

# Know Your Medical Rights

## Consider an Advance Directive



### **Everyone hopes to stay in good mental and physical health**

Because of technological advances, medical treatment options are available that were unimaginable just a few years ago, allowing us to live longer and often healthier lives. However, these advances also can leave family members and loved ones with difficult medical decisions when a person becomes unable to make them on his/her own.

Think about creating an Advance Directive that explains the kind of medical treatment you want to receive or would not want to receive. Some day you may become too sick to make decisions about your medical care. If that happens, you may want to be sure your loved ones know and can talk about your wishes. If they do not know your wishes, decisions will be made for you. We encourage you to think about your wishes in advance, discuss your options with family or friends, and with your health care providers. Make plans now for your future health care needs.

As a competent adult, you have the right to make your own medical decisions. Competent means you have the ability to understand your medical conditions and treatment options. It means you are able to judge the risks and benefits of these options and decide which – if any – is best for you.

### **Choose what is right for you**

Advance directives are not required. However, if you are no longer able to make decisions for yourself, it helps to have someone you trust to make decisions for you. Talk to your family and friends about what medical treatment you want to receive or would not want to receive, so they know what to tell your doctors.

Because none of us knows what the future holds, HAP recommends appointing a representative – or Patient Advocate – now to specify the type of medical care you want in the future, should the need arise.

Please note that the information and links to forms are guidelines only and not intended as legal advice.

## **Advance Directive answers**

### **What is an Advance Directive?**

An Advance Directive is a written document, such as a living will or a durable power of attorney for health care. It is recognized under state law and signed by you, where in you specify what type of medical care you want in the future, or who you want to make decisions for you, should you lose the ability to make decisions for yourself.

### **Who decides what treatment I will get?**

As long as you are competent, you are the only person who can decide what medical treatment you want to accept or reject. You will be given information and advice about the pros and cons of different kinds of treatment, and you can ask questions about your options. But only you can say “yes” or “no” to any treatment offered. You can say “no” even if the treatment you refuse might keep you alive longer and even if others want you to have it.

### **What if I'm in no condition to decide?**

If you become unable to make your own decisions about medical care, decisions will have to be made for you. If you haven't given prior instruction, no one will know what you would want. There may be difficult questions like: Would you refuse treatment if you were unconscious and not likely to wake up? Would you refuse treatment if you were going to die soon no matter what? Would you want to receive any treatment your caregivers recommend? When your wishes are not known, your family or the courts may have to decide what to do.

### **What can I do now to see that my wishes are honored in the future?**

You can make an **Advance Directive**. In Michigan there are two kinds of **Advance Directives**. One is a Durable Power of Attorney for health care, also called a Patient Advocate Designation. The other is a Do Not Resuscitate Declaration.

You have the right to give your Patient Advocate, your caregivers, your family and friends written or spoken instructions about what medical treatment you want and don't want to receive.

### **What is a Patient Advocate Designation?**

In Michigan, a Patient Advocate Designation enables you to appoint a Patient Advocate to carry out your wishes if you become unable to make decisions regarding your care, custody and medical treatment. In a Patient Advocate Designation you may specify what type of medical care you want in the future. A Patient Advocate Designation is just one kind of Advance Directive.

### **Why is a Patient Advocate Designation law needed?**

If you lose your decision-making abilities, your family may not know whether you want to exhaust every medical option or whether you want only medical treatments that ensure your comfort without postponing death. This can be agonizing for a family, and in some cases the courts have to decide

what to do. With a Patient Advocate Designation, your Advocate can express your wishes. Thus, your doctor will know what medical treatment you desire.

### **Must I have a Patient Advocate Designation?**

No. A Patient Advocate Designation is voluntary. No family member, hospital or insurance company can force you to have one as a condition of treatment or coverage, or dictate what the document should say if you decide to write one. Doing so violates the law.

### **Where can I get a Patient Advocate Designation form?**

Many Michigan hospitals, nursing homes, homes for the aged, hospices and home health care agencies have forms available. Senior and civic groups and churches may also have forms, or you may contact the Michigan legislature for free information. Many lawyers also prepare Patient Advocate Designations for their clients but you don't need a lawyer to name a Patient Advocate. All forms aren't alike. You should choose the one that best suits your situation. We've given you information on how to get a form on the last page of this booklet.

It's a good idea to use a form created by a Michigan hospital, health system, health plan, physician organization, patients' rights organization or a State of Michigan department or agency. That way it is more likely that the form has all the things needed to name a Patient Advocate.

You can find a Patient Advocate form when you visit [henryford.com/AdvanceCarePlanning](http://henryford.com/AdvanceCarePlanning). You can also ask your doctor, the social worker at a hospital or clinic where you receive your care or even an attorney. Remember that you don't need an attorney to name a Patient Advocate.

### **How do I sign a Patient Advocate Designation form so that it's valid?**

All you have to do is fill in the name of the Patient Advocate and sign the form in front of two witnesses. But some people cannot be your witnesses. Your spouse, parents, grandchildren, children, and brothers or sisters, for example, cannot witness your signature. Neither can anyone who could be your heir or who is named to receive something in your will, or who is an employee of a company that insures your life or health. Finally the person you name as your Patient Advocate, your doctors and all employees of the facility or agency providing health care to you cannot be a witness to your signature. It is easier to make a Patient Advocate Designation before you become a patient or resident of a health care facility or agency. Friends or co-workers are often good people to ask to be witnesses, since they see you often and can, if necessary, swear that you acted voluntarily and were of sound mind when you signed the form.

### **Why do I need witnesses?**

The two signatures show that you signed the Patient Advocate Designation voluntarily, and under no duress, fraud or undue influence. If there is a dispute, witnesses can testify that when you signed the document, you knew what you were doing and were not being pressured.

### **Who can make a Patient Advocate Designation?**

People who are at least 18 years of age and of sound mind are eligible.

## **Who can be my Patient Advocate?**

Any person 18 years or older is eligible. You should choose someone you trust, who can handle the responsibility and is willing to serve. Your Patient Advocate should know you well enough to know what kinds of decisions you would want made about your care and treatment.

## **When can the Patient Advocate act on my behalf?**

The Patient Advocate can make decisions for you only when you are unable to participate in medical treatment decisions and two doctors (or one doctor and a psychologist/mental health provider) have documented that in your medical record.

## **Who determines that I am no longer able to make these decisions?**

The doctor responsible for your care and one other doctor will make that decision.

## **Why might I be unable to participate in medical treatment decisions?**

There might be a loss of ability to make or communicate decisions due to a serious accident or illness.

## **What powers can I give my Patient Advocate?**

You can give a Patient Advocate 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 contract for home health care or adult day care, arrange care in a nursing home or move you to a home for the aged.

## **Can I give my Patient Advocate the right to decide whether or not to withhold or withdraw life-sustaining treatment?**

Yes, but you must express in a clear, convincing manner that the Patient Advocate is authorized to make such decisions, and you must acknowledge that those decisions “could” or “would” allow your death.

As just one example:

Artificial nutrition and hydration are generally considered life-sustaining medical treatments. In Michigan, a Patient Advocate may allow the withholding or withdrawing of a medical treatment — including artificial nutrition and hydration, which could or would allow you to die as long as you have expressed in a clear and convincing manner that the Patient Advocate is authorized to make those kinds of decisions. If you want your Patient Advocate to be able to make these important kinds of decisions, you should authorize those kinds of decisions in writing and acknowledge that you understand those kinds of decisions would allow you to die. It's important to discuss these kinds of end-of-life choices with your family, friend and Patient Advocate. Don't talk it about it once and forget about it. Sometimes circumstances change causing your opinion to change, so be sure to have these kinds of discussions more than once.

### **What other kinds of decisions will my Patient Advocate be able to make?**

You may permit your Patient Advocate to make medical care and placement decisions. For example, you may authorize him/her to decide whether you receive care in a nursing home, an assisted-living facility, or whether home health aides should be hired to care for you in your home. Your Patient Advocate may also decide what kind of medical treatment and services you receive and what kinds of medications you take. Consider your options carefully and discuss them with your Patient Advocate.

### **Can a Patient Advocate manage my financial affairs?**

No. A Patient Advocate is only allowed to make health care decisions. You should consult an attorney about completing a Durable Power of Attorney for financial and legal matters. A Patient Advocate can't be paid for being your Patient Advocate. A Patient Advocate may be reimbursed for any actual and necessary expenses incurred while performing the duties of a Patient Advocate. So for example if your Patient Advocate paid a copayment for you, the Patient Advocate could be reimbursed from your funds by those people who are legally handling your funds.

### **Does a Patient Advocate need to accept the responsibility before acting?**

Yes. The person you choose to be your Patient Advocate must sign a Patient Advocate acceptance form. This does not have to be done when you sign the document. However, it should be done very soon after you sign. You should speak to the person you propose to name as your Advocate to be sure he/she is willing to serve. It's a good idea to name a backup in case the first person is unwilling or unable to act when the time comes. **Both your Patient Advocate Designation and the signed acceptance form must become part of your medical record before it can be effective.** Make sure all of your treating doctors have a copy of the Patient Advocate designation and acceptance form.

### **Is there a procedure to ensure that my Patient Advocate is acting according to my expressed wishes?**

Yes. An interested individual who believes that your Advocate is not acting according to your wishes may file a petition with the probate court in the county in which you reside.

### **What if the hospital or nursing facility is not acting according to my expressed wishes?**

Your Patient Advocate has the right to file a complaint against the facility that is caring for you while you are sick if they believe the facility is not acting according to your expressed wishes documented in your Advance Directives.

To file a complaint with the State of Michigan, please visit [www.michigan.gov/lara](http://www.michigan.gov/lara) or call the Complaint Hotline at (800) 882-6006.

### **In general, what should I do before completing a Patient Advocate Designation?**

Take your time. Consider who you might choose to be your Patient Advocate. Think about your treatment wishes. Discuss the issue with family members and your doctor. Talk with your religious or spiritual leader if you feel it would be helpful.

### **Do I need an attorney to fill out the form?**

No. Just make sure the form was created by a health system, hospital, doctor or organization that knows what is required in Michigan. You can consult your attorney or an attorney who specializes in probate law. However, you can establish a Patient Advocate Designation without an attorney.

### **What should I do with my Patient Advocate Designation after it is signed and witnessed?**

**Make it a part of your medical record by giving it to your doctor.** Then give signed copies to your Patient Advocate, your backup Advocate, if you appoint one, and your attorney, if you have one. You should also give a copy to anyone who might be affected by your decision to appoint a Patient Advocate. This may be your spouse, significant other or other family members. If you enter a nursing home or hospital, make sure the facility has a copy of your Patient Advocate Designation.

### **When should I review my Patient Advocate Designation?**

Because medical technology is constantly changing, and since there may be changes in your outlook or health status, it would be wise to review a Patient Advocate Designation once a year. If you decide to keep the Patient Advocate, put your initials and the date on the bottom each time you review it.

### **Can I change my Patient Advocate Designation?**

You can change or cancel your Patient Advocate Designation anytime, either orally or in writing. If you choose a different Patient Advocate, or make any other changes, then you simply establish a new Patient Advocate Designation indicating your wishes. Your previous Designation becomes ineffective on the date the new one is signed. Try to obtain all of the copies of the document and destroy them, they could resurface and cause confusion.

### **Must a hospital or nursing home comply with the directions of my Patient Advocate? What happens if I elect to receive my care at home?**

Hospitals, nursing homes, health plans and other health care providers are required to tell patients about their rights to consent to or refuse treatment, including their rights under state law to have a Patient Advocate Designation or any other kind of Advance Directive. If a health care provider has no reason to question the document's authenticity, believes the patient is no longer able to participate in medical treatment decisions and feels the Patient Advocate's actions are consistent with the patient's expressed wishes, the institution would probably have to comply. Patient Advocate Designations are also applicable when you are receiving home health services or hospice services in your home.

### **Do I have to give my Patient Advocate instructions?**

No. A Patient Advocate Designation can be used just to name your Patient Advocate, the person you want to make decisions for you. But written instructions are generally helpful for everyone involved. And, if you want your Patient Advocate to be able to refuse treatment and let you die, you should say so specifically in the Patient Advocate Designation document itself. Any other instructions you have you can either write down or just tell your Patient Advocate. Either way, the Patient Advocate's job is to follow your instructions.

### **Can I just give instructions and not name a Patient Advocate?**

Yes, you can simply tell somebody, for example, your caregiver or your family and close friends, what your wishes are. Better yet, you can write what is called a “Living Will,” which is a written statement of your choices about medical treatment. Even though there is not yet a state Living Will law in Michigan, some courts and health care providers still find Living Wills valuable. Those taking care of you will pay more attention to what you have written about your treatment choices, whether in a Patient Advocate Designation or a Living Will, because they can be more confident they know what you would have wanted. Most doctors, hospitals and other health care providers will also pay attention to what you’ve said to others, especially your family, about medical treatment. But again, it’s better for everyone involved if you write your wishes down.

### **Do I have to make a decision about my future medical treatment?**

No. You don’t have to fill out a Patient Advocate Designation or a Living Will, and you don’t have to tell anybody your wishes about medical treatment. You will still get the medical treatment you choose now, while you are competent. If you become unable to make decisions, and you’ve made sure that your family and friends know what you would want, they will be able to follow your wishes. Without instructions from you, your family or friends and caregivers may still be able to agree how to proceed. If they don’t, however, a court may have to name a guardian to make decisions for you.

### **If I make decisions now, can I change my mind later?**

Yes. You can give new instructions in writing or orally. You can also change your mind about naming a Patient Advocate at all and cancel your Patient Advocate Designation at any time. You should review your Patient Advocate Designation or Living Will at least once a year to make sure it still accurately states how you want to be treated and/or names the person you want to make decisions for you.

### **What else should I think about?**

Treatment decisions are difficult. We encourage you to think about them in advance and discuss them with your family, friends, advisers and caregivers. You can also discuss treatment policies and procedures with your health care team to be sure you understand them and how they work. If you want more information about Patient Advocate Designations or Living Wills, or sample forms, please ask your caregivers for assistance. Many facilities and agencies have staff available who can answer your questions. Additional materials may be available from your state representative or senator.

### **Are there other kinds of Advance Directives besides a Patient Advocate Designation?**

Yes. Michigan recognizes a Do Not Resuscitate Declaration.

### **What is a Do-Not-Resuscitate Declaration?**

A Do-Not-Resuscitate (DNR) Declaration is a written document that says that if your breathing and heartbeat stop, you do not want anyone to attempt to resuscitate you. If you have such a declaration in place, you may wear a Do-Not-Resuscitate Declaration bracelet that lets people know you do not want to be resuscitated. A Michigan law provides these documents are valid in your home and in other settings but not in hospitals.

### **Must I be terminally ill before signing a DNR declaration?**

No. For example, you may be in good health but still not want to be resuscitated should your heart and lungs fail.

### **Are there standard forms for a DNR Declaration?**

Yes. One form, called a “Do-Not-Resuscitate Declaration”, provides spaces for your doctor to sign, for you to sign, and for two witnesses to sign. There is an alternate form, called a “Do-Not-Resuscitate Declaration (adherent of church or religious denomination)”, for individuals who have religious beliefs against using doctors.

### **Can my Patient Advocate sign the form instead of me?**

Yes.

### **What about when I am in a hospital?**

Hospitals can set their own policies about resuscitation. When you are admitted to the hospital, you should let your doctor know about your wishes and ask that these wishes be documented in your medical record.

### **Is a Living Will also an Advance Directive?**

Some states also recognize living wills. A living will is a written statement that you share with your doctors and family members telling them the type of care you want if you become terminally ill or permanently unconscious, and if you are unable to make decisions or talk about your continued care. A “living will” is not recognized as a legally binding Advance Directive in Michigan. The things a person puts in a living will can help family, friend and doctors decide what kind of care you would want. A living will is sometimes combined with a valid Durable Power of Attorney for Health Care to help the Patient Advocate understand the patient’s treatment choices

### **Does HAP need a copy of my Patient Advocate Designation or Advance Directive?**

Generally, no. Since HAP just coordinates the covered services you receive from doctors and other providers, we usually don’t need a copy of your Advance Directive. If your Patient Advocate needs important information from us to help make decisions about your care, we will ask them to provide a signed copy of the Patient Advocate form. We’ll keep it in your Member record.

### **Does HAP require its contracted doctors and providers to honor my Advance Directive?**

Yes. HAP’s contracted providers are all generally enrolled in Medicare and/or Medicaid. Those programs require doctors and providers to honor Advance Directives. Any complaints you have about those providers should be made to HAP.

If you have a complaint about HAP or any of its providers please contact us. You can also complain directly to the Department of Financial and Insurance Services at (877) 999-6442 or by calling 1-800-MEDICARE (633-2277). To file a complaint online, visit [www.medicare.gov](http://www.medicare.gov), click on the *Claims & Appeals* tab and select *File a Complaint*.

Remember both HAP and HAP-contracted providers have to comply with federal and state law. At HAP, we educate our employees about HAP's policies and procedures for Advance Directives.

In addition, hospitals and nursing homes cannot deny you care based on whether or not you have an Advance Directive in place.

**Want More Information?**

If you belong to a community group that would like more information about Advance Directives, please contact our Speakers Bureau at [hap.org/speakers](http://hap.org/speakers) to request a HAP speaker for your next meeting or event.