

On behalf of

The Honorable Elaine Marshall

North Carolina Secretary of State

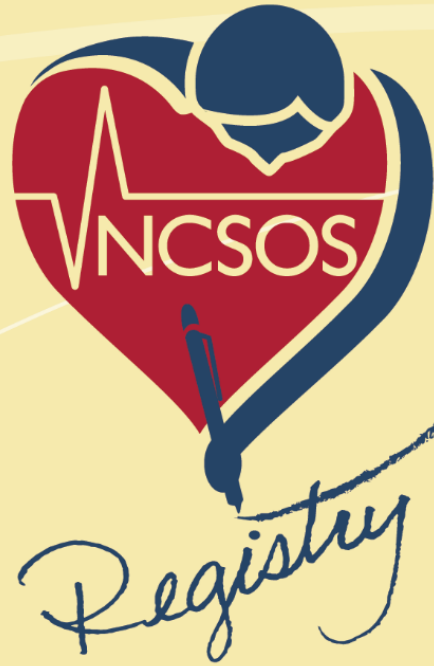
Presenter

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919.814.5521



Advance
Health Care
Directive

Opportunity

Disclaimer



Advance
Health Care
Directive

- This workshop is presented as a general guidance, ***not*** legal advice.
- The views expressed are those of the presenter.
- The presenter believes that all information is truthful and accurate; however, mistakes can occur and laws and regulations may change.

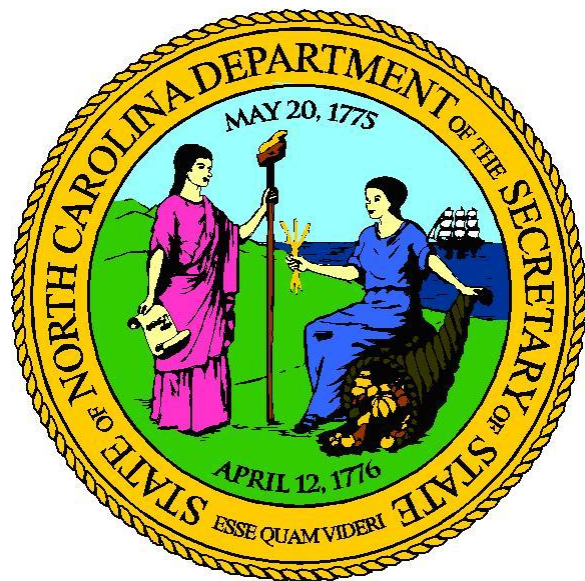
Department of the Secretary of State



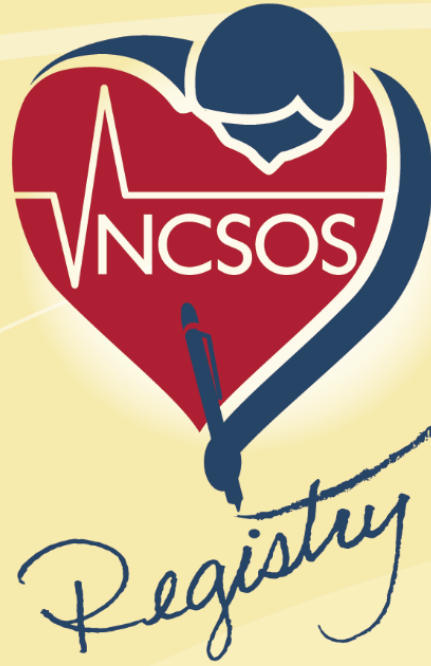
Advance
Health Care
Directive



Hon. Elaine F. Marshall
Secretary of State



ADVANCE CARE
PLANNING
*What It
Is*



Advance
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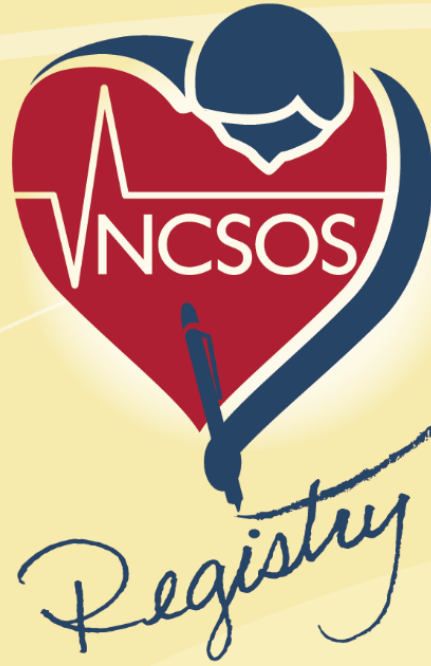
Opportunity *to exercise the right*

- To **control decisions** relating to your medical care,
- To select an **agent** to give, withhold, or withdraw consent to medical treatment, including mental health treatment, when you lack sufficient understanding or capacity to make or communicate health care decisions.

See NC.G.S. § 32A-15 (a&b)

ADVANCE CARE
PLANNING

What It Isn't



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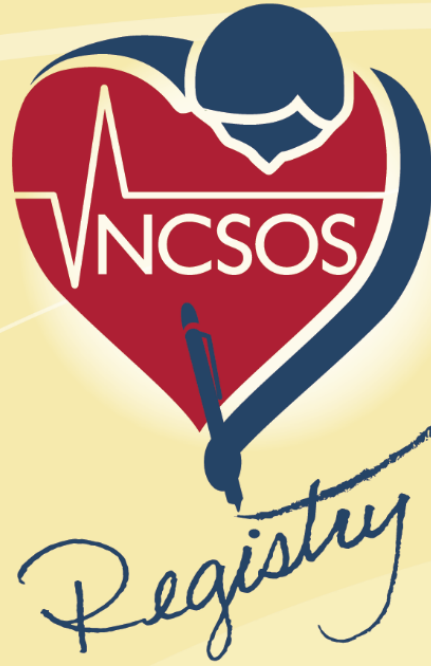
**NC law does NOT authorize any
affirmative or deliberate act or omission
to end life**

other than to permit the natural process of dying.

See NC.G.S. § 32A-15 (c)

ADVANCE CARE
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What It Isn't



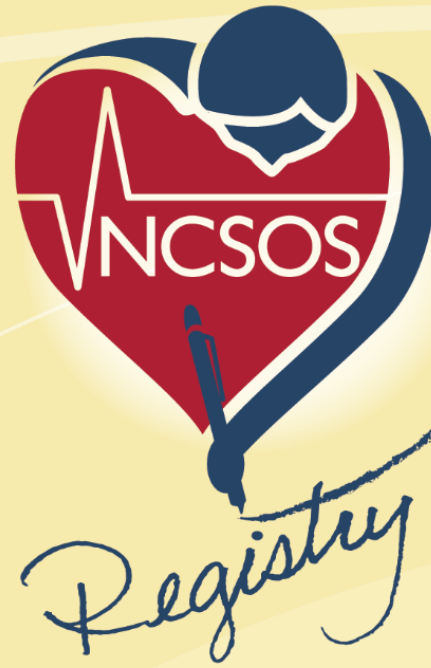
Advance
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Directive

NOT Self Executing

- Directives must be created
- Directives must be easily & quickly obtainable
- Directives should be reviewed & updated as necessary
- Directives must be acted upon

ADVANCE CARE
PLANNING

Why?



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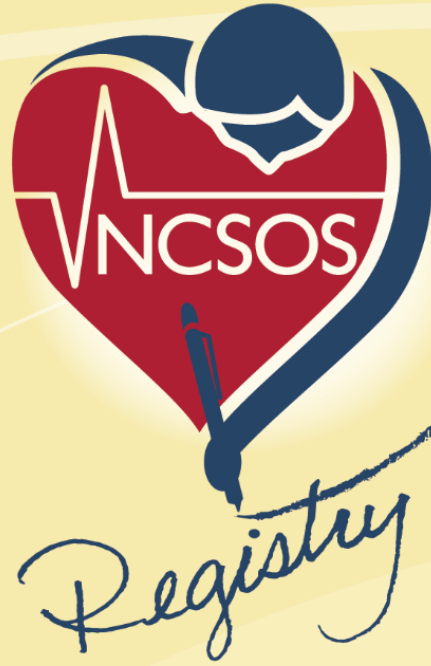
Opportunity *to*

- Better understand options
- Decide what you want & don't want for your care
- Clearly communicate what you want*
- Exercise control over treatment received*
- Relieve family of the decision-making burden*

* Institute of
Medicine:
Dying in
America

ADVANCE CARE
PLANNING

Why?



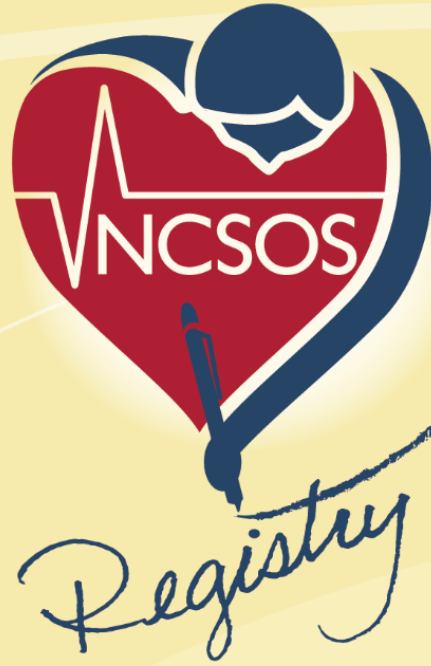
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Opportunity

- Time limited: Only when you have capacity.
- Sharpens awareness: Only when you have focused (made decisions) do others' experiences actually register, your decisions marinate, & you have the chance to change them.

ADVANCE CARE
PLANNING

*The
reality*



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- Approximately

- 40% of adult medical inpatients
- 44-69% of nursing home residents &
- 70% of older adults

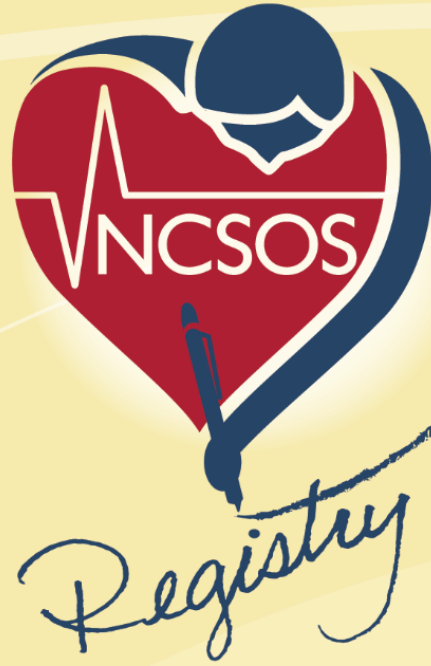
facing treatment decisions are *incapable* of making those decisions themselves &

- The majority will receive acute hospital care from physicians who do *not* know them.

Findings, Conclusions, and Recommendation, Dying in America: Improving Quality and Honoring Individual Preferences Near the End of Life (National Academies Press 2015) at 189.

ADVANCE CARE
PLANNING

*The
reality*



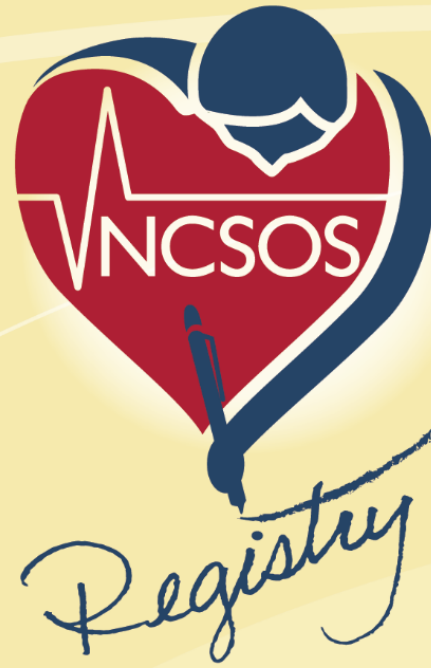
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- 36.7% of adults had completed some kind of advance directive, including 29.3% who prepared living wills.
- 38.2% of adult patients with ***chronic illnesses*** &
- 32.7% of ***healthy*** adults had completed advance directives

“Two out of three U.S. adults have not completed an advance directive,” Science News (July 5, 2017).

ADVANCE CARE
PLANNING

*The
reality*



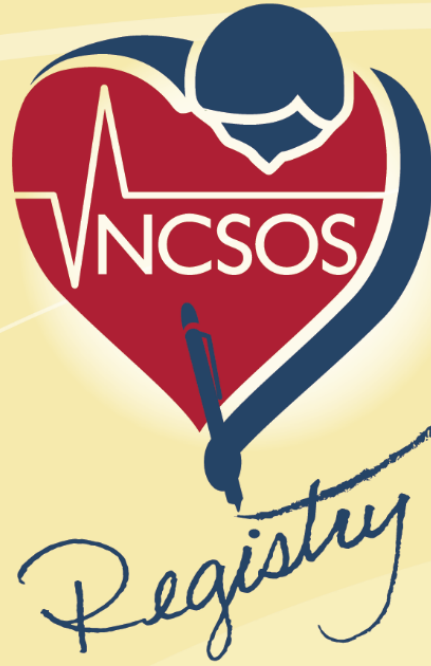
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Advance Care Planning
Documents *Filed* with
the NC Secretary of
State:

- 2013: 4,624
- 2014: 5,547
- 2015: 7,133
- 2016: 7,400
- 2017: 7,785

ADVANCE CARE
PLANNING

*The
reality*



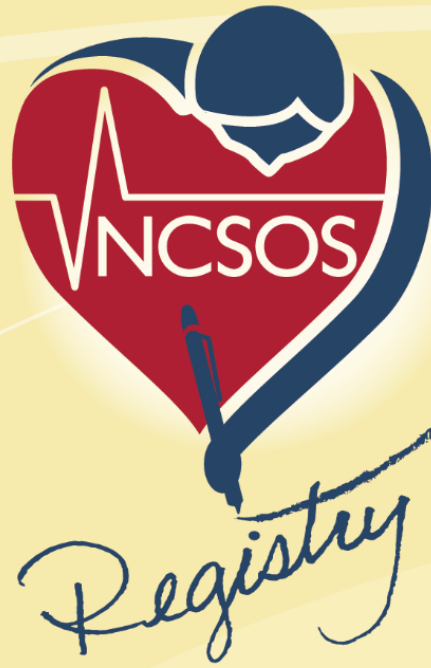
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Advance Care Planning Documents
Already Prepared by Task Force Members Present
& Who Returned the Survey:

- Total Surveys Returned: _____
- Health Care Power of Attorney: _____
- Living Will: _____

ADVANCE CARE
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*Why
Yes?*



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Reasons Noted by _____ Task Force Who Returned the Survey:

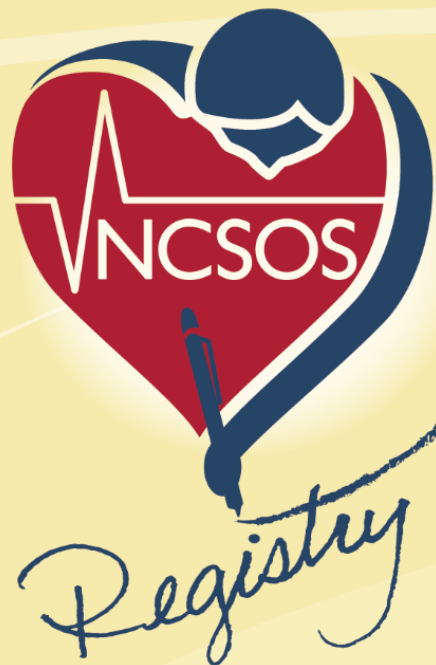
_____ Someone close to me didn't have them when needed

_____ I wanted to make sure my wishes for care are known

_____ Other: _____

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*Why
Not?*



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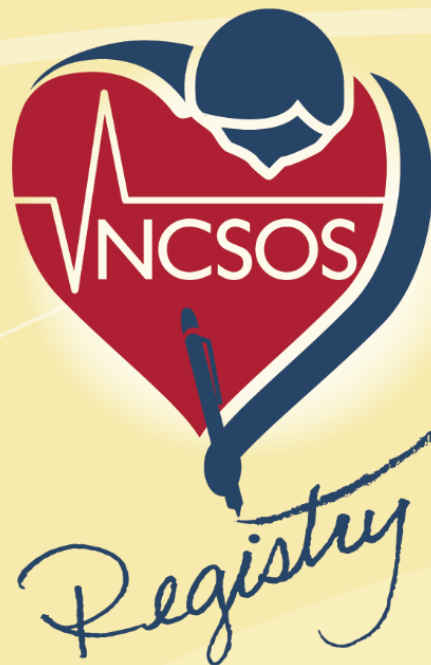
Opportunity Neglected

- Too busy (41%)*
 - Too much trouble
 - Too expensive
- Don't want to think about death & dying (15-26%)*
- Family member didn't want to discuss it (13%)*

* Dying in America:
Improving Quality
and Honoring
Individual
Preference Near the
End of Life (Nat'l
Academy of Sciences
2015), p. 128

ADVANCE CARE
PLANNING

*Why
Not?*



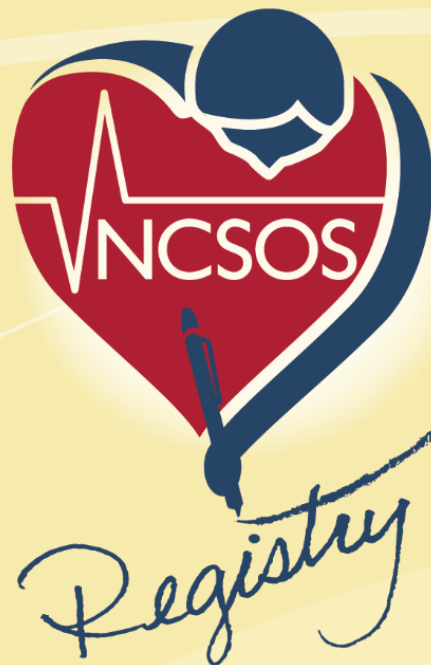
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Reasons Noted by _____ Task Force Who Returned the Survey:

_____ Too busy	_____ Too much trouble
_____ Too expensive	_____ Don't want to think about it
_____ Don't understand....	_____ Don't think I need them
_____ Family members with whom I've raised the issue don't want to talk about it	
_____ Other: _____	

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PLANNING

Remedies at Hand

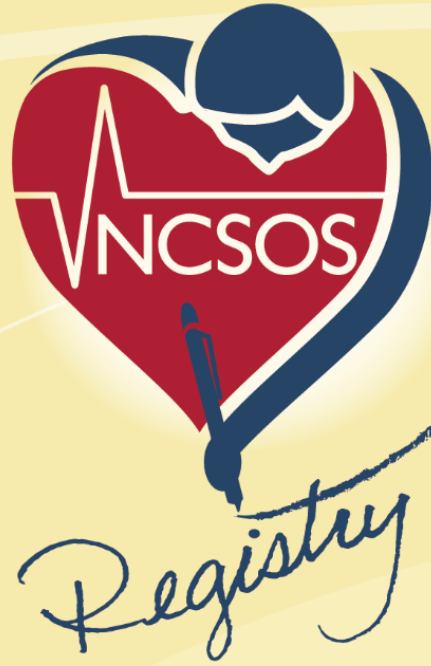


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Barrier	Remedy
Too busy	Can be done online, during doctor visit, estate planning meeting with lawyer
Too much trouble	The forms are accessible online
Too expensive	The forms are available for free online
Don't want to think about death & dying	Reframe discussion <i>from</i> death discussion <i>to</i> what kind of care or treatment each person does/does not want, as well as site (home?)

ADVANCE CARE
PLANNING

*What Happens
When
We
Don't Plan?*

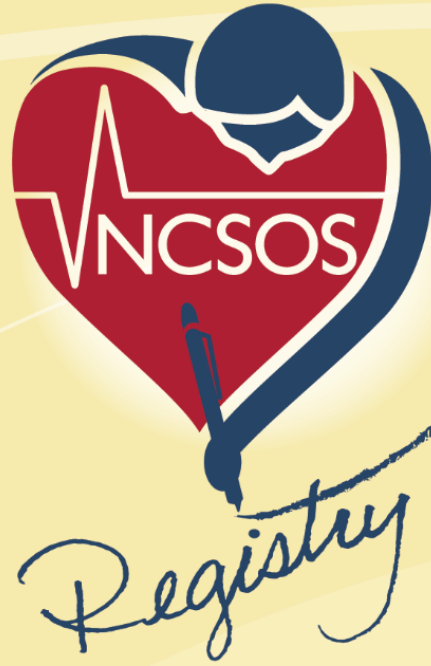


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- Unexpected decision maker
- Unexpected, unwished for outcomes for ourselves
- Anxiety, stress, potential disagreement among family, guilt

FAILURE TO
PLAN

*Unexpected
decision maker*



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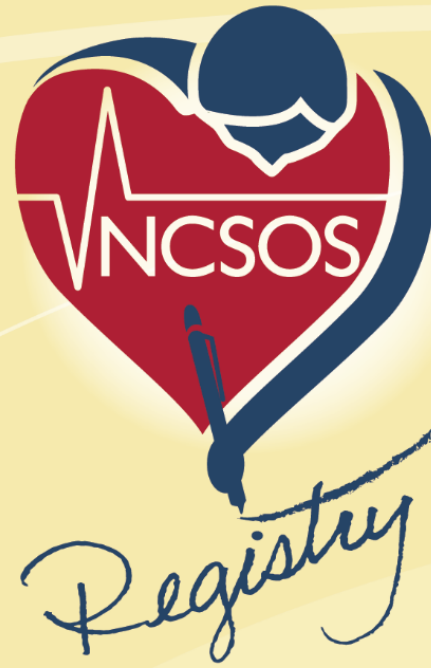
Statutory Hierarchy

- Spouse (*What if separated? What about an unmarried partner?*)
- Majority of reasonably available parents & adult children
- Majority of reasonably available adult siblings
- Individual who has an established relationship with you, who is acting in good faith on your behalf, & who can reliably convey your wishes

NCGS § 90-322(b)

**FAILURE TO
PLAN**

***Unexpected
outcomes
for patient***

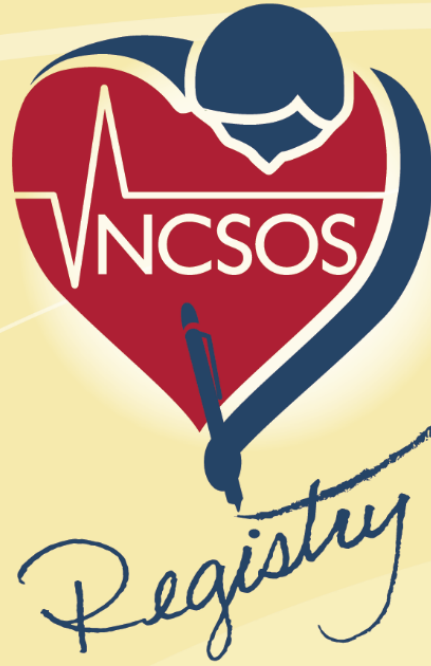


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- Longer life versus quality of life
- Hospital versus home
- Strangers versus family
- Pain, painful regimens
- Ventilator
- Hydration & nutrition tubes

FAILURE TO
PLAN

*Unexpected
outcomes
for family*



Advance
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- Uncertainty
- Stress
- Disagreement
- Guilt

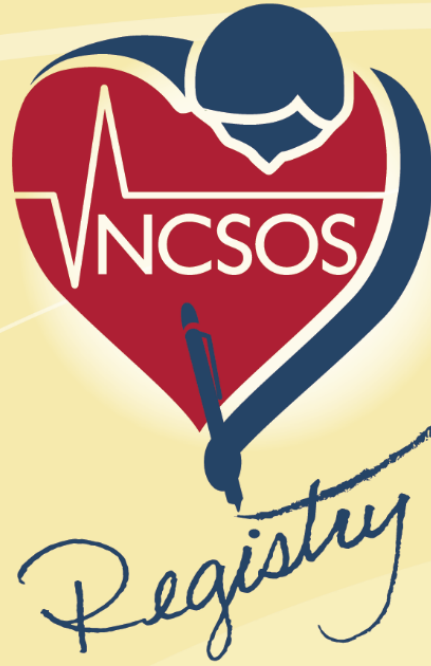
Origins



**Established in 2001 by state law
N.C.G.S. § 130A-465**

“The Secretary of State shall establish and maintain a statewide, on-line, central registry for advance health care directives. The registry shall be accessible over the Internet through a site maintained by the Secretary of State.”

ACCESSIBILITY—
A key component of
advance health care
planning.

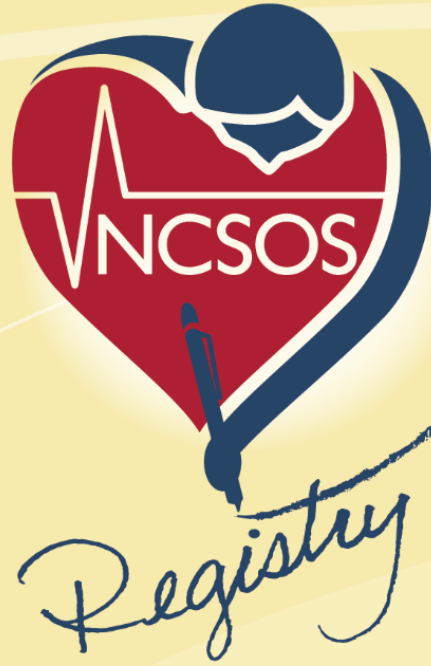


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Opportunity to

- *Give peace of mind knowing documents are secure & won't be misplaced or lost*
- *Make documents available at the point when they're needed*

**PRIVACY &
PERMANENCY—
Potential issues
with private registries**



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- *Documents filed in the SOS registry shall be accessible only if a person attempting to access the document enters both the file number & password of the document. **WARNING! Re-sharing.***
- *Documents filed in the registry, file numbers, passwords, & any other information maintained by the Secretary of State under this Article shall not be subject to disclosure under the public records laws.*

CONTEXT



Other State Registries As of July 2016

Arizona SOS (2004)

California SOS (2000)

Idaho SOS (2006)

Louisiana SOS (1991)

Maryland* (2016)

Michigan* (2014)

Montana* (2005)

Nevada (2007)

Oklahoma* (2009)

Vermont* (2005)

Virginia* (2008)

Washington** (2011)

SOURCE: Preston Holmes, "Commission on Law & Aging Research: A Tour of State Advance Directive Registries," *Bifocal* (Vo. 37, No. 6, July – August 2016), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_37/issue_6_august2016/tour-of-state-advance-directive-registries/.

*Administered by a dep't of state government other than SoS

**Administered by uslivingwillregistry.com

CONTEXT



Private Registry Examples

This is not an endorsement

- The U.S. Living Will Registry AKA U S Advance Care Plan Registry, LLC (NJ SOSID 0450327686)(Incorporated 12/2/18).
 - Currently \$59.95, then renewal after five years for \$25
 - “The U.S. Living Will Registry voluntarily complies with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).” (Emphasis added)
- MyDirectives.com

SCOPE



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Documents that May Be Registered N.C.G.S. § 130A-466

- A health care power of attorney
- A declaration of a desire for a natural death
- An advance instruction for mental health treatment
- A declaration of an anatomical gift

SCOPE



Limitation on Documents See N.C.G.S. § 130A-466

NOT included

- DNR (Do Not Resuscitate)(Yellow)
- MOST (Medical Orders for Scope of Treatment)(Pink)

Each

- Is a Medical Order (versus Legal Document)
- Must be obtained from medical professionals

SOURCES



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Government Sources

- State Statutes,
 - NCGS § 90-321(d1) (Living Will)
 - NCGS § 32A-25.1 (Health Care Power of Attorney)
 - NCGS § 122C-77(Advance Instruction for Mental Health Treatment)
- Secretary of State website
- Department of Health & Human Services website

SOURCES



Non-Government Sources A few of the many....

- NC Bar Association * Legal Aid of NC
- AARP * Cone Health
- Duke Advance Care Planning Initiative
- National Hospice & Palliative Care Organization
- Hospice & Palliative Care Charlotte Region
- National Hospice & Palliative Care Organization
- UNC Health Care
- Veterans Administration (**WARNING**: NC Requires Notarization)

COST: Document Preparation



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Can be done for a fee

Prepared by an attorney as part of Estate Planning, which may also include:

- Power of Attorney (for financial matters),
- Will,
- Trust, &
- Review of beneficiary designations.

COST: Document Preparation



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Can be done for FREE

- Unaided by an attorney
- Aided by an attorney
 - Legal Aid of NC
 - Volunteer lawyers partnering with health care systems, hospice providers & senior advocates as part of Advance Care Planning Workshops
- Assisted by an Advance Care Planning Facilitator

COST: Document Preparation



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With the help of medical providers
80 Federal Register 70886 (11/16/15)

Two CPT advanced care planning codes
99497 & 99498

are used to report the face-to-face service between a physician or other qualified healthcare professional (QHP) and a patient, family member or surrogate in counseling & discussing advance directives, with/without completing relevant legal forms.

COST: Registering Documents



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Set by state law in 2001
N.C.G.S. § 130A-470

- \$10 per document filing fee
- No renewal fees (unlike private registries)
- No fee for withdrawal of document

COST of Registry



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Set by state law in 2001
N.C.G.S. § 130A-470

Tax money is not used to support the registry; instead, the cost of maintaining the Registry is supported entirely by

- The per document fee
- Gifts, donations, devises, & other forms of voluntary contributions
- Grants from public & private sources

CAVEATS



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Directive

Per state law

N.C.G.S. § 130A-468(a & d)

Registration does not

- Constitute a legal finding that the documents are legally sufficient, *but...*
- Affect the validity of any document
- Relate to the accuracy of information in the document

CAVEATS



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Per state law

N.C.G.S. § 130A-467

- **Non-registration** does not affect validity of documents
- Failure to notify SOS of **revocation** won't affect validity of revocation, so long as revocation meets statutory requirements.

Registration Is Easily Done



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- Print out the registration form available on the SOSNC.gov website
- Fill it out
- Copy documents to be registered; originals do not need to be sent
- Make out a check for the documents to be registered

Your AHCDR Letter



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Plain language instructions

- Carry it in your wallet
- Keep copies handy
- Notify friends, family, health care pros
- Give copies to people whom you want to have access



We Can Also Help Protect Your Financial Health

The North Carolina Department of the Secretary of State Securities Division wants you to know that if someone contacts you - or you see something on the Internet - about an investment opportunity that sounds or looks "too good to be true" - IT PROBABLY IS!

In general, anyone who offers or sells investments, or is paid to provide advice about investing, must be registered with the Securities Division to do so legally in North Carolina.

As an investor, you have the right to know anything and everything about both the investment you are being asked to make and the person or company selling or promoting it. One of the easiest ways to find out if a specific investment professional is licensed in North Carolina, or has any known history of violations or complaints, is to call the North Carolina Securities Division at (919) 814-5400 or toll-free at (800) 688-4507. (Note: Under North Carolina law, annuities generally are regulated as insurance products by the NC Department of Insurance. You should call that office at 855-408-1212 to verify the registration status of annuity salespersons.)

What are Some Warning Signs of Potential Investment Fraud?

The key to avoid becoming an investment fraud victim is to recognize the pressure tactics and remember that it is OK to say NO to an unsolicited sales pitch. These are the most common psychological tactics used against victims:

1. Promises of Wealth: The salesperson dangles the promise of wealth in a short period of time, often "guaranteed" with "little or no risk" involved. Remember: All investments carry risk.
2. Favors: The salesperson gives you something (like a free meal or a discount) hoping you will feel obligated to give him something in return (like your money). Remember: You have no obligation to return any business-related favor.
3. Act Now: The salesperson pressures you to "act fast" because the offer will only be available "for a limited time". Remember: Do not feel pressured to make a quick investment decision.

For additional information, please visit our website at www.sosnc.gov and click on the "Securities" tab. To schedule a fraud prevention talk for your business, church, or civic organization, Email secdiv@sosnc.gov and include "Speaker Request" in the subject line.

Please carry this card with you at all times

Furnish the file number and password to persons who need to be aware of your directives, such as family members and health care providers.

Replacement cards may be obtained for a minimal cost.

Call our office at:

(919) 814-5400

From 8:00 a.m. - 5:00 p.m.

Monday through Friday.

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AHCDR ID Cards



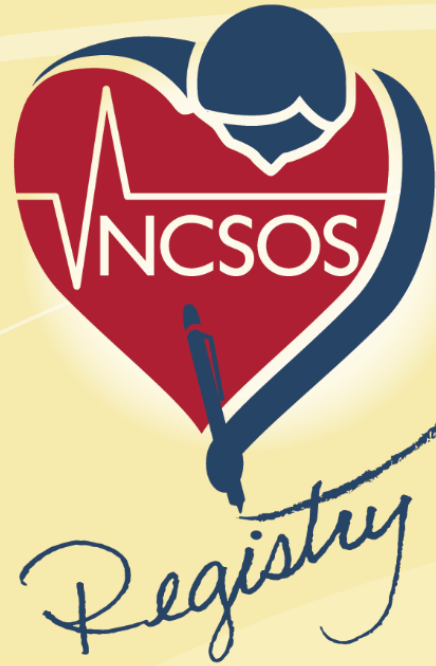
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Easy to Use

- Insurance card size
- Documents available
 - By internet
 - 24/7/365



**A key component of
advance health care
planning.**

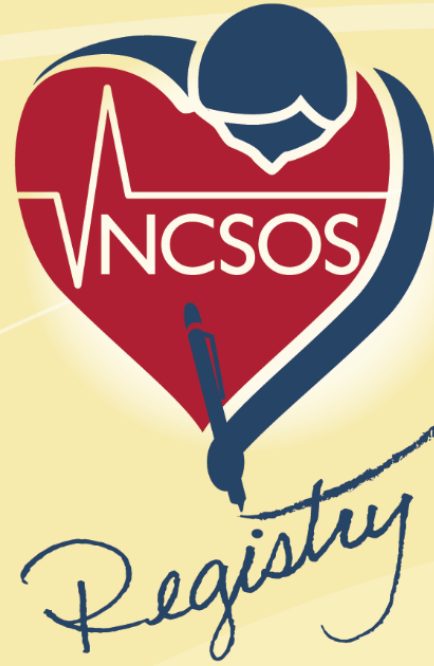


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Loved Ones. *The AHCDR makes it easy to*

- *Express your wishes * Reexamine them **
 - *Share your wishes &
* Help a loved one
achieve his/her health care wishes*

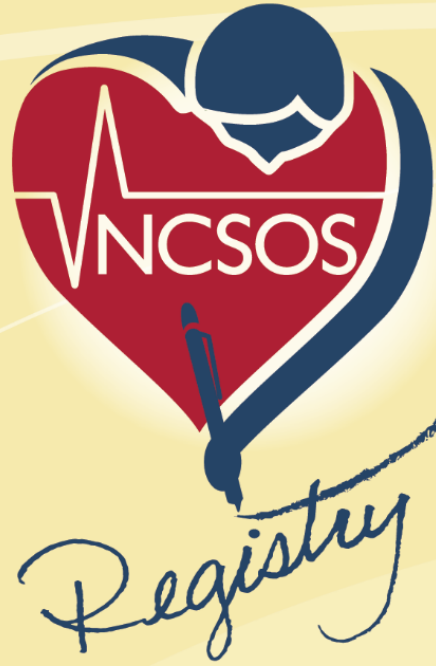
A key component of
advance health care
planning.



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Opportunity *to make documents available
at the point & at the time
when they're needed.*

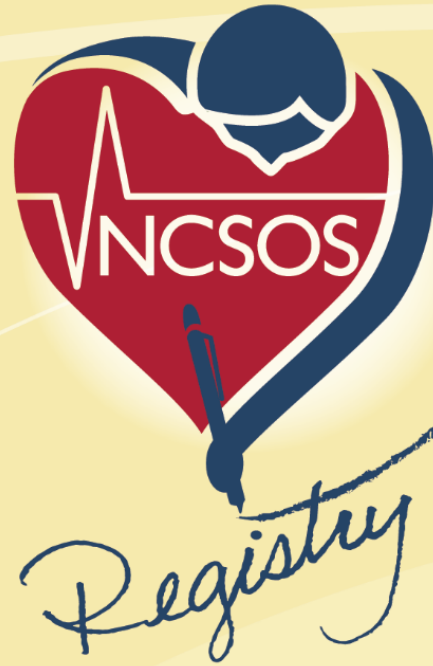
MISSED OPPORTUNITY



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- *“It’s always too early, until it’s too late.”*
–The Conversation Project, 2013
- *“Nothing is more expensive than a missed opportunity.”*
–H. Jackson Brown, Jr.
- *“In the end, we only regret the chances (opportunities) we didn’t take.”*
--Unknown

***SEIZE THE
OPPORTUNITY***



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- *Open a dialogue*
- *Lead by example*
- *Use advance planning, so problems can be identified & corrected*



Advance Health Care Directive

Registry

For more information

Please call us at

919-814-5400



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Registry

For more information

Visit us on the web at

www.sosnc.gov