

# Your Right to Make Health Care Decisions

## OVERVIEW

This pamphlet informs you about your right to make health care decisions, including the right to accept or refuse medical treatment. It explains the following advance directives and related subjects:

1. Medical Durable Power of Attorney
2. Living Will
3. Cardio Pulmonary Resuscitation (CPR) Directive
4. Substitute Decision Maker (Medical Proxy)
5. Guardian

Federal law directs that any time you are admitted to any health care facility, or served by certain organizations that receive Medicare or Medicaid money, you must be told about Colorado's laws concerning your right to make health care decisions. This requirement applies to all adult patients no matter what their medical condition. This pamphlet is designed to provide information about your rights under Colorado law to accept or refuse medical treatment, including life support. These are important personal health care decisions and they deserve careful thought. It's a good idea to talk about them with your doctor, family, friends, staff members of your health care facility and possibly a lawyer.

You have the right to consent to (accept) or refuse any medical care and treatment, unless care is ordered by a court. In an emergency, your consent to resuscitation, medical care and treatment is assumed.

If and when you are unable to make your own decisions, Colorado law allows your guardian or your agent "appointed" or "named" under a Medical Durable Power of Attorney to make your health care decisions. In the absence of an advance medical directive or guardian, Colorado law allows a person close to you to be a substitute decision

maker (proxy). In the absence of advance directives, Colorado law requires the physician or the physician's designee to make reasonable efforts to contact those close to the patient for the purpose of seeking a proxy.

Medical Durable Power of Attorney and Living Will forms are included as part of this kit. It should be noted, however, that other forms are also acceptable.

## INTRODUCTION TO ADVANCE DIRECTIVES

Your right to make medical care decisions includes giving "advance directives" which are written instructions concerning your wishes about your medical treatment. These instructions are used in the event you become unable to make health care decisions for yourself. You must be given information on advance directives by Medicare- and Medicaid-funded hospitals, nursing homes, HMOs, hospices, home health care and personal care programs at the time you are admitted as a patient or resident in any of those programs or facilities. You must also be given written information on facility and provider policies concerning advance directives. Please understand that you are not required to have an advance directive in order to receive care and treatment, or for admission to a facility. You must only be informed about them. **Whether or not you have an advance directive, you will receive the medical care and treatment appropriate for your condition and consistent with your consent and facility policies.**

If you spend a great deal of time in more than one state, you may wish to consider having an advance directive that meets the requirements of the laws of all the states where you spend significant time. You should prepare an advance directive before you get too sick to think or communicate clearly. In Colorado, there are three kinds of medical

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advance directives. A **Living Will** is a signed, dated and witnessed document you prepare to tell others what type of care you want or don't want if you become terminally ill. A **Medical Durable Power of Attorney** is a document in which you appoint someone to make health care decisions for you when you are unable to make them yourself. A **Cardio Pulmonary Resuscitation (CPR) Directive** allows you or your medical proxy to refuse resuscitation (CPR) if you stop breathing or your heart stops.

Any Living Will, Medical Durable Power of Attorney and CPR Directive may include a written statement indicating a decision regarding organ and tissue donation. Organ donation may also be accomplished by signing a separate document executed in accordance with the provisions of the "Uniform Anatomical Gift Act". You should consult your health care provider for specifics. You should also notify your family of your decision to give an anatomical gift.

If you have prepared and signed an advance directive, it will represent your wishes if you become unable to make health care decisions for yourself. These documents do not take away your right to decide what you want, if you are able to do so at the time a decision is needed.

If you have an advance directive from another state, it may still be valid in Colorado. However, it is recommended you prepare a new advance directive under Colorado law.

## MEDICAL DURABLE POWER OF ATTORNEY

A Medical Durable Power of Attorney is a document you sign naming someone to make your health care decisions. The person you name is called your agent. Your agent stands in for you when it is time to make any and all medical or other health care decisions with your doctor. Your agent can get copies of your medical records and other information to make medical decisions for you.

There are other types of durable powers of attorney which allow an agent to make different kinds of decisions for you, including financial ones.

A Medical Durable Power of Attorney can cover more health care decisions than a Living Will does and is not limited to terminal illness. You may put instructions or guidelines into your Medical Durable Power of Attorney telling your agent

what you really want. You can cancel (revoke) your Medical Durable Power of Attorney at any time.

Your Medical Durable Power of Attorney can become effective immediately, or you can make it become effective when you become unable to make your own medical decisions. A Medical Durable Power of Attorney form is included in this kit and may be used. The Medical Durable Power of Attorney discussed in this pamphlet is the type which becomes effective only when you become unable to make your own health care decisions. If you want information on the one that can become effective immediately, you may want to talk to a lawyer.

You can appoint anyone to be your health care agent as long as that person is at least 18 years old, mentally competent and willing to be your agent. Your agent does not have to live in Colorado, although you may want to choose someone nearby. If you appoint your spouse as your agent, and then later you are divorced, legally separated or your marriage is annulled, your former spouse is automatically removed as your agent unless expressly stated otherwise in your Medical Durable Power of Attorney.

If you'd like to create a durable power of attorney, fill out the blue-colored form titled *Medical Durable Power of Attorney for Health Care Decisions* in this section of the Patient Safety Kit. If you need assistance filling out this form, contact your patient representative by dialing 2205. It is important to talk with your doctor, your family and your agent about your medical care choices and your advance directives.

## LIVING WILL

A Living Will is a document you sign telling your doctor not to use artificial life support measures if you become terminally ill. That means you have an incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to postpone the moment of death. In Colorado, your Living Will does not go into effect until two doctors agree in writing that you have a terminal condition.

In Colorado, Living Wills may be used to stop tube feeding and other forms of artificial nourishment, but only if your Living Will clearly says so. If you are able to take food by

mouth, your Living Will won't prevent you from being fed. In any case, artificial nourishment may be used if necessary to provide comfort or relieve pain.

Two witnesses must sign your Living Will. The following cannot witness or sign a Living Will: patients in the facility in which you are receiving care, any doctor or any employee of your doctor, any employee of the facility or agency providing your care, your creditors or people who may inherit your money or property.

If you'd like to create a Living Will, fill out the yellow-colored form titled *Living Will* in this section of the Patient Safety Kit. If you need assistance filling out this form or obtaining witnesses, contact your patient representative by dialing 2205. This form, in addition to other versions meeting Colorado requirements, is acceptable and may be used. Legal assistance is not required to complete a Living Will. If you have legal questions, you may want to talk with a lawyer.

You can cancel or change your Living Will at any time. You can do this by destroying it. You may also sign a statement that you no longer want it or you may prepare a new one. If you cancel or change your Living Will, you should tell your family, your doctor, and anyone who has a copy of it that it has been canceled or changed.

## CARDIO PULMONARY RESUSCITATION (CPR) DIRECTIVE

A CPR (Cardio Pulmonary Resuscitation) Directive allows you, your agent, guardian or proxy to refuse resuscitation. CPR is an attempt to revive someone whose heart and/or breathing has stopped by using special drugs and/or machines or very firm pressing on the chest.

If you have a CPR Directive, and your heart and/or lungs stop or malfunction, then paramedics and doctors, emergency personnel or others will not try to press on your chest or use breathing tubes, electric shock, or other procedures to get your heart and/or lungs working again.

Most health care facilities have a policy which requires that resuscitation be done unless there are written physician orders (DNR or Do Not Resuscitate Orders) or patient CPR Directives to the contrary. DNR orders are written by a physician when, in a physician's judgment,

and often after consultation with the patient, resuscitation would not be appropriate.

Anyone over the age of 18 can sign a CPR Directive, which becomes effective upon a physician's signature. CPR Directives are usually signed by patients with terminal illnesses. They are sometimes signed by very frail elderly patients who are not ill at the time but may in the future have small strokes, a weak heart, hardening of the arteries, failing liver or kidney or other conditions. If resuscitation is performed, it may result in the patient being paralyzed, forever unconscious, or unable to speak or understand.

**Minors:** After a physician issues a "Do Not Resuscitate" order for a minor child, and only then, the parents of the minor, if married and living together, or the custodial parent or the legal guardian may execute a CPR Directive for the child.

If you do not have a CPR Directive or a DNR Order, your consent to CPR will be assumed. In most situations, hospitals and nursing homes respond as if all patients want resuscitation unless they have refused it. Patients, families and/or agents, guardians or proxies are encouraged to check with the facility in question as to their CPR Directive and DNR Order policies.

Even if you have other types of advance directives, the use of a CPR Directive is strongly recommended if you do not want to be resuscitated. Colorado law does not require that a specific CPR Directive form be used. There is a state approved CPR form, but other CPR Directive forms may be used. Regardless of the form you use, you should inform family members of your wishes and about the location of the CPR Directive form. If this directive is not found or you are not wearing a CPR necklace or bracelet, CPR will probably be initiated.

Signing a CPR Directive will not prevent you from receiving other kinds of needed medical care such as treatment for pain, bleeding, broken bones or other comfort care. A CPR Directive may be canceled at any time by the person who has signed it. All original forms must be canceled.

CPR Directive forms may be obtained from your physician or from licensed health care facilities. This directive must be signed by you, or your agent or proxy and your doctor. The original copy must be available to appropriate personnel, and you are urged to order and wear a necklace or bracelet

that will quickly identify you as someone who does not want to be resuscitated. Order forms for the state-approved necklace or bracelet are available at the time you and your doctor sign a CPR Directive form. There is a charge for the necklace or bracelet.

If you would like to create a CPR Directive, contact your patient representative by dialing 2205.

## **SUBSTITUTE DECISION MAKER (MEDICAL PROXY)**

Under Colorado law, family members and close friends can select a substitute decision maker (proxy) for you if you do not have an advance directive or a guardian, and if a doctor or a judge determines that you are unable to make medical decisions. Your spouse or parent or adult child, grandchild, brother/sister, or a close friend may be chosen as the proxy by mutual agreement.

When a doctor determines a patient is unable to make medical decisions, reasonable efforts must be made to tell you who the proxy is, and the patient has the right to object to the proxy selected and any proxy's decision. If the patient is re-examined later and has regained decision-making capacity, the proxy is relieved of duty.

A proxy can make decisions about all kinds of personal and medical care, and shall comply with your wishes for medical care, if known. (If your wishes are not known, the proxy is to act in your best interest.) The proxy can decide to stop (or not to start) tube feeding only when two doctors agree that tube feeding would only prolong dying and is unlikely to help the patient recover. One of the doctors must be trained in neurology or neurosurgery.

If any of the people entitled to choose your proxy disagree with the choice, or with the proxy's actions, or no proxy can be agreed upon, then that person can ask the court to start a guardianship. Under Colorado's proxy law, no member

of the group has "automatic" priority. The person chosen as your proxy should be the one who knows your medical wishes the best.

## **GUARDIAN**

A guardian is a person appointed by a court to assist with the personal affairs of an individual who is unable to make his own decisions. The law regards a person as being unable to make personal decisions if he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself. This may result from mental illness, mental retardation, physical illness or disability, chronic use of drugs and/or alcohol or other causes. A person who is subject to a guardianship is called a "ward."

It is important to recognize that, other than in emergency situations, it may take several months for the appointment of a guardian.

Any person aged 21 or over, or an appropriate agency which is willing to serve, may be appointed as a guardian. A guardian is not required to provide for a ward out of his own funds, nor is he required to live with the ward. In addition, a guardian is not responsible for a ward's behavior. Guardianship can be shared by more than one individual.

Generally, the duties of a guardian are to determine where the ward should live, to arrange for necessary care, treatment or other services for the ward, and to see that the basic daily personal needs of the ward are met, including food, clothing and shelter. A court order may allow a guardian to make medical care and treatment decisions. A guardian may manage financial matters for the benefit of a ward. A court may appoint a limited guardian to provide particular services for a specific length of time.