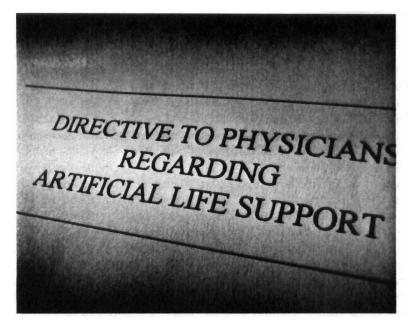
ELDER LAW EDGE



MANAGING END-OF-LIFE ISSUES

By Donald D. Vanarelli, Esq

While personal autonomy has long been recognized as a hallmark of modern society, patient autonomy has more recently emerged as a hallmark of modern medical ethics. Federal law now recognizes an individual's constitutional right to refuse medical treatment and aims "to ensure that a patient's right to self-determination in healthcare decisions be communicated and protected." But too often, an older adult's ability to retain control of his or her autonomy ends with the loss of the ability to comprehend or communicate treatment decisions. Therefore, particularly because your professional practice is devoted to our aging population, educating your clients about the use of advance directives may be the starting point of an ongoing dialogue to ensure that the elder's wishes are respected even after his or her ability to communicate those wishes has ceased.

An advance directive (also known as a healthcare advance directive or instruction directive) is a written statement made by the individual concerning future healthcare wishes. Advance directives consist of two parts: a living will and a healthcare proxy (a healthcare power of attorney).

Directing Medical Treatment

A living will is a document in which an individual provides direction regarding medical treatments he or she wishes to accept or refuse under various circumstances. An elder may provide itemized guidelines for carrying out future medical needs in the event he or she is unable to participate in making such decisions.

The preferences specified in a living will may be made within the context of various hypothetical medical scenarios, such as a case in which the individual is severely impaired cognitively, has a serious irreversible illness, has a terminal condition, or is permanently comatose. Under the various scenarios, the individual may indicate preferences regarding such issues as nutrition and hydration, life-sustaining treatment, do-not-resuscitate orders, do-not-hospitalize orders, pain management, euthanasia, or compliance with a particular religion. The living will may express the preference to be cared for at home rather than in a hospital or institution. It may also cover issues such as organ donation, autopsy, burial or cremation, and memorial services.

The living will provides guidance to medical providers and to the individual whom an elder may appoint as the healthcare proxy. Its usefulness is limited, however, by the inherent difficulty involved in anticipating future medical problems, medical advances, and personal issues.

Healthcare Proxy

A healthcare proxy is a document designating an agent (surrogate decision maker) to act on the individual's behalf with respect to medical decisions. A healthcare proxy may be written to give an agent limited or broad authority over the patient's medical affairs, and it need not be restricted to decisions concerning end-of-life care. A healthcare proxy document may be executed in conjunction with a living will. However, just as a living will may be a stand-alone document, a patient may choose to execute only a healthcare proxy without a corresponding living will.

The healthcare proxy is more flexible than the living will because as specific future medical issues and circumstances arise, the agent has the opportunity to evaluate those circumstances, some of which may not have been contemplated or addressed by the elder in his or her living will.

Interestingly, in one survey, patients reported a desire to exercise control over their end-of-life decisions but chose living wills that provided general statements regarding end-of-life decisions (such as the wish to die with dignity) rather than an overly specific one. In conjunction with the broader living will, the patient would also designate a healthcare proxy who would have substantial authority to make specific decisions in a given situation in order to carry out the individual's generalized care goals.

Because the healthcare proxy is potentially given vast powers and responsibilities, it is vital that the proxy be carefully chosen. It is also important for an older adult to consider appointing an alternate healthcare proxy in the event that the primary proxy is unable to serve.

The Importance of Planning

Emotional reactions to end-of-life decisions prevent many older adults from planning for their future healthcare needs. Nevertheless, it is vital to stress to patients and clients that planning now for future healthcare is one of the most important acts elders can perform, both for themselves and their loved ones.

Even after an older adult has executed an advance directive, it is critical to encourage a continuing conversation among the patient, medical providers, healthcare proxy, and loved ones. Ongoing discussions between the elder and healthcare proxy may be particularly important to those patients who prefer to appoint a healthcare proxy with broad authority to carry out end-of-life decisions that are guided by the patient's general values and goals rather than dictated by the terms of a highly detailed living will. A continuing conversation will ensure that the elder's wishes are understood and that medical providers and others involved adhere to no religious, moral, or other policy or belief that may result in a refusal or inability to honor the terms of an advance directive.

The Agency for Healthcare Research and Quality Advance Care and Planning suggests that in the best of circumstances, the patient, the family, and the physician have held discussions about treatment options, including the length and invasiveness of treatment, the chance of success, overall prognosis, and the patient's quality of life during and after the treatment. Ideally, these discussions would continue as the patient's condition changed.

According to the American Bar Association, perhaps the best advice you can give to your clients is to remember that the advance directive form is to aid, and not take the place of, communication.

Periodic Review

An elder's wishes concerning medical treatment may change over time, depending on factors such as advancing age, medical technologies and breakthroughs, changing responsibilities for the care of others, involvement with the end-of-life decisions of others, or the diagnosis of a significant illness. In addition, a patient may move to a different state where there may be legal differences with respect to the effectiveness and requirements of an advance directive. Therefore, the properly considered advance directive should be the end product of the planning process, repeated at various turning points in the patient's life.

Making Wishes Known

Because an advance directive no one knows about will do nothing to effectuate an older adult's medical wishes, the older adult should store the original document in a safe place but should consider giving a copy to his or her healthcare proxy, medical providers, family members, and attorney. The elder should also let these individuals know where the original is located.

An elder may carry a wallet card to alert third parties about his or her advance directive and the identity of his or her healthcare proxy.

Taking End-of-Life Control

In 2003-2004, AARP estimated that only between 20% and 25% of Americans had executed advance directives. Although the 2005 Terri Schiavo case brought the issue of end-of-life decision making to the national forefront, more recent polls indicate that the number of Americans with advance directives has inched to only about 25% to 29%.

Though issues surrounding end-of-life decisions are seldom easy, AARP suggests that it's important to counsel patients and clients that these documents represent "a critical statement that your life is your own, and so is your death, and that the decisions about both belong to you."

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