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Should You Consider a Living Will?

Introduction

As we go about our daily lives, our minds are often filled with plans for the present and the future -- things we must do, things we would like to do, things we would like to help our loved ones do. Rarely do we have time to consider what might happen if we were somehow rendered permanently unable to realize these plans. In anticipation of such a situation, the living will (also called a "health care directive") was first developed a half-century ago. Today, all states have provisions for some form of health care directive, allowing individuals to exert control over their lives and estates in the event they become incapable of making their own health care decisions.

Background and Characteristics of the Living Will

The living will is, at least in part, a response to medical advancements made in the 20th century. In earlier times, people typically died at home in the company of family. During the 20th century, however, medical science advanced to the point where it could extend life under many circumstances that had formerly been fatal. In some cases, such as with kidney dialysis and various organ transplants, the treatments could significantly extend life while allowing patients to remain alert and active in many of the activities they had always enjoyed. Other treatments, however, left patients in a much more limited condition, keeping the body alive, but unable to restore movement or brain activity. This condition has been called a "persistent vegetative state" -- the person is alive, in the way a plant is alive, but cannot move, speak or exhibit any signs of cognitive activity.

Medicine's ability to keep the body alive without regard to brain function has led to conflicts between health care providers and families of patients in conditions such as irreversible comas. The health care providers believed it was their moral and professional obligation to keep patients alive if at all possible, whereas families of the patients wanted to allow their loved ones to pass on if there was no realistic chance that they could ever regain consciousness. The case of Karen Ann Quinlan gave national attention to this conflict. Quinlan, who suffered irreversible brain damage, was sustained for eight years on a respirator until her parents secured permission from a New Jersey court to disconnect life support. After it was disconnected, however, Quinlan did not die but instead lived another 10 years sustained by a feeding tube. In 1977, the year the Quinlans took their daughter's case to court, California passed the Natural Death Act -- essentially the first living will law. Other states followed.

In 1990, the U.S. Supreme Court recognized a patient's right to refuse life-sustaining treatment, including food and water, as long as that wish is expressed in a valid, written document that complies with applicable state law. Today, most states have living will statutes, and others allow patients to control, through an advanced health care directive, the care they'll receive if rendered incompetent.

What is a Living Will?

A living will is a person's statement to health care providers dictating the types of life-prolonging treatment he or she would not want to receive if confronted with a life-threatening condition making them incapable of communicating desired medical treatment. The purpose of a living will is to make important health care decisions at a time when a person is still competent to make them. It was created to spare a person who is incompetent and near death any unwanted suffering, medical treatment, and health care expenses.

To create a valid living will, a person must be a competent adult. The living will, or a third person if named in the living will, speaks for the will's creator in the event that he or she faces a terminal condition, or is rendered unconscious, and is unlikely ever to regain consciousness. Appointing a person to make health care decisions can be useful because it allows for advocacy on the patient's behalf, which may enable the patient and physician to get past disagreements over the meaning of language fixed in a living will. A physician who refuses to respect the will must transfer the patient to another physician or hospital that will honor the document.

Living wills exempt physicians who follow them from civil or criminal liability as long as the care directives comply with reasonable medical standards. The laws on living wills, however, do not allow civil or criminal remedies for a health care provider's refusal to end life-sustaining treatment. It is therefore important to draft the document with care.

Would You Benefit from a Living Will?

Whether to make a living will is a personal decision, much like becoming an organ donor. The decision requires contemplating imminent death or permanent unconsciousness, conditions it may be hard for us to imagine. Yet the impact of such a condition on our loved ones is something we may better be able to picture. The emotional and financial costs of being kept alive when there is no real chance of recovery can be severe. Avoiding depletion of an estate that could be passed to loved ones was, and is, a primary reason for the creation of living wills.

The living will is just one form of planning for the end of life. It supplements a regular will, which becomes effective at death. In a sense, a living will is insurance against the frustration of the regular will, as it serves to prevent the will's creator from being sustained on the brink of death as the assets that would otherwise pass through the will are drained on medical expenses. To fully protect yourself, and to ensure that the property and real estate you have worked a lifetime to acquire serve the purposes you intend, it is best to prepare a living will and an estate plan to be followed after death. To make sure that your full intent is accurately conveyed, it is wise to have a qualified attorney draft your living will.

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