

# NEBRASKA

## Advance Directive

### Planning for Important Healthcare Decisions

***Caring Connections***  
1731 King St., Suite 100, Alexandria, VA 22314  
[www.caringinfo.org](http://www.caringinfo.org)  
800/658-8898

Caring Connections, a program of the National Hospice and Palliative Care Organization (NHPCO), is a national consumer engagement initiative to improve care at the end of life.

Caring Connections tracks and monitors all state and federal legislation and significant court cases related to end-of-life care to ensure that our advance directives are up to date.

#### **It's About How You LIVE**

*It's About How You LIVE* is a national community engagement campaign encouraging individuals to make informed decisions about end-of-life care and services. The campaign encourages people to:

- L**earn about options for end-of-life services and care
- I**mplement plans to ensure wishes are honored
- V**oice decisions to family, friends and healthcare providers
- E**ngage in personal or community efforts to improve end-of-life care

Visit [www.caringinfo.org](http://www.caringinfo.org) to learn more about the LIVE campaign, obtain free resources, or join the effort to improve community, state and national end-of-life care.

If you would like to make a contribution to help support our work, please visit [www.nationalhospicefoundation.org/donate](http://www.nationalhospicefoundation.org/donate). Contributions to national hospice programs can also be made through the Combined Health Charities or the Combined Federal Campaign by choosing #11241.

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## **Your Advance Care Planning Packet**

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## Using these materials

### BEFORE YOU BEGIN

1. Check to be sure that you have the materials for each state in which you may receive healthcare.
2. These materials include:
  - Instructions for preparing your advance directive.
  - Your state-specific advance directive forms, which are the pages with the gray instruction bar on the left side.

### PREPARING TO COMPLETE YOUR ADVANCE DIRECTIVE

3. Read the HIPAA Privacy Rule Summary on page 4.
4. Read all the instructions, on pages 7 through 9, as they will give you specific information about the requirements in your state.
5. Refer to the Glossary located in Appendix A if any of the terms are unclear.

### ACTION STEPS

6. You may want to photocopy these forms before you start so you will have a clean copy if you need to start over.
7. When you begin to fill out the forms, refer to the gray instruction bars - they will guide you through the process.
8. Talk with your family, friends, and physicians about your advance directive. Be sure the person you appoint to make decisions on your behalf understands your wishes.
9. Once the form is completed and signed, photocopy the form and give it to the person you have appointed to make decisions on your behalf, your family, friends, healthcare providers and/or faith leaders so that the form is available in the event of an emergency.

If you have questions or need guidance in preparing your advance directive or about what you should do with it after you have completed it, please refer to the state-specific contacts for Legal & End-of-Life Care Resources Pertaining to Healthcare Advance Directives, located in Appendix B.

## Summary of the HIPAA Privacy Rule

HIPAA is a federal law that gives you rights over your health information and sets rules and limits on who can look at and receive your health information.

### Your Rights

You have the right to:

- Ask to see and get a copy of your health records.
- Have corrections added to your health information.
- Receive a notice that tells you how your health information may be used and shared.
- Decide if you want to give your permission before your health information can be used or shared for certain purposes, such as marketing.
- Get a report on when and why your health information was shared for certain purposes.
- If you believe your rights are being denied or your health information isn't being protected, you can:
  - File a complaint with your provider or health insurer, or
  - File a complaint with the U.S. Government.

You also have the right to ask your provider or health insurer questions about your rights. You also can learn more about your rights, including how to file a complaint from the Web site at [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/) or by calling 1-866-627-7748.

### Who Must Follow this Law?

- Doctors, nurses, pharmacies, hospitals, clinics, nursing homes, and many other healthcare providers.
- Health insurance companies, HMOs, most employer group health plans.
- Certain government programs that pay for healthcare, such as Medicare and Medicaid.

### What Information is Protected?

- Information your doctors, nurses, and other healthcare providers put in your medical record.
- Conversations your doctor has had about your care or treatment with nurses and other healthcare professionals.
- Information about you in your health insurer's computer system.
- Billing information about you from your clinic/healthcare provider.
- Most other health information about you, held by those who must follow this law.

## Summary of the HIPAA Privacy Rule (continued)

Providers and health insurers who are required to follow this law must keep your information private by:

- Teaching the people who work for them how your information may and may not be used and shared.
- Taking appropriate and reasonable steps to keep your health information secure.

To make sure that your information is protected in a way that does not interfere with your healthcare, your information can be used and shared:

- For your treatment and care coordination,
- To pay doctors and hospitals for your healthcare,
- With your family, relatives, friends or others you identify who are involved with your healthcare or your healthcare bills, unless you object,
- To protect the public's health, such as reporting when the flu is in your area, or
- To make required reports to the police, such as reporting gunshot wounds.

Your health information cannot be used or shared without your written permission unless this law allows it. For example, without your authorization, your provider generally cannot:

- Give your information to your employer.
- Use or share your information for marketing or advertising purposes, or
- Share private notes about your mental health counseling sessions.

## Introduction to Your Nebraska Advance Directive

This packet contains two legal documents that protect your right to refuse medical treatment you do not want, or to request treatment you do want, in the event you lose the ability to make decisions yourself:

1. The **Nebraska Power of Attorney for Health Care** lets you name someone to make decisions about your health care—including decisions about life support—if you can no longer speak for yourself. The Power of Attorney for Health Care is especially useful because it appoints someone to speak for you any time you are unable to make your own health care decisions, not only at the end of life. It goes into effect when your doctor and, when applicable, a consulting physician certify in writing that you are incapable of making health care decisions, and document the cause and nature of your incapacity. The term incapable means the inability to understand and appreciate the nature and consequences of healthcare decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision.
2. The **Nebraska Declaration** is your state's living will. It lets you state your wishes about medical care in the event that you can no longer make your own health care decisions. The Declaration becomes effective once your attending doctor (1) determines that you are incapable of making decisions about the use of life-sustaining treatment and that you are either in a persistent vegetative state or in a terminal condition and (2) has notified a reasonably available member or your immediate family or guardian, if any, of his or her diagnosis of incapacity and the intent to invoke your Declaration.

*Note: These documents will be legally binding only if the person completing them is a competent adult (at least 19 years old) or someone who is or has been married.*

## Instructions for Completing Your Nebraska Power of Attorney for Health Care

### Whom should I appoint as my attorney-in-fact?

Attorney-in-fact does not refer to a lawyer. Your attorney-in-fact is the person you appoint to make decisions about your medical care if you become unable to make those decisions yourself. Your power of attorney may be a family member or a close friend whom you trust to make serious decisions. The person you name as your attorney-in-fact should clearly understand your wishes and be willing to accept the responsibility of making medical decisions for you. (An attorney-in-fact may also be called an "agent" or "proxy.")

The person you appoint as your attorney-in-fact cannot be:

- your doctor,
- an employee of your doctor who is not related to you by blood, marriage or adoption,
- an owner, operator or employee of your treating health care provider who is not related to you by blood, marriage or adoption, or
- a person unrelated to you by blood, marriage or adoption who is currently serving as an attorney-in-fact for ten or more people.

You can appoint a second person as your alternate attorney-in-fact. The alternate will step in if the first person you name as power of attorney is unable, unwilling or unavailable to act for you.

### How do I make my Nebraska Power of Attorney for Health Care legal?

The law requires that you have your Power of Attorney for Health Care witnessed. You can do this in either of two ways:

1. Have your signature witnessed by a notary public who is neither your attorney-in-fact nor your alternate attorney-in-fact,

**OR**

2. Sign your document in the presence of two witnesses, who must also sign the document to show that they know you and believe you to be of sound mind, that neither they nor your doctor are appointed as your attorney-in-fact, and that you have signed or acknowledged your signature in their presence. These witnesses **cannot** be:

- your spouse, parent, child, grandchild, sibling or presumptive heir,
- a known devisee at the time of the witnessing,
- your doctor,
- the person you name as your attorney-in-fact, or
- an employee of your life or health insurance provider.

*Note: No more than one witness may be an administrator or employee of a health care provider that is caring for or treating you.*

## **Instructions for Completing Your Nebraska Power of Attorney for Health Care (continued)**

### **Should I add personal instructions to my Nebraska Power of Attorney for Health Care?**

Under Nebraska law, your attorney-in-fact does not have the authority to consent to the withholding or withdrawal of a life-sustaining procedure or artificially administered nutrition or hydration (*e.g.*, tube feeding) ***unless***:

- You are suffering from a terminal condition or are in a persistent vegetative state; *and*
- You have explicitly granted your attorney-in-fact with the authority to withdraw or withhold such treatments; *or*
- Your wishes regarding the withdrawal or withholding of such treatments is established by clear and convincing evidence.

### **What if I change my mind?**

You may revoke your Nebraska Power of Attorney for Health Care at any time and in any manner that reflects your intent to revoke, provided that you are competent. Your revocation is effective once you notify your health care provider, attending physician or attorney-in-fact.

Your health care provider and attorney-in-fact, if notified, must inform your attending physician of the revocation.

Unless you provide otherwise, making a valid power of attorney for health care will revoke any previously executed power of attorney for health care.

*Note: If you appoint your spouse as your attorney-in-fact, a decree of divorce or legal separation will automatically revoke that appointment, unless the decree specifically provides otherwise.*

### **What other important facts should I know?**

A pregnant patient's Power of Attorney for Health Care will not be honored if it is probable that the fetus will develop to the point of live birth with continued life support.

## **Instructions for Completing Your Nebraska Declaration**

### **How do I make my Nebraska Declaration legal?**

In order to make your Declaration legally binding, you must do one of two things:

1. Sign your Declaration, or direct another to sign it, in the presence of two witnesses. These witnesses cannot be employees of your life or health insurance provider. No more than one witness can be an administrator or employee of your treating health care provider.

**OR**

2. Sign your Declaration, or direct another to sign it, in the presence of a notary public.

### **Can I add personal instructions to my Declaration?**

Yes. There is a section in your document where you can add personal instructions.

If you have appointed an attorney-in-fact and you want to add personal instructions to your Declaration, it is a good idea to write a statement such as "Any questions about how to interpret or when to apply my Declaration are to be decided by my agent."

### **What if I change my mind?**

You may revoke your Nebraska Declaration at any time and in any manner without regard to your mental or physical condition. Your revocation becomes effective once you or a witness to your revocation notify your doctor or treating health care provider.

### **What other important facts should I know?**

A pregnant patient's Nebraska Declaration will not be honored if it is probable that the fetus will develop to the point of live birth with continued life support.

**INSTRUCTIONS**

**NEBRASKA POWER OF ATTORNEY FOR HEALTH CARE  
PAGE 1 OF 4**

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PRINT THE NAME,  
ADDRESS, AND  
TELEPHONE  
NUMBER OF  
YOUR ATTORNEY-  
IN-FACT

I appoint \_\_\_\_\_,  
whose address is \_\_\_\_\_,  
and whose telephone number is \_\_\_\_\_,  
as my power of attorney for health care.

PRINT THE NAME,  
ADDRESS AND  
TELEPHONE  
NUMBER OF  
YOUR ALTERNATE  
ATTORNEY-IN-FACT

I appoint \_\_\_\_\_,  
whose address is \_\_\_\_\_,  
and whose telephone number is \_\_\_\_\_,  
as my successor power of attorney for health care.

I authorize my attorney-in-fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

ADD GENERAL  
INSTRUCTIONS  
(IF ANY)

I direct that my power of attorney comply with the following instructions or limitations: (optional)

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Palliative Care  
Organization  
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**NEBRASKA POWER OF ATTORNEY FOR HEALTH CARE**  
**PAGE 2 OF 4**

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STATE YOUR  
DIRECTIONS FOR  
THE USE OF LIFE-  
SUSTAINING  
TREATMENT  
(IF ANY)

I direct that my attorney-in-fact comply with the following instructions on life-sustaining treatment (any medical procedure, treatment, or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function that serves only to prolong the dying process of a person suffering from a terminal condition or who is in a persistent vegetative state): (optional)

STATE YOUR  
DIRECTIONS FOR  
THE USE OF  
ARTIFICIAL  
NUTRITION AND  
HYDRATION  
(IF ANY)

I direct that my attorney-in-fact comply with the following on artificially administered nutrition and hydration: (optional)

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY POWER OF ATTORNEY, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

SIGN AND DATE  
YOUR DOCUMENT

\_\_\_\_\_  
(signature of person making designation)

\_\_\_\_\_  
(date)

**NEBRASKA POWER OF ATTORNEY FOR HEALTH CARE  
PAGE 3 OF 4**

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WITNESSING  
PROCEDURE

YOUR WITNESSES  
MUST PRINT  
THEIR NAMES  
AND SIGN AND  
DATE YOUR  
DOCUMENT

**DECLARATION OF WITNESSES**

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney-in-fact by this document.

**Witnessed by:**

WITNESS #1

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(printed name of witness)

WITNESS #2

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(printed name of witness)

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Organization  
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**INSTRUCTIONS**

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Other directions:

ADD PERSONAL  
INSTRUCTIONS  
(IF ANY)

SIGN AND DATE  
YOUR DOCUMENT  
PRINT YOUR  
ADDRESS

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

TURN TO THE  
NEXT PAGE TO  
HAVE YOUR  
DOCUMENT  
WITNESSED

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**NEBRASKA DECLARATION – PAGE 2 OF 2**

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WITNESSING  
PROCEDURE

The declarant voluntarily signed this writing in my presence.

YOUR TWO  
WITNESSES  
MUST SIGN YOUR  
DOCUMENT AND  
PRINT THEIR  
ADDRESSES

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

OR

**OR**

A NOTARY PUBLIC  
MUST SIGN YOUR  
DOCUMENT HERE

The declarant voluntarily signed this writing in my presence.

\_\_\_\_\_  
notary public

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*Courtesy of Caring Connections  
1731 King St., Suite 100, Alexandria, VA 22314  
www.caringinfo.org, 800/658-8898*

## **You Have Filled Out Your Advance Directive, Now What?**

1. Your Nebraska Power of Attorney for Health Care and Nebraska Declaration are important legal documents. Keep the original signed documents in a secure but accessible place. Do not put the original documents in a safe deposit box or any other security box that would keep others from having access to them.
2. Give photocopies of the signed originals to your power of attorney and alternate power of attorney, doctor(s), family, close friends, clergy and anyone else who might become involved in your health care. If you enter a nursing home or hospital, have photocopies of your documents placed in your medical records.
3. Be sure to talk to your power of attorney and alternate, doctor(s), clergy, and family and friends about your wishes concerning medical treatment. Discuss your wishes with them often, particularly if your medical condition changes.
4. If you want to make changes to your documents after they have been signed and witnessed, you must complete new documents.
5. Remember, you can always revoke one or both of your Nebraska documents.
6. Be aware that your Nebraska documents will not be effective in the event of a medical emergency. Ambulance personnel are required to provide cardiopulmonary resuscitation (CPR) unless they are given a separate order that states otherwise. These orders, commonly called "non-hospital do-not-resuscitate orders," are designed for people whose poor health gives them little chance of benefiting from CPR. These orders must be signed by your physician and instruct ambulance personnel not to attempt CPR if your heart or breathing should stop.

Currently not all states have laws authorizing non-hospital do-not-resuscitate orders. We suggest you speak to your physician for more information. **Caring Connections does not distribute these forms.**

## Appendix A

### Glossary

***Advance directive*** - A general term that describes two kinds of legal documents, living wills and medical powers of attorney. These documents allow a person to give instructions about future medical care should he or she be unable to participate in medical decisions due to serious illness or incapacity. Each state regulates the use of advance directives differently.

***Artificial nutrition and hydration*** – Artificial nutrition and hydration supplements or replaces ordinary eating and drinking by giving a chemically balanced mix of nutrients and fluids through a tube placed directly into the stomach, the upper intestine or a vein.

***Brain death*** – The irreversible loss of all brain function. Most states legally define death to include brain death.

***Capacity*** - In relation to end-of-life decision-making, a patient has medical decision making capacity if he or she has the ability to understand the medical problem and the risks and benefits of the available treatment options. The patient's ability to understand other unrelated concepts is not relevant. The term is frequently used interchangeably with competency but is not the same. Competency is a legal status imposed by the court.

***Cardiopulmonary resuscitation*** - Cardiopulmonary resuscitation (CPR) is a group of treatments used when someone's heart and/or breathing stops. CPR is used in an attempt to restart the heart and breathing. It may consist only of mouth-to-mouth breathing or it can include pressing on the chest to mimic the heart's function and cause blood to circulate. Electric shock and drugs also are used frequently to stimulate the heart.

***Do-Not-Resuscitate (DNR) order*** - A DNR order is a physician's written order instructing healthcare providers not to attempt cardiopulmonary resuscitation (CPR) in case of cardiac or respiratory arrest. A person with a valid DNR order will not be given CPR under these circumstances. Although the DNR order is written at the request of a person or his or her family, it must be signed by a physician to be valid. A non-hospital DNR order is written for individuals who are at home and do not want to receive CPR.

***Emergency Medical Services (EMS)***: A group of governmental and private agencies that provide emergency care, usually to persons outside of healthcare facilities; EMS personnel generally include paramedics, first responders and other ambulance crew.

***Healthcare agent***: The person named in an advance directive or as permitted under state law to make healthcare decisions on behalf of a person who is no longer able to make medical decisions.

**Hospice** - Considered to be the model for quality, compassionate care for people facing a life-limiting illness or injury, hospice and palliative care involve a team-oriented approach to expert medical care, pain management, and emotional and spiritual support expressly tailored to the person's needs and wishes. Support is provided to the persons loved ones as well.

**Intubation**- Refers to "endotracheal intubation" the insertion of a tube through the mouth or nose into the trachea (windpipe) to create and maintain an open airway to assist breathing.

**Life-sustaining treatment** - Treatments (medical procedures) that replace or support an essential bodily function (may also be called life support treatments). Life-sustaining treatments include cardiopulmonary resuscitation, mechanical ventilation, artificial nutrition and hydration, dialysis, and other treatments.

**Living will** - A type of advance directive in which an individual documents his or her wishes about medical treatment should he or she be at the end of life and unable to communicate. It may also be called a "directive to physicians", "healthcare declaration," or "medical directive."

**Mechanical ventilation** - Mechanical ventilation is used to support or replace the function of the lungs. A machine called a ventilator (or respirator) forces air into the lungs. The ventilator is attached to a tube inserted in the nose or mouth and down into the windpipe (or trachea).

**Medical power of attorney** - A document that allows an individual to appoint someone else to make decisions about his or her medical care if he or she is unable to communicate. This type of advance directive may also be called a healthcare proxy, durable power of attorney for healthcare or appointment of a healthcare agent. The person appointed may be called a healthcare agent, surrogate, attorney-in-fact or proxy.

**Palliative care** - A comprehensive approach to treating serious illness that focuses on the physical, psychological, spiritual, and existential needs of the patient. Its goal is to achieve the best quality of life available to the patient by relieving suffering, and controlling pain and symptoms.

**Power of attorney** – A legal document allowing one person to act in a legal matter on another's behalf regarding financial or real estate transactions.

**Respiratory arrest**: The cessation of breathing - an event in which an individual stops breathing. If breathing is not restored, an individual's heart eventually will stop beating, resulting in cardiac arrest.

***Surrogate decision-making*** - Surrogate decision-making laws allow an individual or group of individuals (usually family members) to make decisions about medical treatments for a patient who has lost decision-making capacity and did not prepare an advance directive. A majority of states have passed statutes that permit surrogate decision making for patients without advance directives.

***Ventilator*** – A ventilator, also known as a respirator, is a machine that pushes air into the lungs through a tube placed in the trachea (breathing tube). Ventilators are used when a person cannot breathe on his or her own or cannot breathe effectively enough to provide adequate oxygen to the cells of the body or rid the body of carbon dioxide.

***Withholding or withdrawing treatment*** - Forgoing life-sustaining measures or discontinuing them after they have been used for a certain period of time.

## Appendix B

### Legal & End-of-Life Care Resources Pertaining to Healthcare Advance Directives

#### LEGAL SERVICES

The Area Agency on Aging (AAA) can connect seniors over the age of 60 with legal services available to individuals with low and moderate income in their region.

Anyone over 60 can get legal information and advice about most issues, including:

- Living Wills and Trusts
  - Power of Attorney
  - Medicare and Medicaid
  - Retirement benefits and more
- 
- Must be over 60
  - Free to individuals with low to moderate incomes

**To locate AAA in your area call toll free at:**

1-800-942-7830 or 402-471-4732

**OR**

**To find out more information about legal services through AAA in your region:**

<http://www.hhs.state.ne.us/ags/legal.htm>

#### END-OF-LIFE SERVICES

Nebraska Division of Health and Human Service can assist older Nebraskans with low to moderate income in finding an Area Office on Aging (AAA) in their region.

AAA resources and services include, but are not limited to:

- Homecare
  - Hospice services
  - Adult Day Care
  - Social Security
  - Legal Assistance programs
  - Housing and many other services
- 
- Must be over the age of 60
  - Free for individuals with moderate to low incomes

**For more information call toll free:**

1-800-942-7830 or 1-402-471-4732

**OR**

**Visit website for more information about services and AAA in your region:**

<http://www.hhs.state.ne.us/ags/agsindex.htm>