

Advance Care Planning and COVID-19

PRACTICE TIP • May 2020

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Life threatening illnesses, such as COVID-19, bring to the forefront the importance of advance health care planning. With restrictions on travel and hospital visitors, advance health care planning can help ensure that individuals' health care decisions are respected and followed.

Some core issues to keep in mind for advance care planning during the COVID-19 pandemic are:

Preparing An Advance Directive

- The most critical step for most individuals is naming a health care agent and a successor. Lawyers routinely help with this task, but [do-it-yourself forms acceptable in every state](#) are available, or use the [ABA multi-state form](#) if you are in a state that recognizes it.
- Individuals can also document health care instructions for end-of-life care, including health care values, goals, and priorities in advance directives.
- Lawyers should use remote methods to counsel clients who are at high-risk if exposed to COVID-19, such as videoconference or phone calls. Continue to be alert to [signs of abuse or exploitation](#) when counseling clients, particularly when meeting with clients remotely or by phone.
- Facility lockdowns, social distancing, and quarantine during the COVID-19 pandemic makes complying with signing formalities difficult. Lawyers are reporting creative solutions, such as meeting with clients through windows with an open audio connection. Some states are changing rules about witnesses, notarization, and other formalities as a result of the pandemic. Check with your state for the latest information.
 - » Think about who is already interacting with the individual who may be able to serve as a witness. Most states prohibit health care providers from serving as witnesses, but other patients or residents are generally allowed unless in an excluded category.
 - » Most states have an exception allowing employees of health care facilities to notarize these documents—check state law to be certain.
 - » A handful of states had provisions before the pandemic for electronic notarization, where the notary observed the signing or acknowledgement by video, and other states are allowing e-notarization as an emergency measure—verify what is possible in your state.
 - » The [ABA Real Property Probate and Trust Law Section](#) and the [American College of Trust and Estate Counsel](#) are tracking information on remote witnesses and notaries.

Documenting Health Care Values, Goals, and Priorities

- Planning requires thinking about a wide range of values and priorities—it is helpful to have a map or a guide. There are a great [many helpful tools available](#) to help both online and in print.
- Everyone can document health care values, goals, and priorities, even if the documentation doesn't meet formal advance directive requirements. Advance directives are one way to document these

health care wishes, but there are many others as well. Clients can document wishes in other ways, such as including them in one of the map or guide tools referred to above or in a letter to their family, a video recording, or in conversations with health care providers memorialized in medical records. These other forms of documentation usually don't qualify as a formal advance directive under state statute, but unless there is a question of their authenticity, health care providers have an underlying ethical and legal obligation to honor known wishes.

- Encourage clients to have open discussions of health care values, goals, and priorities with family, close friends, and health care providers. These discussions are essential to assuring that those wishes are honored. There are several helpful conversation starter handbooks available for free from [The Conversation Project](#).
- Some seriously ill persons are updating [POLST](#) (Portable Medical Order) directives to reflect changing wishes or priorities as a result of COVID-19. Patients should consult their health care provider about POLST and other medical orders.

Updating Advance Health Care Planning

Goals of care and priorities change, so once the current public health crisis passes, encourage clients to revisit the process then, and again whenever one of the 6 “Ds” occurs:

1. You reach a new DECADE
2. You experience a DEATH of family or friend
3. You DIVORCE
4. You receive a new DIAGNOSIS
5. You have a significant DECLINE in your condition as measured by Activities of Daily Living (ADLs)
6. You change DOMICILE or someone moves in with you

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