



Arizona State Senate *Issue Brief*

September 28, 2007

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

HEALTH CARE DIRECTIVES

FEDERAL REQUIREMENTS

In 1990, Congress passed the Patient Self-Determination Act (PSDA) as part of that year's Omnibus Budget Reconciliation Act. The PSDA required providers and organizations (including hospitals, nursing facilities and home health agencies) that accept Medicare and Medicaid reimbursement to have written policies and procedures for all adult patients related to advance directives for health care. These directives are the means by which an individual informs health care providers about his or her beliefs and desires regarding health care procedure and treatments, when the individual is unable to otherwise communicate. An advanced directive is defined by the PSDA as "a written instruction...recognized under state law and relating to the provision of such care when the individual is incapacitated."

The PSDA requires the specified providers to present patients with written information about any state laws regarding a patient's right to make medical care decisions, including the right to accept or refuse treatment and to develop advance directives. Providers must also implement these patient rights and document, in a prominent part of the patient's medical record, whether the patient has executed an advance directive. A provider may not discriminate against individuals based on whether the patient has an advance directive and must provide education for staff and the community regarding advance directives.

ARIZONA HEALTH CARE DIRECTIVES

Arizona statute defines a health care directive as a document drafted in compliance with statute "to deal with a person's future health care decisions."

If an adult patient is unable to make or communicate health care treatment decisions, Arizona statute requires a health care provider to make a reasonable effort to locate a health care directive and to follow any existing valid directive.

An individual may revoke his or her directive through oral or written notification, when a new directive is executed or through any other act that demonstrates a specific intent to revoke or disqualify a surrogate decision maker. Some directives may be revoked by court order.

Health care providers who make good faith decisions when relying on apparently genuine directives are immune from criminal and civil liability and are not subject to professional discipline for relying on that information.

Types of Health Care Directives

Under Arizona law, there are four common types of health care directives. Statute provides guidelines and sample forms for each of the four directives:

- **Durable Health Care Power of Attorney** – a written statement in which an individual names an adult to make health care decisions for him or her or provide funeral arrangements only when the individual cannot make or communicate such decisions (A.R.S. § 36-3221 et seq.).¹
- **Durable Mental Health Care Power of Attorney** – a written statement in which an individual names an adult to make mental health treatment decisions for him or her only when the individual is found incapable of making such decisions for him or herself. If an individual does not have a mental health power of attorney, an adult designated as a health care power of attorney may make mental health treatment decisions (A.R.S. § 36-3281 et seq.).
- **Living Will** – a written statement about specific types of health care an individual does or does not want. This would be invoked if the individual could not make health care decisions on his or her own. For example, a living will may specify whether an individual should receive a feeding tube if he or she is in a persistent vegetative state that is deemed irreversible or incurable (A.R.S. § 36-3261 et seq.).

¹ Laws 2007, Chapter 94, allows an individual, as part of a written health care power of attorney, to designate a person to make decisions related to funeral and final disposition responsibilities in the event of the individual's death. Chapter 94 also establishes a sample power of attorney form that may be used for funeral and disposition requests and designations.

- **Prehospital Medical Care Directive** – a directive refusing cardiopulmonary resuscitation by emergency medical system and hospital emergency department personnel, in the event of cardiac or respiratory arrest. Cardiopulmonary respiration includes numerous specified interventions, including defibrillation and artificial ventilation, but does not include other procedures such as intravenous fluids or oxygen. This type of directive is printed on an orange background and is commonly known as the “Orange Form” or “Orange Card” (A.R.S. § 36-3251 et seq.).

Health care directives prepared in other states or those prepared before the establishment of the existing Arizona directives are considered valid if they were valid when and where they were adopted, as long as they do not conflict with Arizona criminal laws.

Health Care Directives Registry

Arizona statute requires the Secretary of State to establish and maintain an online health care directives registry. Individuals may register their Health Care Power of Attorney, Mental Health Care Power of Attorney and Living Wills with the registry. However, directives are not required to be registered with the registry. Prehospital Medical Care Directives are excluded from the registry because they are intended to be used in emergency situations, when immediate access to the registry may not be possible.

The information in the registry is confidential and may only be accessed by the registrant, the registrant's personal representative or a health care provider using information provided by the registrant. It is the responsibility of the registrant to inform his or her health care provider of existing health care directives; health care providers are not required to request information from the registry about whether a patient has executed a directive.

ADDITIONAL RESOURCES

- Secretary of State, Advance Directive Registry
602-542-4285
http://www.azsos.gov/adv_dir/
- Arizona Attorney General
Life Care Planning Packet
http://www.azag.gov/life_care/
- Health Care Directives Statutes: Arizona
Revised Statutes, Title 36, Chapter 32