

Advance Planning Documents: Planning and Prevention

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

Key Lessons

1. Advance planning includes plans for money, personal decisions, and health care.
2. Advocates should help clients carefully select agents and make provisions for oversight to reduce the risks of abuse, neglect, and exploitation.
3. Providing information about options empowers adults to know what to do and when.

Why Advance Planning?

Advance Planning: Definition

- Advance Planning: the planning process an individual takes on to ensure their values and goals are honored in the event they need assistance making decisions
- Allows the person to select the most trusted agents
- The individual can include protections in the documents
- Default decision-making processes might not cover everything

Few have planned, many will need it

- One third:
 - Slightly over 1/3 of adults have an advance directive
 - About 1/3 of older adults will experience dementia
- Majority of adults will have at least a short period of being unable to make or communicate choices

Audience Poll 1

- Have you completed an advance health care directive or power of attorney?
 - A. Yes
 - B. No

Financial Decisions and Oversight

Automatic Pilot: Direct Deposit

- Set all recurring income on direct deposit
- Mandatory for Social Security and all Federal retirement and disability income benefits
 - Provide existing banking information or an account will be opened and the person sent a debit card
- Virtually all government and private pensions offer or require direct deposit
- Set up with payor
- Provide “Routing Number” and “Account Number”

Practice Tip #1:

- Direct deposit requires some oversight.
- The individual, or their caregiver, should check on a monthly basis that:
 - the individual receives their expected income; and
 - the amounts deposited are correct.

Online Payment

- Online payment of recurring expenses eliminates the need to write, sign, and mail checks.
- Set up either with bank or paying organization
- Online payment requires:
 - Banking information and/or payee information
 - Someone to log on each month to confirm or approve the payment

Automatic Payment

- Payment is made, unless objected to
- Set up with bank or vendor (usually with vendor)
- Consumer receives a “statement” usually by email
- Amount owed, due date
- Unless the consumer objects payment is made on the due date or date agreed to in advance

Autopayment Oversight

- Verify that the amount owed is correct
- Funds are available to pay
- Payment is actually made (account information must be updated)
- Credit cards: Review the detailed statements for improper charges
- Payee and bank must be notified when autopayment terminates

Practice Tip #2

- You need the routing number and account number to set up online or automatic payment
- Online payment requires confirmation for payments to be made
- Automatic payment does not require action for payment to be made, only to dispute a payment
- Both should be monitored to assure that the right amount is paid to the right people at the right time

Poll #2

James has set up his retirement income on direct deposit and his utility bills, insurance, and taxes on automatic payment. His home and car are paid for.

- What else does he need to plan for?
 - A. Paying for groceries
 - B. Paying for home or car repairs
 - C. Paying out of pocket medical expenses
 - D. All of the above

Bank and Financial Accounts

- **Authorized signer:** An authorized signer is not an owner of the account, but is authorized to sign checks on the account.
- **Joint account owner:** The joint account holder can transact any business on the account.
- **Power of attorney and banking:** The key is assuring that the bank recognizes the agent.
 - Use state laws or bank forms

Oversight On Financial Matters

- Careful selection of the person(s) having access
 - When in doubt – don't name them
- Require agents to share all accounts with trusted third party
- Third Party Oversight
 - Review online-only account access
 - Sharing online banking information
 - Also need to see credit cards and other billing statements

Check List For Financial Planning

- Direct Deposit
- Online/Direct Payment
- Selection of trusted agents
- Authorized signer on accounts
- Power of Attorney
- Oversight—records accessible by third parties

Health Care Decision Making

Right To Make Health Care Decisions

- Adults have a right to make health care decisions
- Most adults prefer to make health care choices
 - For example, the choice to not seek diagnosis or treatment
- The decision shifts to third party when:
 - The person defers to a third party; or
 - Health care providers determine the person is unable to give informed consent; or
 - Court order shifts decision-making authority.

Appointing an Agent for Health Care Decisions

- All states recognize the appointment of an agent for health care decisions. Appointment may be documented in the following:
 - Power of Attorney: may designate authority for health care
 - Form appointing a surrogate or agent
 - Other advance directive that includes appointing a health care agent

State Specific Rules

- Who can be the agent or surrogate
- Family member recognition and authority
- Limits on health care providers in many states
- Limits on persons who might benefit from decisions in many states
- Signing requirements
- Impartial witnesses (acceptable witnesses vary from state to state)
 - And / Or
- Notary requirements – in some states
- Special clauses in five states

Practice Tip #3

- [The ABA Commission on Law and Aging maintains a 50 state list of advance health care directives](#)
- [The ABA Publishes an Advance Directives: Counseling Guide for Lawyers](#)

Residents in Long Term Care/ Specialized Care

- May have special requirements
- Required witnesses
- Required statements of capacity
- Long-term care ombudsmen
- Prohibited witness
- Details at ABA Commission on Law and Aging website
 - [State Health Care Power Of Attorney Statutes](#)

Poll #3

California, Delaware, Nevada, New York, Oregon, and Vermont have special witnessing requirements for advance health care directives, such as requiring the long-term care ombudsmen to sign off.

- What are the reasons for doing this?
 - A. The witness can verify capacity
 - B. The witness can verify understanding
 - C. The witness can verify that the document is a free choice by the person
 - D. All of the above.

Authority of the Health Care Agent

- As described in the document
- Limited by state law
- Generally becomes effective when:
 - Health care provider determines that the patient lacks the ability to give informed consent
 - Or the person declines to make decisions
 - Court order
 - The person has a right to object, and due process rights in disputes over capacity or ability

Poll #4

Marty is in the hospital. Because of health conditions, Marty has difficulty communicating. Dr. A is asking Marty's children to make serious health care decisions and Marty objects.

- What are the options?
 - A. Marty should speak up
 - B. Marty can ask the patients advocate for help
 - C. Marty's input should override decisions made by Marty's children.
 - D. All of the above

Written Instructions

- Living Will Directive
 - Specific instructions regarding life-prolonging care
 - When condition is terminal
 - Death is imminent
- Mechanical interventions that replace or supplement essential bodily functions
- Feeding tubes or artificially provided nutrition or hydration
- Some forms decline all, others use an opt in or opt out approach

Living Wills: Strengths and Weaknesses

- Strengths:
 - Helpful when specific end-of-life decisions are needed
 - Provide guidance and reassurance
- Weaknesses:
 - It is hard to predict the end of life
 - People can be reluctant to talk about the end of life
 - Directions are of little or no help before death is imminent

Written Instructions

- Impossible to anticipate the spectrum of illness, injury, and treatment options
- Mental Health Advance Directives – state specific
 - Generally allow opting out of specific treatments or specific drugs
- Disease specific
 - Dementia
 - Cancer
 - Neurologic disorders where disease progression and effect are predictable

Poll #5

Ken went online and found a very long and detailed advance health care directive. He spent hours reading through it and making choices on the 40 page long document. He signed, being careful to have it witnessed as required in his state.

- What is the weakness of his 40 page health care directive?
 - A. In an emergency, no one has time to read it
 - B. The hospital staff are likely to send it to legal counsel before doing anything
 - C. His family may still have no idea what he wants
 - D. All the above

Health Care Goals and Values

- Health Care goals are desired outcomes
- Values are strongly held personal beliefs that guide our choices
- To make choices that reflect the choices the person would make:
 - An agent or surrogate needs to understand the goals and values of the person

Tools for Documenting Goals and Values

- [PREPARE for Your Care™](#)
- [The Conversation Project](#)
- [Consumer's Tool Kit for Health Care Advance Planning](#)
- [The Stanford Letter Project](#)
- [CaringInfo.org](#)
- [The Go Wish Game](#)
- [Five Wishes](#)

Do Not Resuscitate (DNR) Orders

- If heartbeat or breathing stop, no artificial steps should be taken to restart
- Seriously ill with little likelihood of recovery
- Terminally ill
- Not appropriate for everyone
- State specific

Two Varieties

- Institutional DNR
 - Specific to that health care facility
 - Process to create varies, should include consent by patient or surrogate
- Emergency Medical Services DNR
 - State specific in creation
 - May require signature of qualified health care provider (but not in all states.)
 - Immunity for honoring or not honoring them

Physicians Orders on Life Sustaining Treatment (POLST / MOLST)

- State specific – 44 states visit [POLST.org](https://www.polst.org)
- Medical Orders
- Patient is seriously or terminally ill
- No reasonable expectation of recovery
- Written by qualified health care professional
- Portable—travel from one health care setting to another as part of standing medical orders.

POLST Can Include

- Care setting
- Pain control
- Consciousness
- Artificial Nutrition or hydration
- CPR
- Medical Interventions

POLST or Living Will

POLST

- Created in consultation with health care professionals
- At the time of serious or terminal illness
- Specific to facts at hand

Living Will

- Often created without consultation
- Often created far ahead of time
- Limited to options in form
- Not illness specific

What Every Advocate Needs to Know about DNR, POLST, and Hospice

- Advocates should:
 - Educate people about the different options
 - Know when each option is appropriate
 - Understand these are highly personal decisions and the personal goals and values should be honored
- When the person believes these are appropriate options, they should ask health care providers about these options

Check List for Advance Health Care Planning

- Careful selection of agent and back up agent
- Assure that it meets state requirements
 - If the person lives in two states, they may need to do two directives
- Encourage documenting values and goals
- Encourage discussing values and goals with loved ones
- Educate about DNR, POLST, Hospice

Default Health Care Surrogates

- State laws may provide a surrogate if there is none named
- 37 states have a hierarchical model
- 5 states have a list of potential surrogates and ask group to designate a surrogate
- 9 states have no law – but accepted medical practice is to ask for consent from nearest family
- Recent survey highlights provider confusion:
 - 55% of physicians in state without a default consent statues reported though that their state *did* have such a law. (See [recent ABA COLA report](#)).

The Challenge for Default Surrogates

- May not be the person the patient most trusts
- Focus is on nearest family
 - For some non-biological or marital family may be first choice – those states that recognize close friends only do so as a last option.
- Surrogate may have no idea what the goals and values of the person are
- Conflicts between surrogates or surrogates and other family members

Conclusion

- A loss of ability to manage money and make health care decisions can happen to anyone
- Advance Care Planning is something everyone should do
- Familiarity with the basics is a tool for every advocate

Questions?



Type your questions in the question box on the webinar interface.

Additional Resources

- [Giving Someone Your Power of Attorney For Health Care](#)
- [ABA Listing of Links for State Specific Health Care Advance Directives](#)
- [What States have a Statutory Power of Attorney Form and other Characteristics](#)
- [Six Pathways to Health Care Decision Making](#)
- [Drafting Advance Care Planning Documents to Reduce the Risk of Abuse and Exploitation](#)
- [Training on Supported Decision Making](#)

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