

Planning for Your Clients' Care with Advance Directives

By Philip Herzberg, CFP®, CTFA, AEP®; and Jamie L. Zuckerman



Philip Herzberg, CFP®, CTFA, AEP®, is a client adviser for The Lubitz Financial Group in Miami, Florida. He is immediate past president of FPA of Florida, past president of FPA of

Miami, and an executive board member of the Estate Planning Council of Greater Miami.



Jamie L. Zuckerman is an attorney with Kluger, Kaplan, Silverman, Katzen and Levine, P.L., where she focuses her practice on commercial litigation, estate and trust disputes, and appellate matters.

ADVANCE MEDICAL DIRECTIVES outline the kind of medical care that your clients would want in the event that they someday become incapacitated due to a serious accident or terminal illness. Unfortunately, some clients have not taken advantage of advance directives and the opportunity to control their futures.

As a planner, how can you guide your clients to ensure they receive the type of medical care at the end of their lives that is according to their personal values and beliefs? Assess the following considerations so that your clients can voice their own decisions and avoid potential heartache to their family members, who may be forced to guess their loved ones' intentions.

Creating Advance Medical Directives

An advance medical directive generally has two parts: the health care proxy and a living will. The health care proxy, or durable power of attorney for health care, designates someone, such as a spouse or trusted friend, who can legally act as an agent and make medical decisions for your clients if they are incapacitated. This designee can also name a team of people, such as siblings, to serve as health care proxies. Beware that close family members may disagree, potentially resulting in family discord.

Advise your clients that it is prudent to nominate a health care proxy. Many states will appoint a decision maker for your clients on their behalf if they do not have a health care proxy. Usually, this state-appointed person is the client's closest relative, which may or may not coincide with that client's intentions.

Understand that advance directives do not expire and remain in effect until they are changed. If your clients complete new advance directives, they invalidate the previous ones.

Inform your clients that hospitals and nursing homes are required to ask about the existence of any advance directive when they are admitted. Your clients have the ability to override, change, or cancel the proxy in writing as long as they are mentally alert.

According to the National Hospice and Palliative Care Organization (nhpco.org), one state's advance directive does not always work in another state. Some states do not honor advance directives from another state, while

others will defer to out-of-state advance directives as long as they are similar to the state's own law.

Talk to clients who spend a significant amount of time in other states about the importance of completing advance directives for these states, so that no medical gray areas arise in a crisis. Consult with your clients' estate planning attorneys to ascertain that their medical directives comply with laws in these additional states.

“One state's advance directive does not always work in another state.”

Living Will Insights

Educate your clients on the importance of end-of-life guidelines, which are as much for the living as they are for the dying. Without detailed instructions, your clients' family members may have to decide whether your clients would want to be kept alive artificially, what level of pain they would be willing to live with, and how to let them die if they had no hope of recovery.

The living will portion of an advance medical directive delineates the type of treatment your clients would want if they become critically ill and further specifies your clients' wishes in terms of end-of-life care. In essence, through a living will your clients can articulate

their feelings to their loved ones about what kind of life is worth living.

Ensure your clients verify the proper witnessing requirements with their estate planning lawyers before signing the living will. Be certain that the living will transparently communicates their wishes, especially religious considerations relating to end-of-life decisions or organ donations that may not be reflected in generic state forms.

Living wills also need to account for innovative medical advances that can change what once was a terminal or irreversible condition into something treatable.

Potential Advance Directive Challenges

Be cognizant that advance directives cannot handle every medical situation. For instance, the advance directive may not be followed by emergency medical services (EMS). If EMS is summoned to treat your client in the event of a life-threatening situation, they are usually required to resuscitate and stabilize them until they reach the hospital, regardless of any existing advance directive.

Further, some of your clients' caregivers may be able to override the provisions of their health care proxy. Many states allow a doctor or health care facility to reject any advance directive for reason of conscience. In these instances, the doctor of the facility must tell your client or their health care proxies about this when they are admitted to care and must offer to help transfer your client to another party or facility that will comply with your clients' wishes or the health care proxies.

Advance directives are not financial documents. Yet, clients may have their advance directives packaged together with other legal documents, such as a durable power of attorney for finances and property, when visiting their attorneys to discuss financial and estate planning matters.

Your clients need to talk to their loved ones, legal counsel, physicians, and their chosen proxies about their current health and future wishes before setting up any advance directives. Ideally, they should execute their advance directives when healthy.

Guide your clients to give copies of their signed advance directives to their doctors, hospitals, health care agents, backup surrogates, and other close confidantes.

Your clients can safely create, store, and share valuable documents that their loved ones and health care providers might need with secure online resources and portals, such as Everplans and eMoney's vault.

Finally, your clients should designate a successor in their advance directives in the event your clients' health care proxy agent dies, gets sick, or relocates. ■

Learn More



Are You Interested in Estate Planning?

To learn more about various estate planning topics ranging from charitable remainder trusts to secure online document storage and more, join the **FPA Estate Planning Knowledge Circle**, a peer-to-peer learning opportunity for FPA members.

Knowledge Circles meet regularly through conference calls, online discussions, webinars, and in-person meetings.

Join the next Estate Planning Knowledge Circle meeting on December 28 at 1 p.m., Eastern. Visit OneFPA.org/KnowledgeCircles for dial-in instructions and call details.

Customize your REPRINTS



REPRINTS EPRINTS PLAQUES POSTERS

Reprints offer a powerful statement about your product, service, or company. Customize your editorial content into a strong marketing tool by including a company logo, adding highlights to bring out stronger points, or placing an advertisement to capture your targeted audience.

Reprints can be used as:

- Tradeshow Handouts
- Media Kits
- Point of Purchase Displays
- Direct Mail Campaigns

Call today (877) 652-5295 and allow our reprint coordinator to assist you with some proven marketing ideas.