

## Advance Directive for Health Care (TN)

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A Standard Document allowing an individual residing in Tennessee to authorize an individual to make health care decisions on the individual's behalf. The advance directive for health care document may include personal instructions regarding health care treatments, including directives regarding life-sustaining treatments or end-of-life care. This Standard Document contains integrated notes and drafting tips.

### DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

An adult or emancipated minor may appoint an agent or surrogate (generally where there is no appointed agent or guardian) to make any health care decision that the principal could make if the principal had the capacity to do so (T.C.A. § 68-11-1803(b), 68-11-1806(a), and see Surrogates).

This Standard Document refers to the individual making the advance directive for health care as the principal and the appointed third party making health care decisions as the agent, except where clearly referred to as a surrogate.

This Standard Document:

- Complies with the rules for drafting an advance directive for health care, choosing an agent, and executing the advance directive in Tennessee, which are found in the Tennessee Health Care Decisions Act (T.C.A. §§ 68-11-1801 to 68-11-1815).
- Is based on a [form](#) provided by the State of Tennessee. This precise form is not required to create a valid advance directive for health care. However, third-party health care providers may be more familiar with it or use a similar form of their own.

### Capacity to Execute An Advance Directive for Health Care

To execute a valid advance directive for health care, the principal must:

- Be an adult or an emancipated minor.
- Have the required mental competence to execute the document.

(T.C.A. § 68-11-1803.)

### Presumption of Competence

The capacity of an adult or emancipated minor to make that individual's own health care decisions is presumed, as is the ability to give or revoke an advanced directive, or designate or remove an agent or surrogate (T.C.A. § 68-11-1812). To overcome the presumption that the principal has capacity, a physician must determine that the principal lacks capacity (T.C.A. § 68-11-1806(b)).

When a client is diagnosed with an illness that could impact the client's competency, counsel should exercise good judgment in:

- Preparing the requested advance directive.
- Documenting conversations with the client.
- Advising the client about any concerns counsel may have about the client's ability to choose an appropriate agent.

### Advance Directive for Health Care Effective Only on Incapacity

Unless the advance directive for health care specifies otherwise, the agent's authority to make health care decisions for the principal is effective only on the determination of the principal's incapacity by the principal's designated physician (T.C.A. § 68-11-1803(c), (d)). Once the principal regains capacity to make the principal's own health care decisions, the agent's authority ceases to be effective (T.C.A. § 68-11-1803(c)).

### Revoking an Advance Directive for Health Care

Counsel should advise the principal that, generally, an executed advance directive for health care is considered valid and in effect indefinitely, provided that:

- A principal with capacity may revoke a designation of an agent in an advance directive for health care:
  - in a signed writing; or
  - by personally informing the supervising health care provider.
- A principal with capacity may revoke all or part of an advance directive for health care, other than the designation of an agent, at any time and in any manner communicating an intent to revoke.
- A decree of annulment, divorce, or dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent, unless otherwise specified in the decree or advance directive.
- An advance directive for health care that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(T.C.A. § 68-11-1804.)

### Surrogates

In Tennessee, a surrogate is an individual a patient may designate orally or in writing to make health care decisions when both:

- The patient lacks capacity to do so.
- No agent (or guardian) is appointed or reasonably available.

(T.C.A. § 68-11-1806(a), (b).) A patient may, but generally does not, designate a surrogate where the patient designated an agent in an existing advance directive for health care.

If a patient lacks capacity and has not appointed an agent or designated a surrogate, and does not have a guardian (or where none of these individuals is reasonably available to serve), the supervising health care provider must identify a surrogate and document that identification in the hospital records where the patient is receiving health care (T.C.A. § 68-11-1806(c)(1)). The surrogate must be an adult who:

- Showed special care and concern for the patient.
- Is familiar with the patient's personal values.
- Is reasonably available.
- Is willing to serve.

(T.C.A. § 68-11-1804(c)(2).) Consideration may be given in determining the person best qualified to serve as the surrogate to:

- Those individuals the statutory order of preference.
- Using statutory criteria.

(T.C.A. § 68-11-1806(c)(3), (4)).

### Bracketed Items

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

## Advance Directive for Health Care (TN)

### ADVANCE DIRECTIVE FOR HEALTH CARE OF [PRINCIPAL NAME]

I, [PRINCIPAL NAME] [(also known as [ALIAS])], hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

#### DRAFTING NOTE: IDENTIFYING THE PRINCIPAL

Counsel should identify the principal in this paragraph. If the principal has any known aliases, including a maiden or married name, counsel should

include these within the parentheses after the principal's name. If not, counsel should delete the parenthetical with the option for an alias designation.

### PART 1

**Agent:** I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: [AGENT NAME]  
Relation: [AGENT RELATION TO PRINCIPAL]  
Address: [AGENT ADDRESS]  
Phone: [CITY] [STATE] [ZIP]  
[AGENT PHONE NUMBER]

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: [ALTERNATE AGENT NAME]  
Relation: [ALTERNATE AGENT RELATION TO PRINCIPAL]  
Address: [ALTERNATE AGENT ADDRESS]  
Phone: [CITY] [STATE] [ZIP]  
[ALTERNATE AGENT PHONE NUMBER]

My acting agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

**When Effective** (mark one):  I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself.  I do not give such permission (this form applies only when I no longer have capacity).

#### DRAFTING NOTE: DESIGNATING A HEALTH CARE AGENT

The principal must identify an agent in this section. The principal should carefully choose a trusted person to serve as the agent. The agent should:

- Know the principal well.
- Respect the principal's objectives and values or be committed to honoring them.

- Live in close proximity to the principal or be available to travel.
- Agree to act as agent.
- Have no felony convictions that could render the person ineligible to serve as a fiduciary under T.C.A. § 40-20-115.

Counsel should recommend that the principal discuss this role with the potential agent, either before or shortly after the principal executes the advance directive for health care when the matter is fresh on the principal's mind.

The principal should confirm whether the nominated agent is:

- A competent adult.
- Available if the principal cannot make health care decisions.
- Willing to act according to the principal's preferences.
- Able to handle potential family conflicts regarding the principal's preferences.

The principal should also nominate an alternate agent willing to serve if the primary agent is unavailable or cannot make decisions for any reason. Otherwise, if the initially designated agent cannot make health care decisions for the principal (and the principal, with capacity, did not make a designation of a health care surrogate):

- The principal's attending physician appoints a surrogate to make health care decisions for the principal (see Drafting Note, Surrogates). Therefore, it is possible an appointed surrogate may not be the individual the principal would have preferred as surrogate.
- The court may need to appoint a conservator for the principal, generally if there is no agent or surrogate appointed.

### Co-Agents

There is no restriction against a principal appointing co-agents to serve, but the principal must then specify whether the co-agents must act together or if they can act independently. If the principal wants co-agents, counsel should include a sentence between the designation of the alternate agent and the HIPAA language that says "Co-agents must act together" or "Co-agents may act separately." Without this specific information, health care providers may become confused about whether one may or both must act.

It is generally best for the principal to choose one agent to serve as primary agent and another proposed agent to serve as alternate agent. Appointing co-agents may lead to confusion, conflict, or delay in making health care decision for the principal.

### Limitations on Who May Serve as Health Care Agent

Typically, any adult may serve as agent for another. The adult serving as agent must be:

- Competent to make health care decisions.
- Not have felony convictions that could render the person ineligible to serve as a fiduciary under T.C.A. § 40-20-115.

### Effect of Termination of Marriage

Divorce or annulment, dissolution of marriage, or legal separation revokes a previous designation of a former spouse as agent under an advance directive for health care, unless the document indicates otherwise (T.C.A. § 68-11-1804). For more information on revocation of an advance directive for health care or an agent's authority to act under an advance directive for health care, generally, see Drafting Note, Revoking an Advance Directive for Health Care.

## PART 2

**Indicate Your Wishes for Quality of Life:** By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "no" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

\_\_\_ \_\_\_ **Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.

Yes No

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- Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
- Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
- End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

**Indicate Your Wishes for Treatment:** If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked “no” above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking “yes” below, I have indicated treatment I want. By marking “no” below, I have indicated treatment I do not want.

- CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
- Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
- Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
- Tube feeding / IV fluids:** Use of tubes to deliver food and water to a principal's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

### DRAFTING NOTE: INDICATING THE PRINCIPAL'S WISHES FOR QUALITY OF LIFE AND TREATMENT

An advance directive for health care authorizes the designated agent to make health care decisions for the principal on the principal's incapacity, unless the document contains express directions or restrictions. This section provides the principal an opportunity to state specific wishes for quality of life and treatment that the principal would like to include. Absent express provisions in the advance directive for health care, the agent is to consider the principal's individual instructions (if any) and other wishes known to the agent, including the principal's religious or moral beliefs, when making decisions. If the agent does not know the principal's wishes and religious or moral beliefs and cannot reasonably determine these,

the agent decides in the principal's best interest, considering the principal's personal values to the extent the agent knows them. (T.C.A. § 68-11-1803(e).)

### Indicating Wishes for Quality of Life

In Part 2, the principal indicates which of the four quality of life scenarios are acceptable or unacceptable to the principal. This part requires the principal to consider whether the possible states of unconsciousness, confusion, dependency, and terminal illness are acceptable or unacceptable.

### Indicating Wishes for Treatment

Depending on the quality of life choices made in the first section of Part 2, the principal then indicates the type of treatment the principal wants in those

instances the principal deems unacceptable. This includes CPR, the use of artificial support, treatment of new conditions, and tube feeding and intravenous fluids.

### PART 3

Other instructions, such as hospice care, burial arrangements, etc.:

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(Attach additional pages if necessary)

#### DRAFTING NOTE: OTHER INSTRUCTIONS

Part 3 allows the principal to indicate additional specific instructions for the agent in the principal's own words. The principal may include specific instructions related to, for example:

- The principal's preferences regarding end-of-life care.

- The principal's preferences regarding burial or cremation, or the administration of religious rites.
- Any other instruction that the principal desires.

Counsel should review this language to ensure that Part 3 does not contradict or create confusion with other provisions of the advance directive for health care.

### PART 4

Organ donation: Upon my death, I wish to make the following anatomical gift for purposes of transplantation, research, and/or education (mark one):

Any organ/tissue  My entire body  Only the following organs/tissues: \_\_\_\_\_

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No organ/tissue donation.

#### DRAFTING NOTE: ANATOMICAL GIFTS

The advance directive for health care is one of several methods by which the principal can indicate the principal's preferences regarding anatomical gifts (T.C.A. § 68-30-105). The principal should understand

that an agent under an advance directive for health care may make an anatomical gift unless the advance directive for health care or other record specifically prohibits the agent from doing so (T.C.A. § 68-30-104(2)).

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Counsel should make sure that any direction regarding anatomical gifts made in this document

does not conflict with the principal's directions in other documents.

### SIGNATURE OF PRINCIPAL

#### PART 5

Your signature must **either** be witnessed by two competent adults ("Block A") **or** by a notary public ("Block B").

Signature: \_\_\_\_\_  
[PRINCIPAL NAME] (Principal)

Date: \_\_\_\_\_

#### Block A

Neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Witnesses:

1. I am a competent adult who is not named as the agent. I \_\_\_\_\_  
witnessed the principal's signature on this form. [FIRST WITNESS NAME]

2. I am a competent adult who is not named as the agent. \_\_\_\_\_  
I am not related to the principal by blood, marriage, or [SECOND WITNESS NAME]  
adoption and I would not be entitled to any portion of the  
principal's estate on his or her death under any existing will  
or codicil or by operation of law. I witnessed the principal's  
signature on this form.

#### Block B

You may choose to have your signature witnessed by a notary public instead of the witnesses described in Block A.

STATE OF TENNESSEE )  
COUNTY OF [COUNTY NAME] )  
)

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "principal." The principal personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the principal appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE:** (1) provide a copy to your physician(s); (2) keep a copy in your personal files where it is accessible to others; (3) tell your closest relatives and friends what is in the document; (4) provide a copy to the person(s) you named as your health care agent.

\* This form replaces the old forms for durable power of attorney for health care, living will, appointment of agent, and advance care plan, and eliminates the need for any of those documents.

### DRAFTING NOTE: EXECUTION REQUIREMENTS

The principal must sign and date the advance directive for health care in the presence of either:

- Two witnesses.
- A notary, if there are no signing witnesses.

(T.C.A. § 68-11-1803(b)). Some attorneys prefer to have two witnesses and a notary present, though not technically required.

A witness to an advance directive for health care must be a competent adult who is not the individual being

appointed as agent under the document. Also, at least one of the two witnesses must not be related to the principal by blood, marriage, adoption or otherwise entitled to inherit from the estate of the principal under any will or codicil, or by operation of law, for example, as a joint owner with a right of survivorship or as a beneficiary named in a beneficiary designation. (T.C.A. § 68-11-1803(b).)

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