

A guide to your right to make an

# Advance Directive

## Dear Independence Blue Cross Member:

The federal government passed into law "The Patient Self-Determination Act." This law directly affects our responsibilities as a managed health care plan to you, our members.

The law requires Independence Blue Cross to ask its members if they have an advance directive or living will. This means that we want to know if you have discussed with your primary care physician (PCP) your preferences for medical care and treatment should you become unable to express them personally.

This brochure will provide you with information about Independence Blue Cross's policy on advance directives, applicable state and federal laws, as well as your right to make decisions concerning medical treatment.

An advance directive is not required for your enrollment as an Independence Blue Cross member. If you execute an advance directive, we will do our best to assure that your wishes are honored. You can also be assured that you will receive the same level of care and support from our plan providers and facilities whether or not you have an advance directive.

If you have any questions after reviewing the materials, please contact one of the resources listed in the back of the brochure.

Sincerely,



Richard Snyder, M.D.  
Senior Vice President and  
Chief Medical Officer

## Policy On Advance Directives: The Patient Self-Determination Act

In compliance with the federal Patient Self-Determination Act of 1990 and Pennsylvania Advance Directive for Health Care Act of 2006, Independence Blue Cross has established the following policy:

Independence Blue Cross supports the exercise of adult individual's rights under Pennsylvania law to make decisions regarding their medical care. This includes the right to accept or refuse medical/surgical treatment and to formulate advance directives in accordance with federal and state law. Independence Blue Cross will not discriminate against a member based on whether or not the member has executed an advance directive, nor will this be a condition of eligibility for membership. Independence Blue Cross provides education regarding the Patient Self-Determination Act and Advance Directive for Health Care Act for its staff, providers, members, and community.

Physicians and hospitals participating with Independence Blue Cross are independent providers, and they are neither agents nor employees of Independence Blue Cross. Therefore, differences in participating providers' policies regarding honoring an advance directive may exist. However, we encourage our members to discuss their wishes regarding medical treatment and advance directives with their PCP and their families. Complaints regarding noncompliance with advance directives may be filed with:

**Office of Quality Assurance**  
**Pennsylvania Department of Health**  
805 Health and Welfare Building  
Harrisburg, PA 17120

# Making Decisions About Your Care And Treatment: Your Rights As Patient In Pennsylvania

## Introduction

In Pennsylvania, competent adults have the right to decide whether to accept, reject, or discontinue medical care and treatment. If you do not wish to undergo a certain procedure or to receive a certain type of treatment, you have the right to make your wishes known to your doctors or other health care providers and generally to have those wishes respected.

There may be times, however, when a person cannot make his or her wishes known to a health care provider. For example, a person may be unconscious or too badly injured to tell his or her doctor what kind of care or treatment he or she would like to receive or under what circumstances that doctor should withhold care or treatment.

The purpose of this brochure is to let you know what the law currently has to say about your rights as a competent adult to tell other people now if and how you would like to receive medical care and treatment from a health care provider in the event that you need medical attention but become physically or mentally unable to give instructions about your care and treatment later. It also tells you what Pennsylvania law has to say about the duty of a health care provider to follow your advance instruction.

To help simplify these complex issues, Independence Blue Cross addresses them through the series of questions and answers. Before making any decisions about the issues addressed in this document, you should discuss them with your doctor, members of your family, and, where appropriate, your lawyer.

## Questions and Answers

### General information about your rights

#### 1. What are my rights to accept, to reject, or to stop medical care treatment?

In Pennsylvania, adults generally have the right to decide if they want to accept, to reject, or to discontinue medical care and treatment.

#### 2. What does my doctor have to tell me about my care and treatment?

Your doctor should provide you with all of the information that a person in your situation reasonably would want to know in order to make an informed decision about a proposed procedure or course of treatment. This means that your doctor should tell you about the risks and benefits of the medical procedure or course of treatment that he or she is

recommending; possible "side effects"; and alternatives, if any, to the proposed procedure or course of treatment. You may accept or reject your doctor's advice and you may seek a second opinion.

#### 3. If I become physically or mentally unable to make a decision about my medical care or treatment, what can I do now to guarantee that my wishes will be followed later?

There is no law in Pennsylvania that guarantees a health care provider will follow your instructions in every circumstance. There are, however, steps you can take to express your wishes about future treatment. One of these steps is to write and sign an advance health care directive.

#### 4. What is an "advance health care directive"?

An "advance health care directive" is a written document that you may use under certain circumstances to tell others what care you would like to receive or not receive should you become unable to express your wishes at some time in the future. In Pennsylvania, there are two main types of advance health care directives: (1) a living will and (2) a "Health Care Power of Attorney." You may also have a combined directive, which is a written combination of a living will and a health care power of attorney.

### Living wills

#### 5. What is a "living will"?

In Pennsylvania, a living will is a written document that describes your wishes about the kind of "lifesustaining treatment" and other medical care you want or do not want if you are later unable to tell your doctor what kind of treatment you wish to receive. You should also understand that a living will is not a will. A will tells your survivors what to do with your property after your death.

#### 6. Who can make a "living will"?

Any competent person who (1) is at least 18 years old, (2) is a high school graduate, (3) has married, or (4) is an emancipated minor.

#### 7. When does a "living will" take effect?

A living will takes effect only when:

- your doctor has a copy of it; and
- your doctor has concluded that you are "incompetent" and therefore no longer able to make decisions about the medical care you wish to receive; and
- your doctor has determined that you have "an end-stage medical condition" or are "permanently unconscious."

## 8. What does it mean to be “incompetent”?

Incompetent means that you are unable to understand, make, or communicate decisions about a proposed health care matter. You may be competent to make some health care decisions, but incompetent to make others.

## 9. What should my “living will” contain?

There is no single correct way to write a living will. A living will generally expresses your wishes regarding the initiation, continuation, withholding, or withdrawal of life-sustaining treatment and may include other directives such as designating a health care agent. A living will is not valid, however, unless you have taken the following steps:

- You must sign and date your living will, but it does not need to be notarized. If you are unable to do so, you must have someone else sign it for you; and
- Two people who are at least 18 years old must sign your living will as witnesses. Neither of those witnesses may be the person who signed your living will if you were unable to sign it yourself.

## 10. What if I already have a “living will”?

Pennsylvania’s living will Advance Directive for Health Care Act was amended and went into effect on January 29, 2007. There are new provisions for the health care power of attorney and health care representatives. Advance directives that were made prior to the new law are still valid.

## 11. To whom should I give my “living will”?

You should give a copy of your living will to your doctor, hospital, nursing home, or other health care provider. When you enter a hospital or nursing facility, the law requires your doctor or other health care provider to ask you if you have an advance directive. If you give a copy of your living will to your doctor or other health care provider, that document must be made part of your medical record. You should also give a copy to close family members and other people who may make health care decisions on your behalf if you are unable to do so.

## 12. What if my doctor or health care provider refuses to follow the directions in my “living will”?

Your doctor and any other health care provider must tell you if they cannot in good conscience follow your wishes or if the policies of the institution prevent them from honoring your wishes. This is one reason why you should give a copy of your living will to your doctor or to those in charge of your medical care and treatment.

If you are incompetent when you are admitted for medical care and have named someone in your living will to make decisions for you, that person must be told if the wishes contained in your living will cannot be honored. If you have not named anyone in your living will, your family, guardian, or other representative must be informed that your living will cannot be honored.

The doctor or other health care provider who cannot honor your wishes must then help transfer you to another health care provider willing to carry out your directions— if they are the kind of directions that Pennsylvania recognizes as valid.

## 13. Is a “living will” effective when I am pregnant?

Pennsylvania law generally does not permit a doctor or other health care provider to honor the living will of a pregnant woman who has directed that she not be kept alive. The terms of such a living will may be honored, however, if the woman’s doctor determines that life-sustaining treatment (1) will not maintain the woman in a manner that will allow for the continued development and birth of the unborn child, (2) will physically harm the pregnant woman, or (3) cause her pain that could not be relieved by medication.

If your living will is not honored because you are pregnant, the Commonwealth of Pennsylvania must pay all of the usual, customary, and reasonable expenses of your care.

## 14. What if I change my mind after I have written a “living will”?

Pennsylvania’s living will law states that you may revoke a living will at any time and in any manner regardless of your mental or physical condition. All that you must do is tell your doctor or other health care provider that you are revoking it. Someone who saw or who heard you revoke your living will may also tell your doctor or other health care provider about the revocation.

You can also change or rewrite your living will. If you change your mind after you have written down your instructions, you should destroy your written instructions or revoke them and write new ones. You should also consider telling everyone who participated in your decision-making process that you have changed your mind and give a copy of any new instructions to your doctor, health care provider, and anyone else who had a copy of your old instructions.

## Power Of Attorney For Health Care

### 15. What is a "health care power of attorney"?

A health care power of attorney is a document in which you name a person to be your health care agent. Your health care agent is authorized to make health care decisions on your behalf, but only if you are incompetent. You may give your health care agent the authority to make any health care decision regarding your care and health care treatment that you would have made if you were able to do so. You decide what decisions your health care agent may make and when and how you want your health care agent to make those decisions. For example, you can give your health care agent power to refuse care on your behalf or stop life-preserving treatment. Your health care agent can authorize your admission to the hospital or other medical facilities or authorize medical and surgical procedures. When deciding who to name as your health care agent, you should consider naming someone that knows you well and will honor your choices.

### 16. How do I make a "health care power of attorney"?

The requirements are the same as those for a living will. One or more successor health care agents may be named as well, or you can name multiple health care agents who act together on your behalf. Medical providers are disqualified from acting as your health care agent unless related to you by blood or marriage.

### 17. What are some of the major differences between a "living will" and a "health care power of attorney"?

A health care power of attorney generally names someone to make health care decisions for you without necessarily describing what those decisions should be. A "living will," on the other hand, often spells out what kind of life-sustaining treatment you want to receive and may or may not name someone to make those decisions for you should you become incompetent and in a terminal condition or permanent state of unconsciousness. You can have a combined directive, which is a health care power of attorney form where you name a health care agent and a living will form where you tell your doctors and your health care agent your wishes for medical treatment.

## Health Care Representatives

### 18. What if I don't leave instructions or name a person who will make decisions for me?

If you have not named a health care agent or do not have a living will, there are several options. If you are of sound mind, Pennsylvania law allows you to name a person in writing as your health care representative or you can personally inform your attending physician whom you are naming as your health care representative. If you have not named someone and become incompetent, the following order of persons by priority, will act as your health care representative: spouse, adult children, parent, adult brother or sister, adult grandchildren, and then close friend. If you are of sound mind, you may always change the order of persons listed or disqualify someone from acting as your health care representative.

### 19. What is the difference between a "health care representative" and a "health care agent"?

A health care representative generally has the same duties as a health care agent, but with some important exceptions. A health care representative may only make decisions on your behalf when you are incompetent and may not refuse life-saving health care unless you have an end-stage medical condition or are permanently unconscious. A health care agent can be authorized to make decisions for you even if you are competent. A health care agent can also be authorized to refuse or stop life-saving health care even when you do not have an end-stage medical condition or are permanently unconscious.

### 20. Do I have to write a "living will" or "durable power of attorney" for health care?

No. It's your decision. Under the law, a health care provider may not condition the provision of your care or otherwise discriminate against you on the basis of whether you have executed such a document. Moreover, under Pennsylvania law, no health care provider or insurer may charge a different fee or rate depending on whether you have executed a living will. In addition, Pennsylvania law does not require you to use a specific form. However, Pennsylvania law does include a sample form.

### 21. Are "living wills" and "powers of attorney" executed in other states recognized?

The law in Pennsylvania is unclear. It is possible, however, that at the very least your doctor, hospital, or judge may use such documents to determine who will make decisions about your care and what those decisions will be. If your document is notarized it is more likely to be honored in other states.

**22. If I have more questions about “living wills” or “durable powers of attorney” for health care, whom should I contact?**

In addition to a lawyer, many individuals and groups can provide you with information about such documents. Here are some that you may wish to consult:

Your local long term care ombudsman, who can be reached by calling your community’s “Area Agency on Aging” (AAA). The AAA phone number is in the “blue pages” of your phone book.

**PA Department of Aging**  
555 Walnut Street, 5th floor  
Harrisburg, PA 17101-1919  
717-783-1550

**Bucks County Area Agency on Aging**  
30 E. Oakland Avenue  
Doylestown, PA 18901  
267-880-5700

**Bucks County Health Improvement Partnership  
Respecting Healthcare Choices Initiative  
for Advance Care Planning**  
215-710-2201  
BCHIP.org

**Chester County Area Agency on Aging**  
601 Westtown Road, Suite 130  
West Chester, PA 19380-0990  
610-344-6350

**Delaware County Office of Services for  
The Aging (COSA)**  
206 Eddystone Avenue, 2nd floor  
Eddystone, PA 19022  
610-490-1300

**The Hospital & Healthsystem Association  
of Pennsylvania**  
4750 Lindle Road  
P.O. Box 8600  
Harrisburg PA, 17105-8600  
717-564-9200  
www.haponline.org

**Montgomery County Aging & Adult Services  
Montgomery County Human Services Center**  
1430 DeKalb Pike  
P.O. Box 311  
Norristown, PA 19404-0311  
610-278-3601

**The Pennsylvania Medical Society Division of  
Communication and Public Affairs**  
777 East Park Drive  
Harrisburg, PA 17109  
717-558-7750  
www.myfamilywellness.org

**Philadelphia Corporation for Aging**  
642 North Broad Street  
Philadelphia, PA 19130  
215-765-9040

