

Advance Directives Survey

Overview

In response to a state request, NASUAD sent state agencies a survey requesting information about advance directives. The survey included the following questions/requests:

- Does your state have laws regarding advance directives?
- Does your state have a role in the way advance directives are maintained?
- Does your state have a role in the way advance directives are filed?
- Does your state have a role in the way advance directives are followed?
- Please share any advance directive documents that you maintain or have on file

The following 17 states responded:

TN, AZ, WI, NM, OK, OR, NC, VT, SC, MI, WA, MN, MD, NV, VA, MA, MO

1. Does your state have laws regarding advance directives?

Yes = 17

No = 0

Comments:

MI: Has a law providing for a durable power of attorney for health and a mental health advance directive. Michigan also has a law providing for a "do-not-resuscitate" declaration.

VT: The statute can be found at:

<http://www.leg.state.vt.us/statutes/sections.cfm?Title=18&Chapter=231>

MN: Statute covers what they must contain as a minimum.

NV: See Nevada Dept. of Health & Human Services website, Division of Health Care Finance & Policy

2. Does your state have a role in the way advance directives are maintained?

Yes = 6: NC, VT, MI, WA, NV, VA

No = 11

Comments:

NC: The Secretary of State maintains a registry for advance directives.

VT: The state operates an optional statewide Registry for advance directives.

MI: A new statute - PA 2012, No. 179 - provides the state may create a registry of advance directives. The state is delegating this task to the statewide organ procurement organization. The registry will be voluntary and free. All health care providers will have electronic access.

WA: There are rules and regulations regarding advance directives which are administered through the department of health.

NV: See Secretary of State website: Living Will Lockbox

VA: Pursuant to the Health Care Decisions Act, a person can maintain their own advance directive, provide a copy to their health practitioner or notify them one exists, or file it with Advance Health Care Directive Registry. Virginia Code Â§ 54.1-2983 states, in relevant part, ""It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (Â§ 54.1-2994 et seq.), it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive."''

3. Does your state have a role in the way advance directives are filed?

Yes = 7: AZ, OK, NC, VT, MI, NV, VA

No = 10

Comments:

AZ: Advance Directives can be registered with the Advance Directive Registry at the Secretary of State.

OK: If a DPOA is considered to be one of the Advance Directives, in a broad sense, then can it be filed with the county clerk. It is rarely ever done and there is no way to track any filed DPOAs. An "Advance Directive for Healthcare," which includes the state's statutory language for a Living Will, is not capable of being filed.

NC: The Secretary of State maintains a registry for advance directives.

VT: There is some discussion in the statute about the Advance Directive being filed in a way that is easily visible.

MI: A new statute - PA 2012, No. 179 - provides the state may create a registry of advance directives. The state is delegating this task to the statewide organ procurement organization. The registry will be voluntary and free. All health care providers will have electronic access.

NV: See FAQ @ Secretary of State website

VA: Advance Health Care Directive Registry, Article 9 (Â§ 54.1-2994 et seq.) of Chapter 29, Title 54.1 of the Code of Virginia. The Virginia Department of Health makes available a secure online central registry for advance health care directives.

4. Does your state have a role in the way advance directives are followed?

Yes = 8: AZ, NM, VT, SC, MI, WA, MD, VA

No = 9

Comments:

AZ: The Attorney General's Office offers a life care planning packet with forms.

NM: The statutes require advance directives to be followed and sets out certain exceptions that may be followed if one objects for reasons of conscience or institutional policy.

VT: Requires that facilities follow the statutes and offers a complaint process that goes through the state regulators.

SC: If a Living Will is executed in a hospital or facility a Living Will Witness (per statute) must be present during the process. If a person is a resident of a facility, the statute requires a Living Will Witness to be present no matter where the document is executed.

MI: An individual can petition the probate court if issues arise regarding a durable power of attorney for health care. The Bureau of Health Systems has power to cite a nursing home if the nursing home does not honor a valid durable power of attorney for health care.

WA: There are rules and regulations regarding advanced directives which are administered through the Department of Health.

MD: The Office of Health Care Quality has penalized health care providers for failing to honor an advance directive.

NV: The law isn't specific as to what health care professionals are required to do, so they do not always follow advance directives unless there is an advocate for patient on the scene.

VA: Supplied actual language from state statutes (contact stibe@nasuad.org if you would like to review)

5. Please share any advance directive documents that you maintain.

TN: <http://health.state.tn.us/AdvanceDirectives/index.htm>

WI: <http://www.dhs.wisconsin.gov/forms/AdvDirectives/>

NM: See NMSA 1978 Section 24-7A-7

NC: <http://www.secretary.state.nc.us/ahcdr/>

VT: The VT Department of Health role is to: 1) adopt rules and forms

http://healthvermont.gov/regs/ad/advance_directive.aspx 2) provide info on the website: <http://healthvermont.gov/vadr/index.aspx> and 3) maintain the registry:

<http://healthvermont.gov/vadr/register.aspx> The law requires health care providers

and facilities, etc. to follow advance directives. The professional and facility licensing boards/entities would investigate complaints that an AD was not followed.

MN: <http://www.mnaging.org/advisor/directive.htm>

NV: See NRS 162A.860 for statutory form. See Division of Financing and Health Care Policy website.

VA: <http://www.vsb.org/sections/hl/add06/2005Form.pdf>

MA: There are model forms for health care proxies, but no one specific form is required.

MO:

http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Durable_Power_of_Attorney/final-dpa-forms-fillable.pdf

6. Please include any additional comments or helpful information on this topic in the box below.

TN: FAQ link: <http://health.state.tn.us/AdvanceDirectives/FAQ.htm>

NC: Our Medicaid agency also has:

<http://www.ncdhhs.gov/dma/medicaid/AdvancedDirectCondensed.pdf> and

<http://www.ncdhhs.gov/dma/medicaid/AdvanceDirectExpanded.pdf>

AZ: Attached their full Life Care Planning Packet (24 page PDF)

MI: Attached 4 packets, email striben@nauad.org for details.

MN: The questionnaire has listed all the challenge we face as a network. The only one missing is the transferability to other states, important for "snowbirds".

NV: Nevada has taken an active role in this subject. If you Google Nevada advance directives, you will see additional information.

VA: The Commonwealth of Virginia will incorporate the Advance Health Care Directive Registry into the statewide Health Information Exchange. This will provide a value added service to query-retrieve exchange.

MA: The Massachusetts Executive Office of Health and Human Services, through the Department of Public Health and the Executive Office of Elder Affairs, is very actively involved in the development and expansion of a MOLST (Medical Orders for Life Sustaining Treatment) program across the Commonwealth. See: www.molst-ma.org