

How to Decide Who Decides When I Can't Decide

Decision Making Options in Virginia

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Vocabulary

- Capacity
- Advance Directive
 - Power of Attorney
 - Living Will
 - Medical Directive
 - Psychiatric Advance Directive
 - Integrated Advance Directive

Capacity

- The ability to:
 - Take in information;
 - Make an informed decision; and
 - Communicate your decision.

**CAPACITY IS
PRESUMED!**

Capacity is fluid

- Time and circumstance
- Different levels needed
- Capacity needed for an advance directive?

Levels of Capacity

- Must specify whether person lacks capacity to make:
 - a particular health care decision
 - a specified set of health care decisions
 - all health care decisions

Decision Makers

- ME
 - Advance Directive
- Family
 - Health Care Decisions Act
- Authorized Representative
 - DBHDS
- Guardian
 - Court Order
- Judge
 - Court Order

Advance Directives

- Instructions about end of life care:
Living Will
- Naming an alternate decision maker:
Power of Attorney
- Medical decisions other than end of life: **Medical Directive**

Living Will

- Used only for end of life decisions.
- Specifies whether you want extraordinary measures or only comfort measures when you are terminally ill.

Power of Attorney

- Types:
 - Health Care (including MH)
 - Financial
 - Education

Power of Attorney

- Things to consider when choosing an agent:
 - Complete trust
 - Willingness
 - Availability
 - Alternate or co-agent
 - Beliefs and values
 - Conflict of interest

Powers of Agent

- Specific or general
- Limitations
 - End of life decisions?
 - Visitation?
 - Organ or tissue donation?
 - Admission to psychiatric facility?
 - Treatment over protest?
 - Medical research?

Medical Directives

- Expands medical directives to all medical care, not just end of life.
- Includes psychiatric medical directive.

Choices

- Alternatives to inpatient treatment
- Facility
- Physicians
- Medications
- ECT
- Emergency interventions
- Experimental studies; drug trials
- Notifications and visitors
- Other

Signing

- No attorney necessary but is recommended.
- Two witnesses
- Notary is optional in Virginia but is recommended.

Copies

- Provide copies to the following:
 - Your agent
 - Your doctors
 - Your local hospital
 - State Registry
 - Family members and others
- Keep track of who received copies.

Revoking

- An Advance Directive is easy to revoke
 - Prior AD is automatically revoked when you write a new one.
 - Tear up all copies.
 - Notify everyone who received a copy.
 - Oral v. written revocation.
 - “understand the nature and consequences of your action.”
- Revocation to Registry

But I haven't done
any of these things....

- Health Care Decisions Act
- Authorized representative
- Court-ordered treatment
- Guardianship

Health Care Decisions Act

- Hierarchy of Alternate decision makers:
 - Guardian/Agent in POA
 - Spouse
 - Adult child
 - Parent
 - Adult sibling
 - Blood relative in descending order of relationship

Guardianship

- Court decides capacity.
- Court order
- Often confused with Power of Attorney
- Limited or complete
- “Conservator” is appointed by court to make financial decisions

Guardianship

- Last resort because:
 - It takes away basic rights.
 - It is the most restrictive choice.
 - There is stigma and humiliation involved when a person is declared incompetent.
 - It is expensive.
 - It is often unnecessary.
 - It is usually permanent.

Guardianship

- Once declared incompetent, you lose the right to:
 - Make treatment decisions
 - Decide where you live
 - Marry and divorce
 - Vote
 - Enter contracts
 - Make a will or Advance Directive

Guardianship

- Once declared incompetent, you lose the right to:
 - Revoke a will
 - Drive
 - Possess a firearm
 - Buy, sell or rent property
 - Decide how your money is spent (conservatorship)

Is Guardianship Always a Bad Thing?

- No
- Guardianship may be necessary in some situations.
 - For a person who has never had capacity and will probably never gain capacity.
 - For a person who is facing a major decision for which he lacks capacity (limited guardianship should always be considered).

Why Alternatives?

- Inexpensive
- Easy to revoke or change
- YOU make the decisions
- Attorney usually not necessary
- Simple (“legalese” not necessary!)

Resources

- disAbility Law Center of Virginia (dLCV)
 - can provide guidance to callers and direct assistance if the case falls within our current objectives
 - <http://dlcv.org/supported-decision-making/>
- www.virginiaadvancedirectives.org
- www.connectvirginia.org/adr/

One Final Thing...

CAPACITY

IS

PRESUMED!!

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