

Maryland Law Clarifies Patient's End-Of-Life Wishes

By Jeffrey Kolender

One of the most important parts of any estate plan is providing for your health care treatment in case you become disabled and cannot make medical decisions yourself. You may already have signed an Advance Directive, designating someone (a "health care agent") to make medical decisions for you, and also stating your wishes for the withholding of medical treatment in extreme situations.

(Although there are several other similar documents, such as a health care power of attorney, health care proxy and living will, in this article we will use the term "Advance Directive.")

While it clearly is an essential element of an estate plan, there are some limitations and potential problems with the Advance Directive. For example, the health care agent may not be available at the critical time when an emergency decision needs to be made. The agent may be out of town and unable by phone to substantiate his or her identity. Also, the medical staff often will not act on the Advance Directive without medical orders implementing the provisions.

In response to these and other concerns, the state of Maryland recently passed new legislation creating the Medical Order for Life-Sustaining Treatment ("MOLST"). The MOLST is to be completed by a doctor (or nurse practitioner) in consultation with the patient or the patient's agent. The MOLST form allows the patient to set forth his or her wishes regarding CPR, artificial ventilation, blood transfusion, hospital transfer, medical workup, antibiotics, artificially administered fluids and nutrition, and dialysis. Hospitals, nursing homes, medical staff and EMS personnel are required to follow the instructions presented in the MOLST.

The MOLST does not replace or supersede the Advance Directive. It was created as a simple, universally recognized and accepted form to be used by the entire medical community in carrying out end-of-life care. It's important to mention that the form must follow the patient. If a patient is being transferred from a nursing home to a hospital, the nursing home must send the MOLST form to the hospital with the patient.

Note that the MOLST form may not work in another state; only some states accept an out-of-state MOLST. In addition, when the legislation was originally passed, it made it mandatory that the MOLST form be completed for anyone admitted to a nursing home, assisted living facility, hospice, home health agency or dialysis center, effective October 1, 2011. That date has been postponed indefinitely which means that the MOLST may still be completed at any time, but it is not yet required for someone entering any of the health care facilities mentioned previously.

Depending on your age and health - or that of family members - you may want to make a point of speaking with a physician about completing a MOLST. It makes all the sense in the world to ensure your or their health care wishes are followed if and when the time comes.