



In All Our Living: Advance Directives: Why do we need them?

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Prior to Patient Self-Determination Act

- 1914- Judge Benjamin Cardozo - Right of Self Determination...”every human being of adult years of sound mind has the right to determine what should be done to his own body...”
- 1930’s-1950’s - development of mechanical ventilators and CPR; shift to a technical approach to maintaining life
- 1960’s - influence on patients’ rights
 - Women’s movement
 - Consumers’ movement
 - Informed consent
 - Increased technology
- Late 1960’s - Concept of living will - Illinois attorney

Influential Cases

- 1975- Karen Ann Quinlan (d. 1985)
 - 1976 - NJ Supreme Court decided in favor of parents request to remove life support
 - Decision based on right to privacy outweighing State's interest
- 1983- Nancy Cruzan (d. 1990)
 - 1988-Missouri Supreme Court decided that State's interest to preserve life outweighed right to privacy
 - 1990 - affirmed right of competent individuals to refuse any life-sustaining therapy, including artificial nutrition and hydration (liberty)

State Actions

- 1976 - California - Natural Death Act
 - 1st law to give legal force to living wills
 - Preserve dignity and privacy
- 1977- Arkansas
 - One of first states to pass advance directive legislation
- Pennsylvania
 - 1st state to enact legislation for durable power of attorney



State Laws

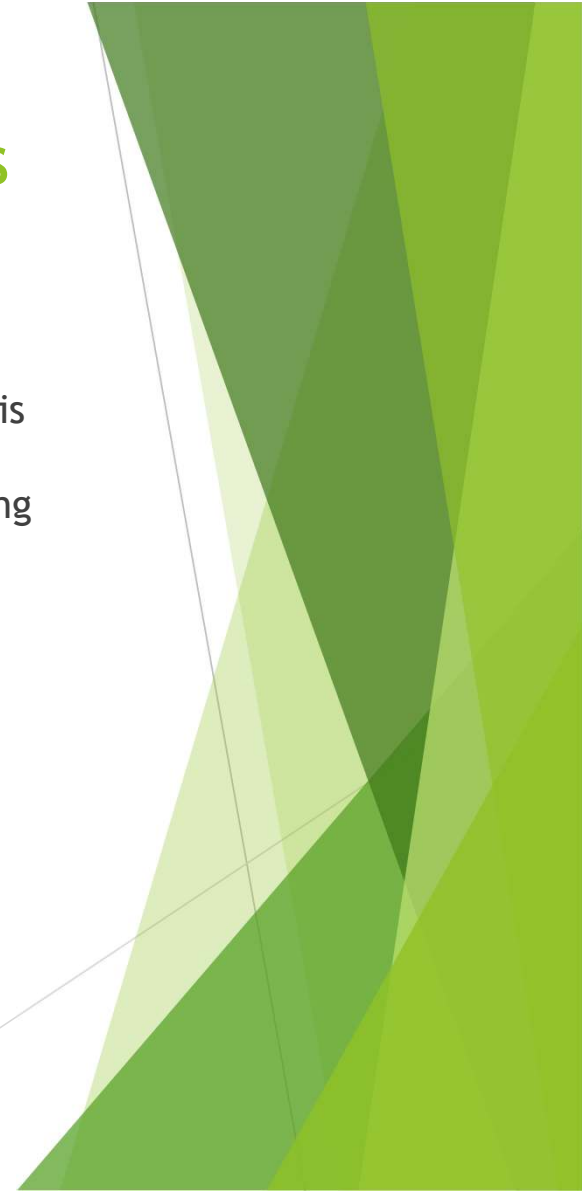
- All 50 states and DC - laws recognizing use of living wills and durable power of attorney (DPOA) for health care
- Most states accept advance directives from other states
 - New Mexico accepts out of state advance directives
- Usually an advance directive does not need to be witnessed or notarized
 - Not necessary in New Mexico
- Health care providers legally obligated to follow and advance directive
 - New Mexico Uniform Health Care Decisions Act so stipulates

Patient Self Determination Act (PSDA)

- PSDA movement grew as a result of public perception that dying patients received significant amount of unwanted or non-beneficial care
- 1990 - PSDA passed by Congress (effective 1991)
 - Provide written information to all adults concerning their rights under state law to:
 - Participate in decisions about health care including right to refuse or accept treatment
 - Complete an advance directive which will be documented in patient's record
 - Health care providers required to honor these rights
 - Provide for staff and community education about issues of advance directives

New Mexico's Uniform Health Care Decisions Act

An adult or emancipated minor, while having capacity, has the right to make his or her own health-care decisions and may give an individual instruction. The instruction may be oral or written; if oral, it must be made personally informing a health-care provider. The instruction may be limited to take effect only if a specified condition arises (e.g., if the individual becomes incapacitated)



Goals of Advance Directives

- Protect patient autonomy
- Right to self determination
- Right to privacy
- Right to accept or refuse treatment



Forms of Advance Directives

➤ **Living Will**

- Outlines preferences about end of life treatments in event patient incapacitated
- Lists types of medical desired or not desired
- Not required to be legally executed

➤ **Durable Power of Attorney for Health Care (DPAHC)**

- Appoint proxy to make health care decisions
- Some states require patients to be terminally ill for proxy to make decisions
- Some states permit turning over decision making prior to becoming incompetent

Forms of Advance Directives

- ▶ POLST (Provider Orders for Life-Sustaining Treatment)
 - ▶ A way to standardize way in which health care professionals prescribe a plan of care
 - ▶ Providing medical orders in time of crisis
 - ▶ Portable
- ▶ NM MOST (Medical Orders for Scope of Treatment)
 - ▶ Has option to refuse CPR by Emergency responders
- ▶ NM Emergency DNR
 - ▶ Only applies to pre - hospital
 - ▶ Not a directive for care only to resuscitation