

# SENIOR SUPPLEMENT

An Educational Service of Lawyer Referral for the Elderly Program

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## Advance Health-Care Directives

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### **What is an Advance Health-Care Directive?**

The New Mexico Uniform Health-Care Decisions Act enables an individual to prepare an Advance Health-Care Directive which is a written document signed by a competent person granting someone authority in a power of attorney to make health-care decisions. Witnesses and notarization are optional and not required. In the Advance Health-Care Directive, the individual is allowed to state his or her own decisions on health care matters and to appoint someone to make health-care decisions on the patient's behalf based on that patient's wishes and intentions. The health-care decision-maker has the right to refuse medical treatment for the patient or to discontinue medical treatment for the patient in certain situations.

### **What purpose does an advance health-care directive serve?**

The purpose of an advance health care directive is to allow a person to plan in advance for medical treatment. A person may state his or her wishes about specific kinds of

medical treatment and may also name a surrogate decision-maker in case the person is unable to make his or her own decisions.

### **What is a surrogate decision-maker?**

A surrogate decision-maker is someone who makes decisions on your behalf. You may appoint the person or New Mexico law may say who may act as your surrogate. The surrogate is supposed to make decisions for you based on your desires and intentions. Under agency law, the person who grants the power to make health-care decisions is the "principal" and the person who acts on the principal's behalf is the "agent" or "attorney-in-fact".

### **If I appoint someone to be a surrogate decision-maker, will I lose my right to make my own health-care decisions?**

No. As long as you have the physical and mental capacity to make your own decisions, you are entitled to do so. Generally, the agent only acts when the principal is incapacitated.

**Who can be a surrogate decision-maker?**

An adult who is appointed in the Advance Health-Care Directive by the patient/principal may make health-care decisions for the patient. If no surrogate decision-maker is designated or if the designated individual cannot be found, New Mexico identifies and prioritizes individuals who are allowed to make surrogate decisions on the patient's behalf even when those individuals are not named in the Advance Health-Care Directive.

**How does the law prioritize surrogate decision-makers?**

The law prioritizes surrogate decision-makers according to their relationship to the patient. The priority of decision makers is as follows: 1) The spouse; 2) An individual who has been in a long term relationship with the patient similar to the commitment of a spouse and where the individual and the patient consider themselves to be responsible for each other; 3) An adult child; 4) A parent; 5) An adult brother or sister; 6) A grandparent.

**Can the surrogate decision-maker have access to the patient's medical records?**

Yes. Under the New Mexico Uniform Health-Care Decisions Act the surrogate decision-maker has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

**What if I no longer want the person named in an Advance Health-Care Directive to act on my behalf?**

The law allows a competent individual to revoke an Advance Health-Care Directive at any time. The individual may revoke an Advance Health-Care Directive by written revocation or by verbally informing the health-care provider that the Directive has been revoked.

**What does the Advance Health-Care Directive form contain?**

The statutory form contains three parts. The first, called a medical power of attorney, allows an individual to designate an agent to make medical decisions on his or her behalf. The second part allows the individual to give instructions for health care, including instructions related to end-of-life decisions. The third part allows the individual to identify his or her primary physician.