

# Advance Directives





## ADVANCE MEDICAL DIRECTIVES

The "Montana Rights of the Terminally Ill Act" (also known as the Montana Living Will Act") allows individuals the maximum possible control over their own medical care and inevitable death. The law allows you to declare your intent not to have life sustaining treatment which only prolongs the process of dying. This Declaration of Living Will only becomes effective if your attending physician determines you have an incurable or irreversible condition that will result in death in a relatively short time.

The law provides immunity for physicians and facilities which carry out the provisions of the living will. It also provides a procedure which requires the physician who will not honor your living will to so notify you, and transfer you to another physician who will comply with your wishes. You have the ability to revoke this Declaration of Living Will at any time and in any manner. There are also provisions allowing you the option of designating another to make the decisions regarding withholding or withdrawal of life sustaining treatment.

If you do not write a living will, or you do not designate another to make these decisions, the law provides a list of individuals who will be allowed to make the decision for you, in the following order:

- 1) spouse;
- 2) adult child or majority of your adult children;
- 3) parents;
- 4) adult sibling or majority of your adult siblings;
- 5) nearest other adult relative.

Living wills have no effect on life insurance or on annuities.

Before considering a "living will" there are three important points to bear in mind.

1. First, a "living will" is only used when you can no longer participate in the decision making process surrounding your treatment and you have been diagnosed with a terminal condition which will result in death in a short period of time. As long as you remain competent you may refuse or accept treatment, regardless of the existence of a living will.

2. Second, the living will is a personal statement which should reflect your end of life treatment desires. It should be developed by you, with consultation with your attorney if you wish to use one. You may wish to discuss this topic with loved ones and your personal doctor or health nurse. Any generic or standardized form of a living will should be examined to ensure that it reflects your wishes.

3. Third, the validity and composition of living wills may vary from state to state. If you anticipate spending a substantial amount of time in another state, you should research that state's law.

If you have decided to exercise your right to a living will, please consider the following steps:

A. Do the research. Materials and other samples may be obtained from a variety of sources (for example: Montana Senior Citizens' Association; American Lung Association of Montana; or Montana Code Annotated). Be positive that your ideas concerning the nature of incompetency which triggers the use of the will, the severity of the medical condition necessary to withhold treatment, and the types of treatment to be withheld are expressed in the document.

B. Consider carefully who will serve as witnesses. Although Montana law has little to say concerning witnesses, other states have set out more specific requirements. As a general rule, your attending physician or other medical personnel who may be attending to you in time of illness should not act as witnesses. In some states relatives may not act as witnesses.

C. The living will should be easily accessible to those likely to be involved in a time of emergency. Copies of the executed document should be in your medical records, and family members and your personal physician should also have a copy. You may also want to carry a card in your wallet or purse stating the existence of your living will and how it may be located.

D. A living will should be re-executed, or rewritten, at relatively frequent intervals. This will add to the perception that the document truly reflects your wishes.

E. Remember, you have the ability to revoke the living will at anytime and in any manner.

F. Montana law does not specify whether food and water are considered “life sustaining treatment. Therefore your living will should be specific as to whether you wish food and water to be provided or not.

Like a testamentary will, the living will allows you to maintain your right to self-determination. It is a document of great significance which requires research and reflection before drafting. Contact your local Area Agency on Aging for additional information if you feel it is necessary.

Use the form on the following page if you want to appoint someone else (who is of sound mind and 18 years of age or older) to make the decisions for you about withholding or withdrawing life-sustaining treatment. If your appointee is unavailable or unwilling to serve as your designee, your doctor will make the determination. If you use the form, check with the people you want to be designees to make sure they are willing to so serve.



**DECLARATION OF LIVING WILL APPOINTMENT**

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or my attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint \_\_\_\_\_, or if he or she is not reasonably available or is unwilling to serve I appoint \_\_\_\_\_ in the alternative, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual(s) I have appointed are not reasonably available or are unwilling to serve, I direct my attending physician or my attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

The declarant voluntarily signed this document in my presence.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)



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**DECLARATION OF LIVING WILL**

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If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or my attending advanced practice registered nurse, 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 or my attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally III Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Address

The declarant voluntarily signed this document in my presence:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address



**REVOCAION OF DECLARATION  
OF LIVING WILL**

I, \_\_\_\_\_ hereby revoke my Declaration (Living Will) regarding withholding or withdrawal of life-sustaining treatment in the event I am in a terminal condition which will result in my death in a short period of time.

This revocation is effective immediately and must be communicated to my attending physician and other health care providers as soon as possible.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)



# RIGHTS OF THE TERMINALLY ILL ACT

## Excerpts from Montana Codes Annotated Title 50, Chapter 9

**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who is licensed under Title 37, Chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the Board of Nursing pursuant to 37-8-202 and 37-8-409

(3) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(4) "Board" means the Montana state board of medical examiners.

(5) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(7) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(8) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(9) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

(13) "Qualified patient" means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition

(16) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment will, in the opinion of the attending physician or attending advanced practice registered nurse, result in death within a relatively short time.

**50-9-103. Declaration relating to use of life-sustaining treatment -designee.** (1) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 of age or older to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another at the declarant's direction and must

be witnessed by two individuals. A health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician or advanced practice registered nurse to withhold or withdraw life-sustaining treatment may but need not be in the following form:

**DECLARATION**

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or my attending advanced practice registered nurse, 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 or my attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_  
City, County, and State of Residence \_\_\_\_\_

The declarant voluntarily signed this document in my presence.

Witness \_\_\_\_\_  
Address \_\_\_\_\_

Witness \_\_\_\_\_  
Address \_\_\_\_\_

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may but need not be in the following form:

## DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or my attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding

my medical treatment, I appoint \_\_\_\_\_ or, if that person is not reasonably available or is unwilling to serve, \_\_\_\_\_, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician or my attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_

City, County, and State of Residence \_\_\_\_\_

The declarant voluntarily signed this document in my presence.

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

Name and address of designee.

Name \_\_\_\_\_

Address \_\_\_\_\_

(4) If the designation of an attorney-in-fact pursuant to [72-5-501](#) and [72-5-502](#) or the judicial appointment of an individual contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, shall advise the declarant and any individual designated to act for the declarant promptly.

#### **50-9-104. Revocation of declaration.**

(1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician, attending advanced practice registered nurse, or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician or the attending advanced practice registered nurse at the earliest opportunity. A revocation communicated to a person other than the attending physician, attending advanced practice registered nurse, emergency medical services personnel, or a health care provider is not effective unless the attending physician or the attending advanced practice registered nurse is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician, attending advanced practice registered nurse, or other health care provider shall make the revocation a part of the declarant's medical record.

#### **50-9-105. When declaration operative.**

(1) A declaration becomes operative when:

(a) it is communicated to the attending physician or the attending advanced practice registered nurse; and

(b) the declarant is determined by the attending physician or the attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) Except as provided in [72-17-216](#), when the declaration becomes operative, the attending physician or attending advanced practice registered nurse and other health care providers shall act in accordance with its provisions and with the instructions of a designee under [50-9-103\(1\)](#) or comply with the transfer requirements of [50-9-203](#).

**50-9-106. Consent by others to withholding or withdrawal of treatment. (1)**

If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician or the attending advanced practice registered nurse, the physician or attending advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding the administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) A full guardian may consent or withhold consent under subsection (1) as provided in 72-5-321.

(4) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(5) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(6) A decision of the attending physician or attending advanced practice registered nurse acting in good faith that a consent is valid or invalid is conclusive.

(7) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or the attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

**50-9-107. When health care provider may presume validity of declaration.** In the absence of knowledge to the contrary, a health care provider may assume that a declaration complies with this chapter and is valid.

**50-9-108. Effect of previous declaration.** An instrument executed before October 1, 1991, that substantially complies with 50-9-103(1) is effective under this chapter.

**50-9-109. Reserved.**

**50-9-110. Authority to adopt rules.** The department may adopt rules to implement this chapter.

**50-9-111. Recognition of declarations executed in other states.** A declaration executed in a manner substantially similar to 50-9-103 in another state and in compliance with the law of that state is effective for purposes of this chapter.

**PART 2**  
**Effect on Health Care -- Rights and Duties**

**50-9-201. Recording determination of terminal condition and content of declaration.** Upon determining that a declarant is in a terminal condition, the attending physician or attending advanced practice registered nurse who knows of a declaration shall record that determination and the terms of the declaration in the declarant's medical record.

**50-9-202. Treatment of qualified patients.**

- (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.
- (2) This chapter does not affect the responsibility of the attending physician, attending advanced practice registered nurse or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.
- (3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

**50-9-203 Transfer of patients.** An attending physician, attending advanced practice registered nurse, or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician, advanced practice registered nurse, or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out.

**50-9-204. Immunities.**

- (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:
  - (a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician or advanced practice registered nurse;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician or advanced practice registered nurse or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs. (2)

A health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(l) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

### **50-9-205. Effect on insurance -- patient's decision.**

(1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter does not create a presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions

regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to affect the withholding or withdrawal of medical care.

**(6)** This chapter does not require a health care provider to take action contrary to reasonable medical standards.

**(7)** This chapter does not condone, authorize, or approve mercy killing or euthanasia.

**DO NOT RESUSCITATE -- NOTIFICATION**  
**Part 1 General**

**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who is licensed under Title 37, Chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

(3) "Attending physician" has the meaning provided in 50-9-102.

(4) "Board" means the state board of medical examiners.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, which signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician or attending advanced practice registered nurse has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(7) "Do not resuscitate order" means a directive from a licensed physician or advanced practice registered nurse that emergency life-sustaining procedures should not be administered to a particular person.

(8) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians, advanced practice registered nurses, and emergency medical services personnel.

(9) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(11) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to Practice medicine in this state.

**50-10-102. Immunities.**

- (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:
- (a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining procedures from that person;
  - (b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician or advanced practice registered nurse;
  - (c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;
  - (d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;
  - (e) physicians, advanced practice registered nurses, persons under the direction or authorization of a physician or advanced practice registered nurse, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.
- (2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.
- (3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician or an advanced practice registered nurse are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

**50-10-103. Adherence to do not resuscitate protocol -- transfer of patients. (1)**

Except as provided in 72-17-216, emergency medical services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order entered on a form prescribed by the department.

- (2) An attending physician, an attending advanced practice registered nurse, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or advanced practice registered nurse or to a health care facility in which the do not resuscitate protocol will be followed

**50-10-104. Effect on insurance -- patient's decision.**

(1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part, does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, advanced practice registered nurse, advanced practice registered nurse, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding use of life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect the provisions of this part are cumulative.

(7) This part does not authorize or approve mercy killing.

**50-10-107. DNR form to be readily available.** The department shall ensure that the DNR identification form approved by the department is readily available at no cost or at a nominal charge.