

Montana Rights of the Terminally Ill Act

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Describes how you (or someone selected by you) can choose to terminate your medical treatment, should you have an incurable and irreversible condition that would lead to death without treatment.

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THE PURPOSE OF THE MONTANA RIGHTS OF THE

Terminally Ill Act, is to allow an individual who is of sound mind and who is 18 or more years of age to make a declaration (living will) that governs the withholding or withdrawing of life-sustaining treatment when he or she is in a terminal condition.

POLST is the Provider Orders for Life-Sustaining Treatment (POLST) program in Montana. The Montana Board of Medical Examiners has developed a protocol and form for medical providers to utilize. The form is intended to be completed in consultation with the patient (or family, if the patient is unable to speak for his or herself) and be respected and followed by every health care professional the patient encounters. The POLST form (www.polst.mt.gov) clearly identifies the wishes of the patients for resuscitation and level of comfort care requested to assure patients receive the care they wish. Further information is available in the MSU Extension MontGuide, *Provider Orders for Life-Sustaining Treatment* (MT201112HR).

The Federal Patient Self-Determination Act (PSDA), applies to all health care facilities, including hospitals, nursing homes and hospices receiving Medicare or Medicaid. It stipulates that individuals must be given written information at the time of admission about their right under state law to accept or refuse medical treatment and the right to formulate advance directives such as living wills, POLST and durable powers of attorney for health care. The facility will be responsible for documenting in each individual's medical record whether he or she has executed such an advance directive.

Definitions

Definitions of the following words are important for an understanding of the Montana Rights of the Terminally Ill Act:

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

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.

Designee means the individual named in a declaration to make decisions on the declarant's behalf regarding withholding or withdrawing treatment.

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

Life-sustaining treatment means any medical procedure or intervention which, when administered to a qualified patient, will serve only to prolong the dying process.

Qualified patient means a patient 18 or more years of age who has written a declaration according to Montana law and who has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition.

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.

What is the format of a living will?

A living will is referred to as a "declaration" under Montana law. An individual who has made a declaration is referred to as a "declarant." As a declarant, you may order the attending physician to withhold or withdraw treatment that would only prolong the process of dying. An example declaration is on the back page. The form is available to download from www.montana.edu/estateplanning.

Your declaration (living will) must be signed by you and by two individuals who serve as witnesses. The signatures do not have to be notarized. You may have another individual sign for you if you are unable to sign it yourself.

Example: John is physically disabled but mentally competent, so he asked his attorney to sign on his behalf in the presence of two disinterested witnesses. Montana law does allow family members to be witnesses, but John chose not to have any relatives as witnesses to avoid potential questions regarding impartiality.

When does my declaration (living will) become effective?

You may make decisions regarding life-sustaining treatment for yourself as long as you are able to do so. Your signed declaration should be communicated to your attending physician. It will become operative provided the following two conditions exist: 1) the attending physician or attending advanced practice registered nurse determines that you are in a terminal condition; and, 2) you are no longer able to make decisions about the administration of life-sustaining treatment.

An attending physician or attending advanced practice registered nurse who is furnished a copy of your declaration is required to make it a part of your medical record. When your declaration becomes operative, the attending physician or attending advanced practice registered nurse is required to follow its provisions. When you name a person as your *designee*, the attending physician or attending advanced practice registered nurse is required to follow the designee's instructions.

What if my attending physician or attending advanced practice registered nurse are not willing to comply with my living will?

If the attending physician or attending advanced practice registered nurse is unwilling to comply with your declaration, he or she is required promptly to advise you, and any individual designated to act for you, of his or her unwillingness. He or she must take all reasonable steps as promptly as practical to transfer care of you to another physician or attending advanced practice registered nurse who is willing to comply with your declaration. If the policies of a health care facility prohibits compliance with declarations (living wills), that facility must take all reasonable steps to transfer you to a facility in which the provisions can be carried out.

How will others know about my declaration (living will)?

Provide a copy of your living will (declaration) to the attending physician so he or she will be aware of it. Upon determining you are in a terminal condition, the attending physician is required to record this information and the terms of your declaration in your medical record.

Share a copy of your declaration with family members or, at a minimum, let them know its location. You may want to carry a card in your wallet or purse stating the existence of your living will and where it is located.

Another way to let others know about your living will is to indicate on your driver's license that you have executed a living will declaration. At the time of application for a new driver's license or for a renewal you will be given the opportunity to indicate if you wish to make an anatomical gift and if you have executed a living will. If you want the presence of these documents to be indicated on your present license you can apply for a replacement driver's license for a fee.

Another way that your declaration can be accessible is if you store it at the Montana End-of-Life Registry. The Office of the Montana Attorney General has established and maintains this website so Montana citizens can securely store their declarations online and gives authorized health care providers immediate access to them. The registration form is available from the End-of-Life Registry at www.endoflife.mt.gov. More information on the registry is in the MSU Extension Montguide, *Montana's End-of-Life Registry (MT200602HR)*.

If I am terminally ill and unable to give consent in a living will, are there circumstances in which others may give consent to the physician, attending advanced practice registered nurse, or health care provider to withhold or withdraw treatment?

You, as the declarant, may designate another individual (designee) to make decisions for you about the withholding or withdrawing of life-sustaining treatment. Your *designee* must be of sound mind and be 18 or more years of age. (An example declaration that designates another individual to make such decisions for you is on the back page.)

If you don't have a living will, Montana law states that the authority to consent or to withhold consent regarding administration of life-sustaining treatment may be exercised by the following individuals, in order of priority:

1. The spouse of the individual;
2. 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;
3. The parents of the individual;
4. 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;
5. Or, the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

If a written consent, witnessed by two others, is given to the attending physician or attending advanced practice registered nurse, he or she may withhold or withdraw life-sustaining treatment from an individual who cannot make that decision because of his or her state of health. The individual must have 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 administration of life-sustaining treatment, and the individual must have no effective declaration.

Under Montana law, granting a health care power of attorney to another individual giving written authorization to make decisions regarding the withholding or withdrawing of life-sustaining treatment constitutes a declaration. However, it must be properly witnessed by at least two individuals to be effective as a declaration (living will).

What if I change my mind and don't want my living will enforced?

Your declaration (living will) may be revoked at any time either in writing or verbally, without regard to your mental or physical condition. A revocation is effective when communicated to the attending physician or attending advanced practice registered nurse by the declarant or by a witness to the revocation. The revocation must be made a part of the declarant's medical record.

A health care provider or emergency medical services personnel witnessing a revocation must act upon it and communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician or attending advanced practice registered nurse is informed of it before the qualified patient is in need of life-sustaining treatment.

What if I wrote a declaration (living will) while residing in another state?

A declaration written properly in another state in a manner substantially similar to Montana law is effective. Compare your living will with the declaration in this MontGuide. If you have any questions regarding interpretation of the language of your living will, consult an attorney to determine whether it conforms to Montana law.

What if hospital policies prevent acceptance of my declaration (living will) because of the fear of suit?

Without actual notice of revocation of the declaration, the following person or persons, while acting in accordance with the requirements of Montana law, are not subject to civil or criminal liability or guilty of unprofessional conduct:

1. A physician or advanced practice registered nurse who withholds or withdraws life-sustaining treatment from a qualified patient.
2. A person who participates in the withholding or withdrawing of life-sustaining treatment under the direction or with the authorization of a physician or advanced practice registered nurse.

3. Emergency medical services personnel who participate in the withholding or withdrawing of life-sustaining treatment under the direction or with the authorization of a physician or advanced practice registered nurse or who on receipt of reliable documentation follow living will protocol established by the Department of Public Health and Human Services and approved by the Montana State Board of Medical Examiners.
4. Emergency medical services personnel who provide life-sustaining treatment to a qualified patient when a revocation is communicated to them.
5. A health care facility in which the withholding or withdrawing of life-sustaining treatment occurs.

What impact does a declaration (living will) have on life insurance?

Death resulting from the withholding or withdrawing of life-sustaining treatment under the Montana Rights of the Terminally Ill Act does not constitute for any purpose a suicide or homicide. The making of a declaration does not affect the sale, the purchase, or the issuing of any policy of life insurance or annuity. A declaration also does not 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 withdrawing of life-sustaining treatment from the insured.

How should a declaration (living will) be worded?

The Montana Rights of the Terminally Ill Act states that a declaration directing a physician to withhold or withdraw life-sustaining treatment may be in the format on page 4, but it is not required. It can be handwritten. An attorney does not have to write the declaration nor does it have to be notarized.

Acknowledgments

This MontGuide has been reviewed by representatives from the following groups who recommend its reading by all Montanans: The Business, Estates, Tax, Trusts and Real Property Law Section, State Bar of Montana; The Montana State University College of Nursing; The Montana State Department of Public Health and Human Services; The Governor's Office on Aging; The Montana Nurses Association; The Montana Legislative Council, Legal Services Division; Montana Board of Medical Examiners.

References

Basic Questions and Answers on the Patient Self-Determination Act, Choice in Dying, 250 West 57th Street, New York, NY 10107.

Montana Code Annotated 2017, Sections §50-9-101 through §50-9-206.

**Declaration
(direct physician or attending advanced practice registered nurse to withhold life-sustaining treatment)
MCA 50-9-103**

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, 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 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 _____, 2_____. Signature _____

City, County, and State of Residence _____

The declarant voluntarily signed this document in my presence

Witness 1 Signature: _____ Witness 2 Signature: _____

Witness 1 Address: _____ Witness 2 Address: _____

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
(designating another individual to make decision)
MCA 50-9-103**

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 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 withdrawing of treatment that would only prolong 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 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 _____, 2_____. Signature _____

City, County, and State of Residence _____

The declarant voluntarily signed this document in my presence

Witness 1 Signature: _____ Witness 2 Signature: _____

Witness 1 Address: _____ Witness 2 Address: _____

Designee's Name: _____ Address: _____



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