

Virginia Advance Directives Primer for Providers

The Basics

Written Advance Directives in Virginia fall into two primary categories: (1) “Living Wills,” which allow patients to express their wishes about life-prolonging treatment in the event that they are diagnosed with a terminal condition, and (2) “Medical Powers of Attorney,” or “Agents,” or “Proxy” designations, which allow patients to designate another individual to speak on their behalf in the event that they are incapable of making informed decisions on their own (as determined by two physicians).

Advance directives are useful for patients regardless of age or current health status. It is important that patients understand that advance directives are not merely documents to express wishes not to have certain treatment; advance directives can and should be used to state any particular preferences for care (such as a patient who wants to expressly state the desire to be on a ventilator and have a feeding tube if necessary) and to record any personal values that could help others make health care decisions on behalf of the patient. Unfortunately, when a patient lacks an advance directive, it is necessary to obtain treatment decisions from an individual according to the order prescribed by law (spouse, children, parents, siblings, other blood relatives), but the individual(s) appointed are left to guess what the patient would really want.

The Requirements

The requirements for advance directives in Virginia are very simple: (1) an adult puts his/her health care wishes in writing, (2) he/she signs it, and (3) the document is signed by two adult witnesses. Spouses and blood relatives may serve as witnesses to an advance directive. (This was a major change in the law, which became effective July 1, 2005.) Nurses and physicians may also serve as witnesses. As these simple requirements reflect, advance directives in Virginia are not required to be notarized; they need not be on any special form; and they do not need to be drafted by an attorney. Furthermore, copies, faxes, and PDFs of advance directives are all valid in Virginia.

Choosing an Agent

Patients should think carefully when choosing an agent. To avoid conflict, they should choose only one person. The person they choose should know the patient’s wishes and be mature, responsible, and willing to serve. The individual need not live in Virginia but does need to be accessible by phone. Patients should also choose an alternate agent in the event the primary cannot or will not serve.

Revocation

Although a patient may revoke his/her own advance directives at any time, advance directives may not be revoked by family members or physicians. In the event that a family disagrees with a patient’s advance directive, you are encouraged to contact your hospital’s Ethics Committee for assistance.

Oral Advance Directives

Patients who are diagnosed with a terminal condition may make an oral advance directive (oral living will), if they state their wishes in the presence of the patient’s attending physician and two witnesses.

Forms and Information

Federal law requires hospitals to ask patients whether they have an advance directive and to offer forms and information. Accordingly, advance directive forms and information are typically available in the Emergency Department, Admitting, and Outpatient Surgery Registration areas of every hospital.

Why This Matters

Even when they can speak for themselves, patients often struggle with decisions about their medical care. Deferring to others when the patients cannot speak for themselves is even harder. Advance directives reduce—if not eliminate—confusion, and they relieve family members from having to guess about the patient’s wishes. Advance directives enable all those involved to provide the most appropriate care for patients.

Additional Information

For information for your patients, a summary of Virginia’s Healthcare Decisions Act, an Advance Directives Checklist, and other information visit:

<http://www.vsb.org/sections/hl/advancedirectivesday2007.html>.

The official Healthcare Decisions Act, from the Virginia Code, §§ 54.1-2982-2993, can be found at <http://leg1.state.va.us/>.