

Anticipate End-of-Life Issues

by Alban Salaman

Earlier this year, the tragic case of Terri Schiavo raised public awareness about the need for each adult to have a living will or advance medical directive. While the sad tale captured our attention as the legal battle played out before the courts, the lessons of the tragedy faded as the news media moved on to the next lead story.

In 1990, at age 26, Terri Schiavo suffered severe brain damage following cardiac arrest. She fell into a coma and remained in what some doctors deemed a persistent vegetative state.

Schiavo did not have a living will or advance medical directive. Her parents and her husband, Michael, disagreed about her treatment and the matter was litigated. Her husband testified that Schiavo told him she would not want artificial life support. Her family disagreed. Last March, Schiavo's feeding tube was removed. She died almost two weeks later.

While it is estimated that only 15 to 20 percent of adults have a living will or advance medical directive, every adult should consider having one. Such documents allow you to state your wishes and provide instructions regarding the health care you want if you become unable to make your wishes known to your doctor. You can appoint an agent to make health care decisions for you if you become incapacitated.

Living wills and advance medical directives are not only for the elderly. The Schiavo case focused attention on the fact that a young adult suddenly can lose the capacity to make health care decisions.

Regardless of age, if you are an adult, you should consider making your wishes known by means of a living will or other advance medical directive.

Living Will

A living will states your preferences to your health care provider concerning end-of-life decisions.

For example the Washington D.C. statutory living will form provides that a person may declare that life sustaining procedures, such as artificial nutrition or hydration, be withheld or withdrawn if two physicians determine a person has a terminal condition.

The statute relies on the physicians' judgment as to whether the patient has a terminal condition.

Advance Medical Directive

An advance medical directive (called a power of attorney for health care in Washington, D.C., advance directive for health care in Maryland, and advance medical directive in Virginia) is a document that allows you to designate someone, typically your spouse, child, or friend, as your agent to make health care decisions for you in the event you are unable to.

You should also name an alternate agent, in case the first named agent is unable to make decisions, dies or becomes disabled.

Your agent may make decisions regarding your medical treatment such as whether you should receive artificial nutrition and hydration, and cardiopulmonary resuscitation or whether to put you in to or take you out of a hospital. Also, in an advance medical directive, you may express your wishes regarding your medical care, such as if you are in a terminal condition, whether you do or do not wish to receive artificial nutrition and hydration, or other forms of medical care.

By having an advance medical directive, you may avoid having decisions about your medical care made by a physician or possibly a judge. You and your loved ones can have peace of mind knowing that if you are incapacitated, you will get the medical treatment you want. You also may include an organ donation provision in an advance medical directive.

The advance medical directive should expressly state that your health care agent is your personal representative under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), otherwise, your health care agent may be denied access to your medical records. If your advance medical directive does not contain such a provision, it should be updated by your lawyer.

It is also recommended that you communicate to your health care agent your wishes, beliefs and feelings about the quality of life you want. These issues are emotional and very personal, and it is important to have these conversations before a medical crisis strikes.

Additionally, you should review and, if needed, update your documents every few years to make sure your instructions (and agent and alternate agent) are current with your wishes.

Forms for each local jurisdiction can be found online at www.uslivingwillregistry.com. Also, federal law enlists hospitals, nursing homes and other health care providers to promote the use of living wills and advance medical directives.

However, it is not recommended that you simply sign a form obtained from the internet or another source. It is best to consult with a lawyer in your jurisdiction who is familiar with these types of documents, can check for recent changes to the laws and the forms, and can customize the forms to meet your specific wishes concerning your medical care.

Your lawyer can also advise you whether you need both a living will and an advance medical directive, or whether the language of an advance medical directive sufficiently indicates your health care preferences.

These documents are best considered as part of your overall estate planning.

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