

NEWS ALERT

TRUSTS & ESTATES



Triaging Your Advance Health Care Directive

By Robert A. Heinimann, Jr. | September 22, 2020

The COVID-19 pandemic has upended virtually all of our daily routines. Likewise, it has changed the way estate planning attorneys (and hopefully you) think about your Advance Health Care Directive.

Advance Health Care Directives typically specify the type of medical care patients want or do not want to receive in the event they are unable to communicate (i.e. to be allowed to pass comfortably without certain life saving measures). They also express a patient's specific instructions concerning certain life saving measures (i.e. intubation, artificial respiration, etc.). Advance Directives are frequently coupled with, or include, both a statement of intent or "Living Will" and the appointment of a health care proxy or agent. A health care proxy or agent is a person selected to make medical decisions for you if you unable to do so. Because your agent can make a decision for you that you might not have anticipated in your directive, that designation is vitally important.

Often quickly admitted to overwhelmed hospitals without a family member present because of contagion concerns, seriously ill COVID-19 patients are especially vulnerable to having their intent overlooked. To make matters worse, the trajectory of the virus varies greatly from person to person and treatment options are limited. With these concerns in mind, having an Advance Directive in place increases the likelihood that your intent is known and will be effectuated. At the very least, it should offer peace of mind in these uncertain times.

Even if you have an Advance Directive in place, it may be worth revisiting. Have your assumptions concerning your certain medical interventions changed because of a new medical condition, a pre-existing medical condition, or COVID-19? Should your Advance Directive distinguish between desired medical care related to COVID-19 and that related to other illnesses? For example, given ever-changing reports of new life saving treatments for COVID-19, some may be more receptive to long-term use of artificial respiration or experimental treatments for COVID-19 illness, but not for other illnesses. The opposite may be true for others.

Given the strict limitations on visiting patients in a hospital or other medical setting and the rise of telehealth appointments for routine medical care, it is also necessary to consider if your current health care proxy is able to perform the functions of the role if needed. If you are unable to express your desired medical care, is your current health care proxy able to effectively communicate with your health care provider through electronic means such as video conferencing?

Every situation is unique and particular care should be provided to make certain that your Advance Directive meets your specific health care needs.

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