

Advance care directive and living will

In life, there are situations in which a person is unable to make decisions – either due to illness, an accident or age-related limitations. In order to ensure that one's wishes are respected in such situations and carried out, advance care directives and living wills are essential. By making arrangements early on, you can create security – for yourself and for your family.

Advance care directive

What is an advance care directive?

In an advance care directive, a person with legal capacity tasks a natural person or legal entity that they trust to represent them in the event that they are unable to make decisions. An advance care directive may comprise personal care, care of assets and representation in legal matters.

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■ Personal care

The appointed person must take all necessary steps to ensure a well-structured daily routine as well as appropriate treatment, care and support. This includes organising the living situation, e.g. decision as to whether to house the person in a care home. If a separate living will was set up regarding medical measures, this takes precedence over the advance care directive.

Personal care also includes receiving, opening and dealing with mail.

■ Care of assets

The person tasked with handling assets must manage all the assets and income, as well as insurance and tax-related matters.

■ Representation in legal matters

This task involves representing the appointer before public authorities, courts, private institutions, insurance companies and social benefit providers.

The advance care directive should specify the individual tasks as precisely as possible and issue clear instructions regarding their performance.

Appointee

In an advance care directive, either a natural person with legal capacity or a legal entity can be appointed. The exact personal details and address of the appointee(s) must be included in the advance care directive. The appointee must be suitable for the delegated tasks and have the necessary specialist skills.

It is possible to appoint different persons or several persons for personal care and care of assets; in this case they must carry out the task together. If an appointee is not suitable for the tasks, does not accept the advance care directive or cannot or can no longer carry it out – for whatever reason – or gives notice, substitute appointees may be selected.

The person issuing the advance care directive may provide for compensation for the appointee for their services. If the advance care directive does not include any such arrangement, the child and adult protection agency (KESB) can decide on whether to pay compensation.

Establishment and revocation

When setting up the advance care directive, the person in question must have legal capacity, i.e. be able to make sound judgements and must be an adult. The advance care directive may be drawn up by hand and signed and dated at the end or alternatively may be drawn up by a notary.

The person drawing up the advance care directive may revoke it at any time. The revocation of the advance care directive may be in either of the forms required for its establishment. The advance care directive may also be revoked by destroying it.

If the person drawing up the advance care directive sets up a new one, the latter replaces the earlier version, provided the new document is not merely an addendum.

Effectiveness

The advance care directive takes effect only when the person who set it up becomes unable to make sound judgements. Temporary inability to make sound judgements is not sufficient. The inability of the person setting up the advance care directive to make sound judgements, the validity of the advance care directive and the suitability of the appointee will be evaluated and determined by the child and adult protection agency. If all the criteria are met, the appointee receives an official document stating their tasks and powers.

If the subject of the advance care directive regains their ability to make sound judgements or dies, the advance care directive automatically loses its legal force.

Safekeeping

Safekeeping of the advance care directive is generally one's personal responsibility. The document must be easy to find. In some cantons, the advance care directive can be deposited with the child and adult protection agency.

An entry can be made in the Swiss Civil Status Register at the relevant registry office stating that an advance care directive was drawn up and where the original is kept.

Living will

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A person capable of making sound judgements (not necessarily an adult) can stipulate in a living will which medical measures they consent to should they become unable to take decisions or which medical measures they refuse. They may also designate a natural person to take decisions in their place if they are unable to take decisions themselves.

Establishment and revocation

The living will must be drawn up in writing and must include the date and the person's signature. In contrast to the advance care directive, a form available from various organisations (FMG, Pro Senectute, etc.) may be used for the living will.

The living will can be amended or revoked at any time. For revocation, the provisions of the advance care directive apply by analogy.

Safekeeping

The living will may be deposited with a general practitioner, a health insurance fund or the Swiss Red Cross, for example.

General information

The spouse sharing a household with a person who is incapable of making sound judgements or who regularly and personally provides support, has a right of representation under the law if neither an advance care directive nor corresponding guardianship exists. However, this right of representation applies only to those legal actions required to cover daily maintenance, regular administration of income and assets, and, if applicable, the authority to open and deal with mail. Any legally binding actions in the context of extraordinary asset management require the consent of the child and adult protection agency unless an advance care directive exists.

Setting up an advance care directive is recommended in particular for co-habiting persons as, unlike with a spouse, the partner does not have a right of representation under the law.

Once drawn up, the contents and instructions set out in an advance care directive and living will should be checked at regular intervals.

Seeking specialist advice is also recommended when drawing up the advance care directive. We'll be happy to support you.