TENNESSEE



Legal Documents
To Assure Future Health Care Choices

ADVANCE DIRECTIVES

YOUR RIGHT TO MAKE HEALTH CARE DECISIONS UNDER THE LAW IN TENNESSEE

INTRODUCTION

Tennessee and federal law give every competent adult, 18 years or older, the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject or discontinue. If you do not want to receive certain types of treatment or you wish to name someone to make health care decisions for you, you have the right to make these desires known to your doctor, hospital or other health care providers, and in general, have these rights respected. You also have the right to be told about the nature of your illness in terms that you can understand, the general nature of the proposed treatments, the risks of failing to undergo these treatments and any alternative treatments or procedures that may be available to you.

However, there may be times when you cannot make your wishes known to your doctor or other health care providers. For example, if you were taken to a hospital in a coma, would you want the hospital's medical staff to know what your specific wishes are about the medical care that you want or do not want to receive.

This booklet describes what Tennessee and federal law have to say about your rights to inform your health care providers about medical care and treatment you want, or do not want, and about your right to select another person to make these decisions for you, if you are physically or mentally unable to make them yourself.

To make these very difficult issues easier to understand, we have presented the information in the form of questions and answers. Because this is an important matter, we urge you to talk to your spouse, family, close friends, personal advisor, your doctor and your attorney before deciding whether or not you want an advance directive.

QUESTIONS AND ANSWERS

GENERAL INFORMATION ABOUT ADVANCE DIRECTIVES

What are "Advance Directives"?

Advance directives are documents which state your choices about medical treatment or name someone to make decisions about your medical treatment, if you are unable to make these decisions or choices yourself. They are called "advance" directives, because they are signed in advance to let your doctor and other health care providers know your wishes concerning medical treatment. Through advance directives, you can make legally valid decisions about your future medical care.

Tennessee law recognizes 2 types of advance directives:

- 1) An Advance Care Plan (Living Will).
- 2) An Appointment of Health Care Agent.

Do I have to have an Advance Directive?

No. It is entirely up to you whether you want to prepare any documents. But if questions arise about the kind of medical treatment that you want or do not want, advance directives may help to solve these important issues. Your doctor or any health care provider cannot require you to have an advance directive in order to receive care; nor can they prohibit you from having an advance directive. Moreover, under Tennessee law, no health care provider or insurer can charge different fees or rates depending on whether or not you have executed an advance directive.

What will happen if I do not make an Advance Directive?

You will receive medical care even if you do not have any advance directives. However, there is a greater chance that you will receive more treatment or more procedures than you may want.

If you cannot speak for yourself and you do not have any advance directives, your doctor or other health care providers will look to the following people in the order listed for decisions about your care:

- 1) Your spouse, unless you are legally separated;
- 2) Any of your adult children;
- 3) Either of your parents;
- 4) Any of your adult brothers or sisters;
- 5) Any of your other adult relatives; or
- 6) Any other adult who is familiar with your personal values and has exhibited special care and concern for you.

How do I know what treatment I want?

Your doctor must inform you about your medical condition and what different treatments can do for you. Many treatments have serious side effects. Your doctor must give you information, in language that you can understand, about serious problems that medical treatment is likely to cause. Often, more than one treatment might help you and different people might have different ideas on which is best. Your doctor can tell you the treatments that are available to you, but he or she cannot choose for you. That choice depends on what is important to you.

Whom should I talk to about Advance Directives?

Before writing down your instructions, you should talk to those people closest to you and who are concerned about your care and feelings. Discuss them with your family, your doctor, friends and other appropriate people, such as a member of your clergy or your lawyer. These are the people who will be involved with your health care, if you are unable to make your own decisions.

When do Advance Directives go into effect?

It is important to remember that these directives only take effect when you can no longer make your own health care decisions. As long as you are able to give "informed consent," your health care providers will rely on **YOU** and **NOT** on your advance directives.

What is "Informed Consent"?

Informed consent means that you are able to understand the nature, extent and probable consequences of proposed medical treatments and you are able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures **AND** you are able to communicate that understanding in any way.

How will health care providers know if I have any Advance Directives?

All hospitals, nursing homes, home health agencies, HMO's and all other health care facilities that accept federal funds must ask if you have an advance directive, and if so, they must see that it is made part of your medical records.

Will my Advance Directives be followed?

Generally, yes, if they comply with Tennessee law. Federal law requires your health care providers to give you their written policies concerning advance directives. A summary statement of those policies is provided for you at the back of this book. It may happen that your doctor or other health care provider cannot or will not follow your advance directives for moral, religious or professional reasons, even though they comply with Tennessee law. If this happens, they must immediately tell you. Then they must help you transfer to another doctor or facility that will do what you want.

Can I change my mind after I write an Advance Directive?

Yes. At any time, you can cancel or change any advance directive that you have written. To cancel your directive, simply destroy the original document and tell your family, friends, doctor and anyone else who has copies that you have cancelled them. To change your advance directives, simply write and date a new one. Again, give copies of your documents to all the appropriate parties, including your doctor.

Do I need a lawyer to help me make an Advance Directive?

A lawyer may be helpful and you might choose to discuss these matters with him or her, but there is no legal requirement in Tennessee to do so. You may use the forms that are provided in this booklet to execute your advance directives.

Will my Tennessee Advance Directives be valid in another state?

The laws on advance directives differ from state to state, so it is unclear whether a Tennessee advance directive will be valid in another state. Because an advance directive is a clear expression of your wishes about medical care, it will influence that care no matter where you are admitted. However, if you plan to spend a great

amount of time in another state, you should consider signing an advance directive that meets all the legal requirements of that state.

Will an Advance Directive from another state be valid in Tennessee?

Yes. An advance directive executed in compliance with another state's laws will be valid in Tennessee to the extent permitted by Tennessee law.

What should I do with my Advance Directives?

You should keep them in a safe place where your family members can get to them. Do **NOT** keep the original copies in your safe deposit box. Give copies of these documents to as many of the following people as you are comfortable with: your spouse and other family members; your doctor; your lawyer; your clergyperson; and any local hospital or nursing home where you may be residing. Another idea is to keep a small wallet card in your purse or wallet which states that you have an advance directive and who should be contacted. Wallet cards are provided for you at the back of this booklet for that purpose.

ADVANCE CARE PLAN (LIVING WILL)

What is a "Living Will"?

A living will (officially called an "Advance Care Plan" in Tennessee) is a document which tells your doctor or other health care providers whether or not you want life-sustaining treatments or procedures administered to you if you are terminally ill, permanently unconscious or in an end-stage condition.

Is a "Living Will" the same as a "Will" or "Living Trust"?

No. Wills and living trusts are financial documents which allow you to plan for the distribution of your financial assets and property after your death. A living will only deals with medical issues while you are still living. Wills and living trusts are complex legal documents and you usually need legal advice to execute them. You do not need a lawyer to complete your Tennessee living will.

When does a Tennessee Living Will go into effect?

A Tennessee living will goes into effect when:

1) your doctor has a copy of it, and 2) your doctor has concluded that you are no longer able to make your own health care decisions, and 3) your doctor has determined that you are either terminally ill, permanently unconscious or you are in an end-stage condition.

What are "life-sustaining" treatments?

These are treatments or procedures that are not expected to cure your terminal condition or make you better. They only prolong dying. Examples are mechanical respirators which help you breathe, kidney dialysis which clears your body of wastes, and cardiopulmonary resuscitation (CPR) which restores your heartbeat.

What is a "terminally ill" condition?

Being terminally ill is defined as an incurable condition for which administration of medical treatment will only prolong the dying process and without administration of, these treatments or procedures, death will occur in a relatively short period of time.

What is a "permanently unconscious state"?

A permanently unconscious state means that a patient is in a permanent coma or state of unconsciousness caused by illness, injury or disease. The patient is totally unaware of himself or herself, his or her surroundings and environment, and to a reasonable degree of medical certainty, there can be no recovery.

What is an "end-stage" condition?

An end-stage condition is defined as an irreversible condition caused by injury, illness or disease which results in severe and permanent deterioration, incapacity and physical dependence, and to a reasonable degree of medical certainty, medical treatment would not be effective.

Is a Living Will the same as a "Do Not Resuscitate (DNR)" order?

No. A Tennessee living will covers almost all types of life-sustaining treatments and procedures. A "Do Not Resuscitate" order covers two types of life-threatening situations. A DNR order is a document prepared by your doctor at your direction and placed in your medical records. It states that if you suffer cardiac arrest (your heart stops beating) or respiratory arrest (you stop breathing), your health care providers are not to try to revive you by any means.

Will I receive medication for pain?

Unless you state otherwise in the living will, medication for pain will be provided where appropriate to make you comfortable and will not be discontinued.

Can I provide for organ donation in my Tennessee Living Will?

Yes. Tennessee law now provides that you can include a statement concerning your wishes to donate tissues and organs after death in the living will document. The living will document included in this book contains an organ donation section. YOU DO NOT HAVE TO DONATE YOUR ORGANS AFTER DEATH TO FILL OUT A LIVING WILL DECLARATION.

Will being an organ donor affect my care at the hospital?

No. If you are injured or ill and are taken to a hospital emergency room, you will receive the best possible care, whether or not you are an organ donor. Donation procedures begin only after all efforts to save your life have been exhausted and death has been declared.

Does my religion permit organ donation?

Almost every major faith either supports organ and tissue donation or finds it

acceptable as a personal decision for their members. The Gypsy faith is the only one holding any restrictions regarding donation due to their belief in the afterlife.

Can I still have a regular funeral service?

Yes. A traditional open casket funeral service can still take place, even though many organs and tissues have been donated. The surgical procedures used are performed by highly skilled professionals and the appearance of the donor's body is unchanged.

Can my doctor be sued or prosecuted for carrying out the provisions of a Tennessee Living Will?

No. The Tennessee Right to Natural Death Act specifically states that no physician, health facility or health care provider acting under the direction of a physician, who participates in the withholding or withdrawal of medical care in accordance with the law shall be guilty of any civil or criminal act or of unprofessional conduct.

Does a Tennessee Living Will affect insurance?

No. The making of a living will, in accordance with Tennessee law, will not affect the sale or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy. In addition, the removal of life-support systems according to Tennessee law, shall not, for any purpose, constitute suicide, homicide or euthanasia, nor shall it be deemed the cause of death for the purposes of insurance coverage.

Does a Tennessee Living Will have to be signed and witnessed?

Yes. You must sign (or have someone sign the document in your presence and at your direction, if you are unable to sign) and date the living will. Then it must be witnessed by 2 qualified people or notarized.

The following people CANNOT witness your signature of the living will:

- Any person you may have appointed as your agent or alternate agent in your Appointment of Health Care Agent document; or
- 2) Any person who is not yet 18 years of age.

In addition, at least one of the two witnesses must not be related to you by blood, marriage or adoption, and not entitled to any portion of your estate upon your death.

<u>APPOINTMENT OF HEALTH CARE AGENT</u>

What is an Appointment of Health Care Agent (AHCA)?

An AHCA is a legal document which allows you (the "principal") to appoint another person (the "attorney-in-fact" or "agent") to make medical decisions for you if you should become temporarily or permanently unable to make those decisions yourself. The person you choose as your attorney-in-fact does not have to be a lawyer.

Who can I select to be my Agent?

You can appoint almost any adult to be your agent. You should select a person knowledgeable about your wishes, values, religious beliefs, in whom you have trust and confidence, and who knows how you feel about health care. You should discuss the matter with the person(s) you have chosen and make sure that they understand and agree to accept the responsibility.

You can select a member of your family, such as your spouse, child, brother or sister, or a close friend. If you select your spouse and then become divorced, the appointment of your spouse as your agent is revoked.

The following people **CANNOT** be appointed as your agent in the AHCA:

- 1) Your treating health care provider;
- 2) An employee of your treating health care provider, unless he or she is related to you by blood, marriage or adoption;
- 3) An operator of a treating health care institution;
- 4) An employee of an operator of a treating health care institution, unless he or she is related to you by blood, marriage or adoption; or
- 5) A Conservator, if one has been appointed by a court for you, except under conditions specified by Tennessee law.

When does the AHCA take effect?

The AHCA only becomes effective when you are temporarily or permanently unable to make your own health care decisions and your agent consents to start making those decisions. Your agent will begin making decisions after your doctors have decided that you are no longer able to make them. Remember, as long as you are able to make treatment decisions, you have the right to do so.

What decisions can my Agent make?

Unless you limit his or her authority in the AHCA, your agent will be able to make almost every treatment decision in accordance with accepted medical practice that you could make, if you were able to do so. If your wishes are not known or cannot be determined, the agent you appointed has the duty to act in your best interest in the performance of his or her duties. These decisions can include authorizing, refusing or withdrawing treatment, even if it means that you will die. As you can see, the appointment of an agent is a very serious decision on your part.

What happens if I regain the capacity to make my own decisions?

If your doctor determines that you have regained the capacity to make or to communicate health care decisions, then two things will happen:

1) Your agent's authority ends; and 2) Your consent will be required for treatment.

If your doctor later determines that you no longer have the capacity to make or communicate your health care decisions, then your agent's authority will be restored.

Can there be more than one Agent?

Yes. While you are not required to do so, you may also designate alternates who may also act for you, if your primary agent is unavailable, unable or unwilling to act. Your alternates have the same decision-making powers as the primary agent.

Can my Agent be legally liable for decisions made on my behalf?

No. Your health care agent or your alternate agent cannot be held legally liable for treatment decisions made in good faith on your behalf. Also, he or she cannot be held liable for costs incurred for your care, just because he or she is your agent.

Can my Agent be paid for his or her services?

No. Your agent and your alternates cannot accept payment for the performance of their authority, rights and responsibilities. But your agent can be reimbursed for actual and necessary expenses incurred in the performance of their duties.

Can my Agent resign?

Yes. Your agent and your alternates can resign at any time by giving written notice to you, your doctor or the hospital or nursing home where you are receiving care.

Does the AHCA have to be signed and witnessed?

Yes. You must sign (or have someone sign the AHCA in your presence and at your direction, if you are unable to sign) and date it. Then it must be witnessed by 2 qualified people or notarized.

The following people **CANNOT** witness your signature of the AHCA:

1) Any person you may have appointed as your agent or alternate agent; or 2) Any person who is not yet 18 years of age.

In addition, at least one of the two witnesses cannot be related to you by blood, marriage or adoption, and is not entitled to any portion of your estate upon your death.

How is the AHCA different from the Living Will?

A living will only applies if you are terminally ill, or are permanently unconscious, or in an end-stage condition and unless you write in other specific instructions, it only tells your doctor what you do **NOT** want.

The AHCA allows you to appoint someone to make health care decisions for you if you cannot make them. It covers all health care situations in which you are incapable of making decisions for yourself. It also allows you to give specific instructions to your agent about the type of care you want to receive.

The AHCA allows your agent to respond to medical situations that you might not have anticipated and to make decisions for you with knowledge of your values and wishes.

Since the AHCA is more flexible, it is the advance directive most people choose. Some people, however, do not have someone whom they trust or who knows their values and preferences. These people should consider creating a living will.

TENNESSEE ADVANCE CARE PLAN

(Instructions: Competent adults and emancipated minors may give advance instructions using this form or any form of their own choosing. To be legally binding, the Advance Care Plan must be signed and either witnessed or notarized.) _____, hereby give these advance instructions on how I want to be treated by my doctors and my other health care providers when I can no longer make those treatment decisions myself. **Agent:** I want the following person to make health care decisions for me: Name: _____ Address: City, State, Zip Code: _____ Relationship: _____ Phone No: _____ Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as my alternate: Name: Address: City, State, Zip Code: _____ Relationship: _____ Phone No: _____ QUALITY OF LIFE I want my doctors to help me maintain an acceptable quality of life including adequate pain management. A quality of life that is unacceptable to me means when I have any of the following conditions (you can check as many of these items as you want): Permanent Unconscious Condition: I become totally unaware of people or surroundings with little chance of ever waking up from the coma. Permanent Confusion: I become unable to remember, understand or make decisions. I do not recognize loved ones or cannot have a clear conversation with them. Dependent in all Activities of Daily Living: I am no longer able to talk clearly or move by myself. I depend on others for feeding, bathing, dressing and walking. Rehabilitation or any other restorative treatment will not help. End-Stage Illnesses: I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that does not respond anymore to treatment; chronic and/or damaged heart and lungs, where oxygen needed most of the time and activities are limited due to the feeling of suffocation.

TREATMENT				
If my quality of life becomes unacceptable to me and my condition is irreversible (that is, it will not improve), I then direct that medically appropriate treatment be provided as follows. Checking "Yes" means I WANT the treatment. Checking "No" means I DO NOT want the treatment.				
☐ Yes ☐ No CPR (Cardiopulmonary Resuscitation): To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.				
☐ Yes ☐ No Life Support / Other Artificial Support: Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys and other organs to continue to work.				
□ Yes □ No Treatment of New Conditions: Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.				
☐ Yes ☐ No Tube feeding/IV fluids : Use of tubes to deliver food and water to patient's stomach or use of IV fluids into a vein which would include artificially delivered nutrition and hydration.				
Other instructions, such as burial arrangements, hospice care, etc.: (Attach additional pages if necessary)				
Organ donation (optional): Upon my death, I wish to make the following anatomical gift (please mark one): ☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues:				

PATIENT SIGNATURE

Your signature should either be witnessed by two competent adults or notarized. If witnessed, neither witness should be the person you appointed as your agent, and at least one of the witnesses should be someone who is not related to you or entitled to any part of your estate.

, and the second					
Signature:(Patient)	Date:				
WITNESS SIGNATURES					
1. I am a competent adult who is not named signature on this form.	d as the agent. I witnessed the patient's				
Signature of witness number 1:					
PrintName:	Phone No:				
Address:					
2. I am a competent adult who is not name patient by blood, marriage, or adoption and of the patient's estate upon his or her death operation of law. I witnessed the patient's s	d I would not be entitled to any portion under any existing will or codicil or by				
Signature of witness number 2:					
PrintName:	Phone No:				
Address:					
This document may be notar	ized instead of witnessed				
STATE OF TENNESSEE - COUNTY OF_					
I am a Notary Public in and for the State a who signed this instrument is personally kno of satisfactory evidence) to be the person we personally appeared before me and signed above as his or her own. I declare under per to be of sound mind and under no duress,	own to me (or proved to me on the basis who signed as the "patient". The patient d above or acknowledged the signature enalty of perjury that the patient appears				
Signature of Notary Public					
My commission expires:					
WHAT TO DO WITH THIS	ADVANCE DIRECTIVE				

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Approved by Tennessee Department of Health, Board for Licensing Health Care Facilities, February 3, 2005 Acknowledgement to Project GRACE for inspiring the development of this form

TENNESSEE APPOINTMENT OF HEALTH CARE AGENT

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important document. Before executing this document, you should know these important facts:

This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

You have the right to revoke the authority of your agent by notifying your agent or your treating physician, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure.

If there is anything in this document that you do not understand, you should ask your attorney to explain it to you.

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(Ho	me Phone Number)		(I	Home Phone Number	er)
(W	ork Phone Number)		((Work Phone Number)	
Patient's Name	(please print or type)	Date	(must be	Signature of Patien at least 18 or emand	
To be legally va	lid either bloc	k A or block			
1. I am a compe on this form.	etent adult who i	is not named		ssed the patien	
Signature of with	ness number 1:				
2. I am a compermarriage, or add his or her death patient's signatu	ption and I wou under any exis	ld not be enti sting will or c	tled to any portion	on of the patien	t's estate upon
Signature of with	ness number 2:			SE	4
3		LOCK B NO	OTARIZATION		
STATE OF TEN					
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who signed this satisfactory evid patient personal above as his or of sound mind a	instrument is plence) to be the lly appeared be her own. I decla	personally kr person who fore me and are under pe	nown to me (or se name is show signed above of nalty of perjury	proved to me over a sthem of the standard of t	on the basis of "patient." The d the signature
Signa	ature of Notary Public	C	-	My commission exp	ires
Approved by Tenne	essee Department o	of Health, Boar	d for Licensing Hea	alth Care Facilities,	February 3, 2005

A SUMMARY STATEMENT OF HEALTH CARE POLICIES REGARDING PATIENTS' RIGHTS OF SELF-DETERMINATION

(Since a summary like this cannot answer all possible questions or cover every circumstance, you should discuss any remaining questions with a representative of this health care facility.)

- 1. Prior to the start of any procedure or treatment, the physician shall provide the patient with whatever information is necessary for the patient to make an informed judgment about whether the patient does or does not want the procedure or treatment performed. Except in an emergency, the information provided to the patient to obtain the patient's consent shall include, but not necessarily be limited to, the intended procedure or treatment, the potential risks, and the probable length of disability. Whenever significant alternatives of care or treatment exist, or when the patient requests information concerning alternatives, the patient shall be given such information. The patient shall have the right to know the person responsible for all procedures and treatments.
- 2. The patient may refuse medical treatment to the extent permitted by law. If the patient refuses treatment, the patient will be informed of significant medical consequences that may result from such action.
- 3. The patient will receive written information concerning his or her individual rights under Tennessee state law to make decisions concerning medical care.
- 4. The patient will be given information and the opportunity to make advance directives--including, but not limited to a Tennessee Advance Care Plan and an Appointment of Health Care Agent.
- 5. The patient shall receive care regardless of whether or not the patient has or has not made an advance directive.
- 6. The patient shall have his or her advance directive(s), if any has been created, made a part of his or her permanent medical record.
- 7. The patient shall have all of the terms of his or her advance directive(s) complied with by the health care facility and caregivers to the extent required or allowed by Tennessee law.
- 8. The patient shall be transferred to another doctor or health care facility if his or her doctor(s), or agent of his or her doctor(s), or the health care facility cannot respect the patient's advance directive requests as a matter of "conscience".
- The patient shall receive the name, phone number and address of the appropriate state agency responsible for receiving questions and complaints about these advance directive policies.

WALLET CARDS FOR TENNESSEE ADVANCE DIRECTIVES

Complete and cut out the cards below. Put one card in the wallet or purse you carry most often, along with your driver's license or health insurance card. You may keep the second card on your refrigerator, in your motor vehicle glove compartment, a spare wallet or purse, or other easy-to-find place.

*	×
ATTN: TENNESSEE HEALTH CARE PROVIDERS	TENNESSEE ORGAN DONOR CARD
(Your Name) I have created the following Advance Directives: (Check one or both) Tennessee Living Will Appointment of a Health Care Agent Please contact (Name) at (Address) and for more information.	I have given my instructions concerning organ donation in my Tennessee Living Will dated Please contact
ATTN: TENNESSEE HEALTH CARE PROVIDERS	┌ — — — <u>※</u> ¬ TENNESSEE ORGAN DONOR CARD
(Your Name) I have created the following Advance Directives : (Check one or both)	(Your Name) I have given my instructions concerning organ donation in my Tennessee Living Will dated
Tennessee Living Will Appointment of a Health Care Agent	Please contact(Name)
Please contact(Name) at(Address) and for more information.	at (Address) and for more information.

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