Advance Care Planning Webinar
Questions and Answers
July 1, 2020

GOODWIN HOUSE

During a recent webinar with Goodwin House, Mr. Nathan Kottkamp and Dr. Farrah Daly discussed Advance Care Planning. Mr. Kottkamp is a Partner at Waller Law Firm and Founder and Chair of National Healthcare Decisions Day. Dr. Daly is a neurologist and consultant to Goodwin House Hospice and Palliative Care. Below is a summary of responses to the questions asked by participants.

The following legal questions were answered by Nathan Kottkamp.

Q. What should I do if I do not have a trusted family member or friend to name as my medical power of attorney (POA)?

A. Consider appointing a religious leader, attorney or facility administrator – provided, of course, that they agree to accept the position. For those who truly have no one to appoint, there are various services that offer individuals an experienced and dedicated POA provider. Note: Geriatric Care Managers can provide this service, but others can be found via website search.

Q. If I complete my Advance Directive in Virginia, is there reciprocity for other states?

A. Yes. All states have a reciprocity law. Despite the law, it is not uncommon for facilities to be confused about reciprocity. The best approach is to bring your advance directive (AD) with you or store your AD electronically. If you believe that your AD is not being accepted, request assistance from the facility's ethics committee, social worker or administration.

Q. If you have a trust that includes an AD that needs to be updated, can you update it with your attorney virtually, or can it be updated virtually at all?

A. There currently is no mechanism for virtual AD updates. Nevertheless, if you create a video or audio declaration, it should be honored as a reflection of your wishes, even if it doesn't formally qualify as being an AD.

Q. How do I make my Advance Directive legal? Are copies valid?

A. Creating an AD is simple: a meaningful set of instructions, your name, and two adult witnesses (who can be anyone over 18) are all that is required in Virginia to make your AD legal. No special form is required, and no notary is required. Copies (electronic or paper) are automatically valid. Although it technically isn't required, you should include the date on your AD.

Q. Once I have completed my Advance Directive, can I change the wording or can my family/POA change it after I sign it?

A. The only changes that you may make are non-substantive or ministerial changes, such as updating the contact information for one of your named decision makers. If you make any other changes, in particular changing your named decision makers, you will need to execute a new AD. If you update your AD, be sure to write "CANCELLED" on the old version, but keep it for your records. Your family and/or POA is **not** authorized to make changes to your advance directive.

Q. If you have used a business-oriented lawyer in the past for your will, trust, etc., is it better for someone who is older than 70 to change to a lawyer who specializes in elder care to update these documents?

A. Not necessarily. The AD rules are the same for individuals, regardless of age. The advantage of elder law specialists is that they are likely to have specific experience that may be helpful for individuals with complex needs, but this additional support may not be necessary for everyone.

Q. Do Advance Care Directives expire in VA? Do they have to be redone after a certain number of years?

A. ADs in Virginia do not expire. Although there is no requirement to update an AD, these are the recommended circumstances during which you may consider updating your AD:

- Diagnosis (new or significant)
- Death (of loved one, named POA, or anyone who may change your approach to end of life decisions)
- Divorce
- Day (your birthday, a holiday, National Healthcare Decisions Day, Thanksgiving, etc.)
- Different applicable law (if you move)

Q. Where do you put your ADs? To whom do you give them?

A. First, do NOT put your AD in a lockbox or safety deposit box where it cannot be obtained without you. Make multiple copies and share them broadly. Be certain that your named POA and alternate have a copy. Provide a copy to your general practitioner and to the hospital that you regularly use. Store it in an online AD registry, such as the Virginia registry: www.connectvirginia.org

The following legal questions were answered by Dr. Farrah Daly.

Q. Where should I keep my Advance Directive and who should receive a copy? Is it enough to have an advance directive on file at my primary care physician's office, or do I need to provide copies to all of my physicians?

A. It is most important to have your advance directive accessible to your surrogate decision maker and to any family members who might be called in an emergency. In reality, your primary care physician is unlikely to be called by the hospital until after an emergency has been managed. It is important to discuss your advance care plan with your primary care physician and any physician with whom you have an ongoing relationship. They can help to put things in the context of your overall health and can help to advocate for you in an emergency. Another option is to put your documents into a registry. The Virginia registry is www.connectvirginia.org. There are other proprietary registries that are also available, which you can find with an internet search.

Q. How will a hospital know if I have an AD?

A. If you were ever in that hospital system before and supplied a copy of your AD at that time, then it may still be in their records. If you are able to speak, they will – or should – ask you. If you are unable to speak, they will ask your emergency contact. And usually they will not ask, "does he/she have an AD?" They will say, "what do you want us to do?" So the most important thing is for your surrogate decision maker and your family to know about your AD and to understand what your goals are. Remember that the AD is a document that gives guidance to your decision maker. It probably should be called "advance guidance" rather than "advance directive".

Q. Can you add assisted termination of life in an AD or care plan?

A. You can describe anything you want in an advance directive, though if assisted death is not legal in your state then it still wouldn't happen. I suggest that you identify anything that you feel very strongly about – it will still be informative to your care team about what you value, and could still help them make other decisions.

Virginia does not allow for assisted termination of life or medically assisted suicide. You may, however, indicate in an AD that you wish to decline therapeutic treatment. Doing so is not considered suicide for insurance purposes.

Q. I have an Advance Directive but my social worker tells me I need to talk to my doctor about signing a DNR because emergency medical personnel won't look for my Advance Directive during an emergency.

A. If you want to be protected from anyone trying to do CPR in an emergency, then you do need to have a DNR order signed by your physician. Advance directives are intended to guide surrogate decision makers in ongoing medical decisions. They are usually long and a little complicated and require interpretation. They are not used in an immediate emergency situation. In emergency situations, Emergency Medical Technicians are trained to look for a DNR order.

Q. What is the success rate with resuscitation?

A. This is a complicated question to answer because there are a lot of variables that affect it. TV and movies would give the impression that CPR is successful most of the time, but that is not true. CPR in older adults that occurs outside the hospital is successful somewhere between 2-15% of the time. In the hospital, the success rate is somewhere between 10-30% of the time. After CPR, a person usually has a complicated recovery with time in the hospital and in rehabilitation.

Q. Could you please address COVID advance care planning, specifically? My doctor seemed to want a "ventilator/no ventilator" directive, and that is too black and white to decide in advance!

A. I have seen some COVID-specific advance care plans around, but in general I am recommending that people consider their goals and values as they normally would for a general advance care plan. It is important to know that the burdens of being in the hospital are greater right now (maybe no visitors, possibly even at end of life), so going to the hospital during COVID might mean separation from loved ones.

I think that this fact is important for people who have been previously wavering or uncertain about adding a DNR or no ventilator guidance to their directive. This might be a helpful resource: https://compassionandchoices.org/resource/covid-19-understanding-your-options/

Q. Can you talk about the POLST (Provider Orders for Life-Sustaining Treatment) and the best time to do this documentation?

A. POLST is recommended for anyone who might be within the last year or two of life. I also recommend it for anyone who is already certain that they do not want to go to the hospital or have aggressive care.

Q. I have eight doctors. Which one should get my directive? How about hospitals?

A. As above – the most important person to have and understand your advance directive is your surrogate decision maker and any family members or friends who might get involved in the event that you are ill and can't speak for yourself. Your advance directive is guidance for them. The doctors will be asking your surrogate for decisions, and your surrogate will be referencing the advance directive for guidance. Discussing your advance directive with your doctor helps you to create an effective, practical advance directive that actually takes your overall health condition into account. Doctors and hospitals having copies of your AD is a great extra layer of support. You can also use registries such as www.connectvirginia.org.