

Summary of State Law Regarding Advance Directives

An advance directive is:

- (1) a directive;
- (2) an out-of-hospital do-not-resuscitate (DNR) order;
- (3) a medical power of attorney; or
- (4) a declaration for mental health treatment.

DIRECTIVE (Chapter 166 of the Texas Health and Safety Code)

- A directive is an instruction made to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.
- "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.
- "Irreversible condition" means a condition, injury, or illness:
 - (A) that may be treated but is never cured or eliminated;
 - (B) that leaves a person unable to care for or make decisions for the person's own self; and
 - (C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.
- "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.
- A sample form of a written directive, as contained in Texas Health and Safety Code, §166.033 may be found at the Texas Department of Aging and Disability Services (DADS) Advance Directives [webpage](#) .

OUT-OF-HOSPITAL DNR ORDER (Chapter 166 of the Texas Health and Safety Code)

- An out-of-hospital DNR order is a legally binding order that directs health care professionals in an out-of-hospital setting not to initiate or continue the following life-sustaining procedures:
 - (i) cardiopulmonary resuscitation;
 - (ii) advanced airway management;
 - (iii) artificial ventilation;
 - (iv) defibrillation; and
 - (v) transcutaneous cardiac pacing.
 - (vi) other life-sustaining treatment specified by the Department of State Health Services.
- The required form of an out-of-hospital DNR, as described in Texas Health and Safety Code, §166.083, may be found at the DADS Advance Directives [webpage](#) .

MEDICAL POWER OF ATTORNEY (Chapter 166 of the Texas Health and Safety Code)

- A medical power of attorney is a document in which an adult, referred to as the “principal,” delegates to another person, referred to as the “agent,” the authority to make health care decisions.
- The agent does not acquire authority under the power of attorney until the principal becomes incompetent and the principal’s attending physician certifies the principal’s incompetency in writing and files that certification in the principal’s medical records.
- A medical power of attorney is not effective unless the principal, before executing the medical power of attorney, signs a statement that the principal has received a disclosure statement and has read and understood its contents.
- The disclosure statement and medical power of attorney forms must substantially be the forms set forth in Texas Health and Safety Code, §§166.063-.064. Those forms may be found at the DADS Advance Directives [webpage](#).

DECLARATION FOR MENTAL HEALTH TREATMENT (Chapter 137 of the Texas Civil Practice and Remedies Code)

- A declaration for mental health treatment is a document in which an adult, referred to as the “principal,” gives consent for treatment for psychoactive medication, convulsive treatment, and preferences for restraint, seclusion or medication in an emergency.
- A physician or other health care provider must act in accordance with the declaration for mental health treatment when the principal has been found to be incapacitated.
- “Incapacitated” means that, in the opinion of the court in a guardianship proceeding under the Texas Probate Code, or in a medication hearing under the Health and Safety Code, a person lacks the ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, and lacks the ability to make mental health treatment decisions because of impairment.
- A declaration for mental health treatment expires on the third anniversary of the date of its execution or when revoked by the principal, except if the principal is incapacitated on the third anniversary of the effective date of the declaration, the declaration remains in effect until the principal is no longer incapacitated.
- The declaration for mental health treatment must substantially be the form set forth in Texas Civil Practice and Remedies Code, §137.011. This form may be found at the DADS Advance Directives [webpage](#).