STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory:

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

I. Two types of advance directives are allowed by Tennessee law:

A. A *living will* is a legal document that allows a competent person to accept, refuse, stop, or otherwise decide about medical care, especially treatment that keeps him/her alive. It is used when the person's condition is terminal and he/she cannot decide about his/her own medical care.

A *living will* document goes into effect only when an individual no longer can decide. It remains in effect only as long as an individual cannot tell his/her doctor about his/her wishes. The *living will* may be revoked any time. This may be done in writing with at least one witness or notary. An individual also may tell his/her doctor that he/she wants to revoke the *living will*.

Tennessee law includes a *living will* form which can be added to or limited. It is not necessary to use a lawyer to make a *living will*. An individual can type or write a *living will* or complete a pre-printed form. Tennessee law has specific witness requirements for the *living will*. A *living will* must be signed in the presence of two witnesses who know the individual. This excludes relatives, heirs to his/her estate, health care providers taking care of the individual, or people who have claims against any part of the individual's estate. Friends or non-relatives are recommended as witnesses.

The *living will* form included in the law has a place for a notary to sign. The law does not say a notary must be used, but using a notary is recommended.

A copy of the *living will* should be given to the individual's doctor or health care provider and the *living will* must be documented in the individual's medical record. Copies should also be given to family members and caregivers.

The doctor or other health care provider must tell the individual, next of kin or attorney-in-fact if he/she cannot follow the *living will*. The doctor or health care provider must provide assistance in transfer if the individual wants to be transferred to another doctor or health care provider.

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The Tennessee ***living will*** and ***durable power of attorney for health care*** may both be used. The instructions should be the same on both documents. If there are differences, the directions of the attorney-in-fact will control.

Tennessee's ***living will*** law also allows a person to state his/her wishes about donating organs and tissues in the event of death. A person's doctor must keep a person on artificial life support long enough to remove the donated organs and tissues. All organs or tissues may be donated or a person can designate which organs and tissue he/she wishes to donate. A person can state that he/she does not wish to be an organ or tissue donor.

The ***living will*** is only effective in Tennessee if it follows Tennessee law.

B. A ***durable power of attorney for health care*** is a special document that allows someone else to make healthcare choices for someone if the person cannot. This is different from a general power of attorney. It does not allow someone else to control and dispose of a person's assets and execute legal documents.

The individual given the power to decide about an individual's healthcare if he/she cannot is called ***attorney-in-fact***. The person appointed in a ***durable power of attorney*** for healthcare does not have to be a lawyer. The person should be told before he/she is named as the agent.

The attorney-in-fact is an individual's agent. He or she must follow the directions stated in the ***durable power of attorney for healthcare***. The attorney-in-fact also must follow the wishes in the ***living will***. If a person does not have a living will, the attorney-in-fact may make choices for the individual.

The ***durable power of attorney*** for healthcare allows the agent to consent, refuse or take away any care, treatment, service or procedure. This power is limited by what is written in this document. A person may state any types of treatment that he/she does not want.

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An individual has the right to take away the agent's authority. This is done by writing or telling the agency or healthcare provider. A court can take away the power of the agent to make healthcare choices if he/she authorizes anything that is illegal or acts against the desires stated in the document.

If the attorney-in-fact cannot serve as the agent, someone else may be named to serve as the agent.

The agent has the right to look at the medical records. He or she can allow the providers to release an individual's records to others unless this right is limited.

This document also may give the agent other powers after death unless noted otherwise. The agent may allow an autopsy, may donate the body, organs or tissues for certain uses, or also may decide what will be done with the bodily remains.

Tennessee law requires each ***durable power of attorney for healthcare*** to include a warning that states even with a durable power of attorney for healthcare, an individual has the right to make choices for himself/herself. No treatment may be given if an individual does not want it.

Tennessee law requires specific witness requirements for the ***durable power of attorney for healthcare***. The durable power of attorney for healthcare must be signed in front of two witnesses. A notary must certify the signatures of the witnesses. Witnesses must know the individual personally and certify that he/she is of sound mind and under no duress, fraud or undue influence. Friends, non-relatives and other independent people are good choices for witnesses. Witnesses may not be the attorney-in-fact, a healthcare provider, operator of a healthcare facility or service, nor an employee of a healthcare provider. Witnesses may not be a relative by blood, marriage or adoption. They cannot be entitled to any part of the estate upon the individual's death.

Once signed, an individual does not have to renew a ***living will*** or ***durable power of attorney for healthcare***. They should be reviewed periodically since laws may change or an individual may change his/her mind.

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II. Two special limitations on *living will* declarations are included in Tennessee's living will form. These are:

A. Organ Donor Certification:

Special limitations on living will declarations under Tennessee's *living will* law allow an individual to state his/her wishes about donating organs and tissues when a person dies. The Tennessee *living will* form includes a check-off section to make his/her wishes known. All organs/tissues may be donated or specific organs and/or tissues for transplantation can be designated, or a person can check that he/she does not desire to donate organs or tissues for transplantation.

B. Artificially Provided Nourishment and Fluids

If a person wishes artificial food and fluids to be withheld or taken away, it must be specified in the *living will* by checking the proper space on the *living will* form.

III. Tennessee state law does allow for a healthcare provider or agent of the provider to object to implementation of advance directives on the basis of conscience. If the healthcare provider cannot follow the *living will*, the individual, or next of kin, or attorney-in-fact must be informed. If the individual wants to be transferred to another healthcare provider who will follow the *living will*, the physician or provider must assist in transfer.

IV. The written description of the state law on advance directives is available in brochure form to appropriate healthcare providers.

V. Proxy designation is not applicable in Tennessee.