ADVANCE DIRECTIVES

Accommodating Patient Preferences While Avoiding Pitfalls

WHAT YOU NEED TO KNOW ABOUT ADVANCE DIRECTIVES

- Who needs one? Who should have a copy?
- What is an advance directive? What happens if a patient does not have one?
- Where can patients obtain an advance directive form?
- How do you handle conflicts between patient preferences and the selected healthcare agent or surrogate?
- When can a person appoint a healthcare agent? When does it become effective?
- Why is having an advance directive in place is better for both patients and providers?

What is an Advanced Directive (AD)?

- An Advance Directive is a set of formal directions given, whether written or oral, to a health care agent selected by the patient, regarding future medical treatment preferences desired by the patient in the event that patient is unable to make medical decisions for himself or herself.
- The AD may or may not include a Living Will, which is optional.
- To be effective, there are certain minimum legal requirements:

Requirements for Written AD

- If written, the AD must be signed by the patient and by two witnesses.
  - The patient must give the directive voluntarily.
  - The patient must be competent.
  - The form must be dated.
  - The witnesses cannot be the designated health care agent.
  - No more than one witness can be an interested person (i.e., someone who will be a beneficiary under a will or an heir by intestacy laws).
  - No notary is required.
  - There is no other required format.

Examples of ADs

- A widely use written form can be found on the Maryland Attorney General's website at http://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx
- Another popular form is called "Five Wishes" available from https://www.agingwithdignity.org/
- The Maryland Catholic Bishops have provided a comprehensive analysis of advance directives in light of Catholic teaching http://www.mdcathcon.org/library/public/Documents/Publications/Comfort-and-Consolation.pdf

Requirements for an Oral AD

- The Patient must be competent.
- The Patient must make the directive voluntarily.
- The directive is given to the physician in the presence of a witness.
- The directive is noted in and is to be part of the medical record.
- The directive must be dated and signed by the physician and witness

Out of State ADs

- Maryland will recognize ADs that are made in other states and valid under those laws or MD law.
- Whether other states will recognize Maryland ADs will depend on that state's laws.
- This may be an issue for patients who have dual residences (Florida and Maryland, for example).

When does an AD become effective?

Immediately **OR** **Upon the Patient's Incapacity**

- Generally not recommended
- Elderly patients may be vulnerable.

- Patient can choose how incapacity is determined.
- Usually two physicians certify

When does an AD terminate?

- Patient can orally revoke it.
- Patient can revoke it by preparing a later dated AD.
- Patient can revoke in writing.
- Family members or health care agent or power of attorney cannot revoke!

Who Should Have an Advance Directive?

- Seniors age 65 and older
  - higher rates of hospitalization
  - At risk for loss of capacity to make decisions on their own
- Anyone undergoing medical procedures which require them to be under anesthesia (surgery, colonoscopy, wisdom teeth extraction)
- Unmarried adults (including College students)
- Persons who might be involved in automobile accidents
- Ideally, EVERY adult should have an AD

Who Should Have a Copy of the AD?

The Patient should discuss her values and wishes regarding treatment preferences with her Health Care Agent and primary care doctor.

Copies should be provided to the Health Care Agent, the primary care doctor, and, as necessary, to the hospital and any specialists.

Some recommend keeping a copy posted on the refrigerator or in the glove box of the car.

Living Will

Terminal Condition

Incurable

No recovery even with life-sustaining treatment

Death is imminent

- imminent is not defined
- hospice definition is sometimes used

Persistent Vegetative State

No evidence of awareness

May be only reflex activity

Wait for “medically appropriate period of time” for a diagnosis

One of two PVS certifying physicians must be a neurologist, neurosurgeon, or other expert in cognitive function.

End Stage Condition

Progressive

Irreversible (no effective treatment for underlying condition)

Complete physical dependency

Death not necessarily imminent

Alzheimers, COPD

Living Will – 3 Options for Each Condition

Option 1

Keep me comfortable and allow natural death to occur.

I do not want any medical interventions used to try to extend my life.

I do not want to receive nutrition and fluids by tube or other medical means.

Option 2

Keep me comfortable and allow natural death to occur.

I do not want medical interventions used to try to extend my life.

If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

Option 3

Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death.

If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

Goal of AD and Living Will

The goal of the AD and Living Will is to determine and apply the patient's wishes regarding future medical treatment to the fullest extent possible so long as the treatment is not medically ineffective as certified by a physician.

Living Will's Effect on Healthcare Agent Decision making

- Healthcare Agent can be bound to follow the patient wishes exactly as stated.
- On the other hand, a patient can grant the Healthcare Agent maximum flexibility to use judgment as facts and circumstances are considered
- A living will is the best evidence of the patient's wishes.
- If no living will exists, then the patient should at a minimum discuss his or her wishes regarding medical treatment for each condition listed.

Health Care Agent Authority

- Based on patient wishes if clearly known:
  - Look to living will
  - Look to AD
- If patient wishes are unknown or unclear:
  - What is in best interests of patient?
- The Living Will controls

What happens if Patient has no AD

- Law will recognize Surrogates as substitute decision makers upon patient's incapacity if no AD, in the following order:
  - Guardian (appointed by Court)
  - Spouse/domestic partner
  - Adult children
  - Parents
  - Adult siblings
  - Other relatives/friends

Potential Conflicts

- Surrogates of equal rank have equal authority
  - Possible scenario - adult children disagree on medical treatment or condition of patient
  - Who decides if they disagree?
  - Referral to ethics committee
  - Physician may rely on ethics committee recommendation
    - Provides immunity

Pre-existing Disability

- A pre-existing, long-term mental or physical disability CANNOT be a basis for rejection of life sustaining treatment by an health care agent or surrogate

Medically Ineffective Treatment

- Physician is not required to provide
- Medically ineffective treatment means treatment that:
  - Does not benefit patient's health status
  - Will not prevent patient's imminent death
  - Requires concurrence of consulting physician
- Can affect decisions regarding:
  - DNR/LST
  - Feeding tubes

How do DNR and MOLST forms Affect AD?

- Patient can decide directly at the time of treatment.
- Patient can decide DNR-LST by living will (not recommended).
- Healthcare agent or Surrogate can make decision for incompetent patients.
- Physician can certify that patient CPR is medically ineffective:
  - Need to reassess patient condition
  - Put on full code status if CPR no longer medically ineffective

MOLST

- Nursing homes must offer LST forms.
- MOLST makes current LST wishes known to health care professionals.
- Only sections that are completed are the ones that identify the decisions made regarding LST preferences.
- If there is no DNR order on the MOLST form, medics in Maryland must attempt resuscitation.
- It does not expire and it goes where patient goes: to the hospital, rehab, assisted living, and back home.

Resolving Conflicts/Avoiding problems

- Are AD and DNR/MOLST consistent?
- Periodically review patient's situation/prognosis.
- Document relevant information that provides the basis for treatment decisions.
- Don't confuse code treatment/DNR with treatment prior to cardiac arrest.
- Competent patients can revoke MOLST/DNR orders.
- Mental health AD is separate from medical AD.

Thank you for attending today's program!

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