patient advocate to make a decision for you without your specific guidance.

17. Can I revoke my patient advocate designation?

Yes. A patient may revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke. However, for mental health treatment, you may waive your right to revoke your Patient Advocate Designation for up to 30 days to allow for treatment.

18. Can I appoint a second person to serve as patient advocate in case the first-named person is unable to serve?

Yes. In fact, this is highly recommended.

19. Must a designation of patient advocate document be witnessed?

Yes. A designation must be executed in the presence of and signed by two witnesses. The witnesses must not include your spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate. Witnesses must also not include an employee of your life or health insurance provider, a health facility that is treating you, a home for the aged where you reside, or a community mental health services program or hospital that is providing mental health treatment to you.

20. In general, what should I do before completing an advance directive?

Give careful consideration to whom you might choose to be your advocate or to act in your place. Think about your treatment wishes. Discuss the issue with family members. Talk with your minister, rabbi, priest, or other spiritual leader if you feel it would be helpful. Bring the subject up with your doctor. Have a discussion about the benefits and burdens of various types of treatment.

21. Are there issues I should give particular attention to?

Yes. Many people have strong feelings about the administration of food and water, either by tube down their throat, a tube placed surgically into their stomach, or intravenously. You should consider and indicate in what circumstances, if any, you wish such procedures withheld or withdrawn. Also, bear in mind that your opinions regarding your own health care may change over time. Your wishes regarding medical treatment when you are relatively young may be quite different from your wishes when you reach advanced age, so you may wish to review your decisions periodically with your patient advocate.

22. Is there a standard form for an advance directive?

No. While this pamphlet contains a sample form which you may choose to use to designate a patient advocate, you may use a form designed by an organization, you may hire an attorney to draft the necessary documentation, or you may write out the document yourself. If you write the documentation yourself, make sure that it is legible. Under state law, the designation must be in writing, you must sign the document, date it, and have it witnessed as described above.

A person accepting the responsibility to act as a patient advocate must sign an acceptance to the designation document which contains provisions required by statute. **(These statutory provisions are listed in sections A through J found in Part VI of the attached Designation of Patient Advocate form.)**

23. What if there is a dispute as to how my designation of patient advocate should be carried out?

If there is a dispute as to whether your patient advocate is acting consistent with your best interest, the probate court may be petitioned to resolve the dispute. The court can remove a patient advocate who acts improperly in your behalf.