ADVANCE DIRECTIVES IN VIRGINIA

ORIENTATION TO ADVANCE DIRECTIVES WITH INSTRUCTIONS FOR MENTAL HEALTH CARE.

Contributors

- This presentation is the result of collaboration between: DBHDS, VOCAL, dLCV (formerly VOPA), and UVA
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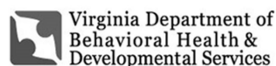

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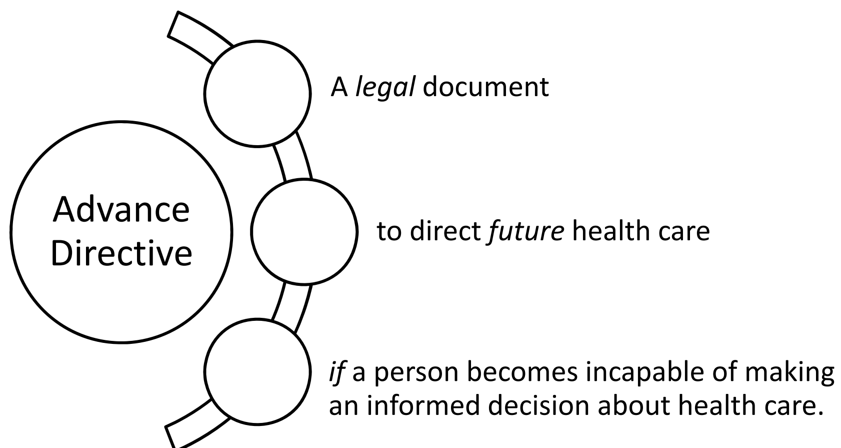
WHAT IS AN ADVANCE DIRECTIVE?



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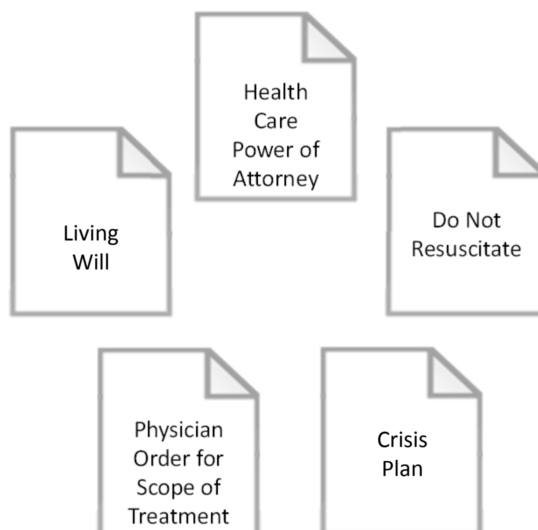
ADVANCE CARE PLANNING: AN ASSORTMENT OF TOOLS



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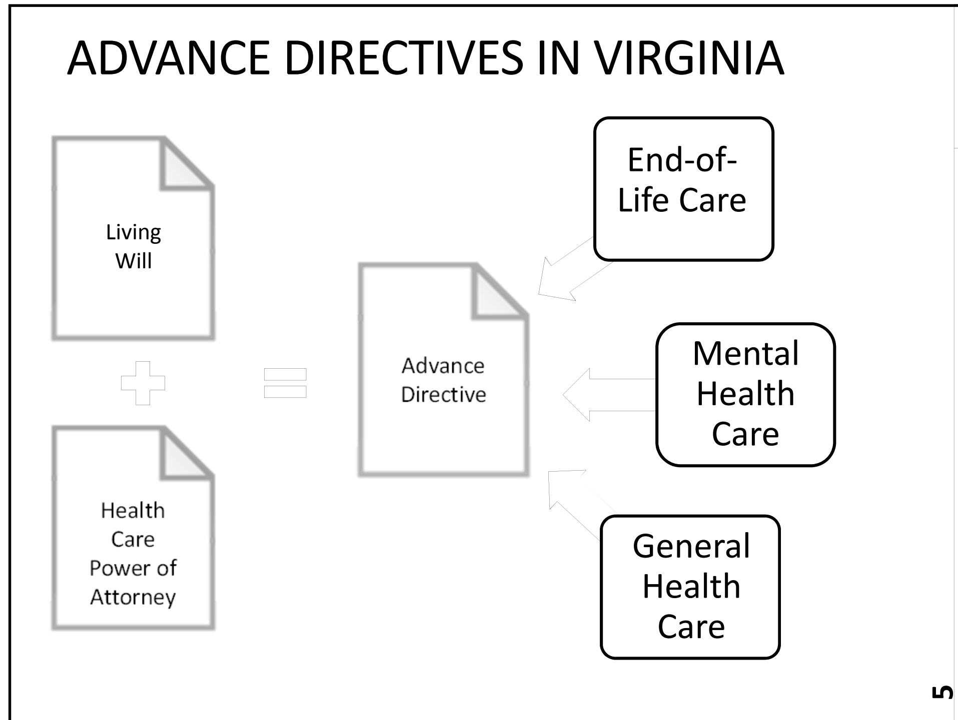
ADVANCE DIRECTIVES IN VIRGINIA



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ADVANCE CARE PLANNING & RECOVERY

- Person-centered because person-drafted
- Empowering
- Self-Determination
- Exert more control over health care during crisis
- Identify less restrictive alternatives to involuntary treatment
- Encourages conversations and shared decision making with loved ones

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MENTAL HEALTH ADVANCE DIRECTIVES COME TO VIRGINIA

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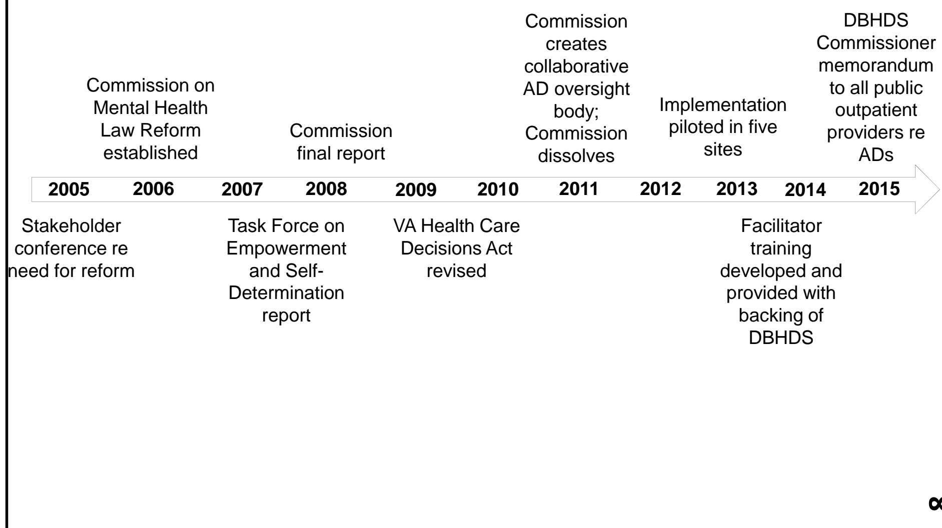
LEGAL AND POLICY HISTORY IN VIRGINIA



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STANDARDS SUPPORTING USE OF ADS

The Joint Commission

- Requires that organizations have an AD protocol in place
- Just providing information about ADs is not enough
- Facilities must follow ADs as closely as possible
- Access to care cannot be predicated upon whether a person has an AD

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STANDARDS SUPPORTING USE OF ADS

DBHDS's *Creating Opportunities Plan*

- Advance planning should be used widely and routinely
- ADs should be a routine practice in behavioral health care
- ADs are a tool for preventative care and crisis management

DBHDS regulations

- An agent named in an AD should be sought out before appointing an authorized representative

(12VAC35-115-146)

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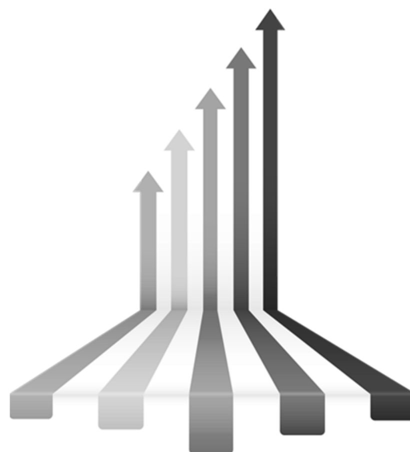
BENEFITS FOR CONSUMERS

Increased sense of control → increased sense of well-being

Improved working alliance with providers

Improved feeling of having treatment needs met

Increased likelihood of receiving medication requested → increased likelihood of staying on medication, reducing symptoms



(Srebnik & LaFond, 1999; Swanson et al., 2006)

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BENEFITS FOR CONSUMERS

Having an AD with instructions for mental health care reduces the incidents of coercive intervention

- Police transport, involuntary commitment, seclusion & restraints, involuntary medications

People with ADs were **half** as likely to experience coercive interventions compared to people without ADs

- Over a 2 year period

(Swanson et al., 2008)

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EVIDENCE OF THE CLINICAL UTILITY OF ADS

All ADs were rated as including useful instructions

- In agreement with clinical practice standards

No one used an AD to reject all treatment

Everyone authorized hospitalization or feasible alternative

When reasons for medication refusal given, doctors more likely to honor that choice

(Srebnik et al., 2005; Swanson et al., 2006; Wilder et al., 2007)

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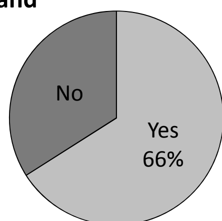
A PERVASIVE PROBLEM FOR ADS

Demand



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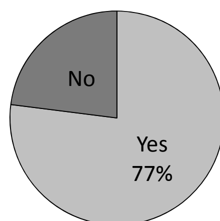
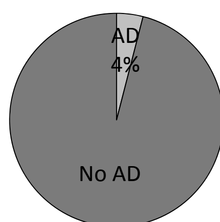


…if given the choice and help

Use



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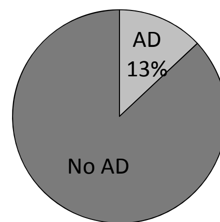

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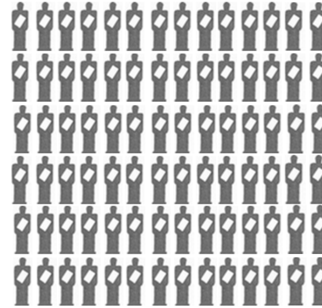
A PILLAR OF AD IMPLEMENTATION

Facilitation overcomes barriers to AD completion

People who completed an AD on their own…

People who completed an AD with help from a facilitator…



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VIRGINIA RULES AND REGS

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VIRGINIA'S REQUIREMENTS FOR LEGAL VALIDITY OF EVERY ADVANCE DIRECTIVE

An AD needs *only*:

- ☑ Signature of the person making it
- ☑ Signatures of two adult witnesses to signature

An AD does *not* need:

- ☒ To be on a particular form
- ☒ To be notarized
- ☒ To be written by an attorney

Photocopies of the original are valid for use by health care providers

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CAPACITY

For the Advance Directive to be valid, the person making the AD must have capacity

Under Virginia law, every adult is presumed to have capacity

Unless…

- Current judicial finding of incapacity (e.g., guardian for health care decisions), or
- Current clinical finding of incapacity by 2 physicians (or physician & psychologist)

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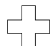
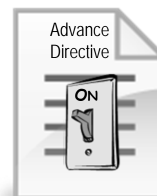
WHEN IS AN AD ACTIVATED & DE-ACTIVATED?

A physician conducts an in-person evaluation and finds incapable of making informed decisions about health care



A second physician or licensed clinical psychologist conducts an in-person evaluation and also finds incapable of making informed decisions about health care



As soon as any doctor examines person and finds he is able to make informed decisions again

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PROVIDER DUTIES

It is the responsibility of the consumer, while well, to give a copy of (or instructions to get) the AD to his provider

Va. Code § 54.1-2983

Once a physician knows that the AD exists, it is the physician's responsibility to make a copy of the AD a part of the consumer's medical records

Va. Code § 54.1-2983

No physician will be liable for carrying out an AD he/she believes to be legitimate

Va. Code §§ 54.1-2985, 54.1-2988

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PROVIDER DUTIES

Physicians must follow a consumer's AD as closely as possible within the boundaries of the law and acceptable medical practice

Va. Code § 54.1-2983.3

If a doctor refuses to follow all or part of an AD because he/she believes it to be medically or ethically inappropriate, that doctor must make a reasonable effort to transfer the consumer to another doctor

Va. Code §§ 54.1-2987, 54.1-2990

If part of an AD cannot be followed, the rest of the document remains valid and should be followed as closely as circumstances and the law allow

Va. Code § 54.1-2983.3

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APPOINTING A HEALTH CARE AGENT

An agent is a person the individual ***trusts*** who will advocate on her behalf and carry out her wishes

Any competent adult can be an agent

- But best to pick someone who knows values and preferences, and is willing

An agent has the **duty** to follow the individual's instructions and preferences

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SPECIAL POWERS TO ACT OVER OBJECTION – PROTEST PROVISION

An individual may give her agent the power to authorize treatment **over her objection***

Authority for her agent to make decisions and doctor to act, even if she objects, regarding:

- Admission to mental health care facilities, and/or
- Health care treatment choices

Objections about end-of-life care are always honored

* Physician or licensed clinical psychologist certification required

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GIVING INSTRUCTIONS

In an AD, an individual can give instructions about the health care she agrees to and the health care she refuses

Effect on the agent

- The agent must act in line with the individual's instructions

Effect on the doctor

- In most cases, providers must honor the instructions, but there are exceptions
  - Instructions that are illegal, unethical, or medically inappropriate;
  - Emergency treatment to prevent serious harm or death;
  - Court orders.

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Q: WHAT CRISIS-RELEVANT INFORMATION CAN AN AD CONTAIN?

A: Quite a lot

- Transportation options
- Helpful (and preferred) medication interventions
- Medication refusals
- Effective interpersonal strategies
- Symptom descriptions
- Contact information for key providers
- Medical conditions
- Trauma-informed care considerations
- Emergency contacts
- Facility preferences
- Authorization for inpatient admission

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2. Medication Authorization and Refusal.

[In general, your agent cannot authorize, and your physician cannot order, administration of the medications that you refuse below except in narrow circumstances permitted by law, such as emergencies.]

I consent, or authorize my agent to consent, to administration of medications my treating physician deems appropriate, with the exception of the medications listed below (or their respective brand-name, trade-name, or generic equivalents) or classes of medication which I specifically do **not** authorize. I realize that my condition and needs may change, and that medications may change. So, for each medication listed, I also state whether my agent can authorize use of the medication if my physician finds, and my agent agrees, that the medication is clearly the most appropriate treatment for me under the circumstances.

Medication or class of medications #1: Lithium
Reason I refuse this medication: It could compromise my kidney function
Agent may authorize this medication if necessary: Yes ____ No X

Medication or class of medications #2: Tegretol
Reason I refuse this medication: Affects my kidney function, liver tests
Agent may authorize this medication if necessary: Yes ____ No X

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D. Mental Health Crisis Intervention

[This part allows you to provide information about your condition and your preferences to help your agent and treatment providers meet your needs in a mental health crisis. Your health care providers will consider your preferences relating to the location and type of care but their ability to follow them may be limited by clinical, legal and administrative requirements.]

1. My Past Experience

a. Symptoms I might experience during a period of crisis:
____
____

b. Interventions that may help me:____
____
____

c. Interventions or other factors that may make things worse: _______________________
____

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3. My preferences regarding behavioral emergency interventions: If I am in immediate danger of harming myself or other people, I prefer that emergency interventions be tried in the following order if they are medically necessary *[RANK THE CHOICES BELOW IN ORDER OF YOUR PREFERENCE FROM 1 TO 4.]*

___ Medication in pill or liquid form
___ Physical Restraint
___ Medication by Injection
___ Seclusion

Reasons for my preferred order: ____
____

☐ I have had a traumatic experience in my past that makes seclusion and restraint particularly stressful and thus inappropriate for me.

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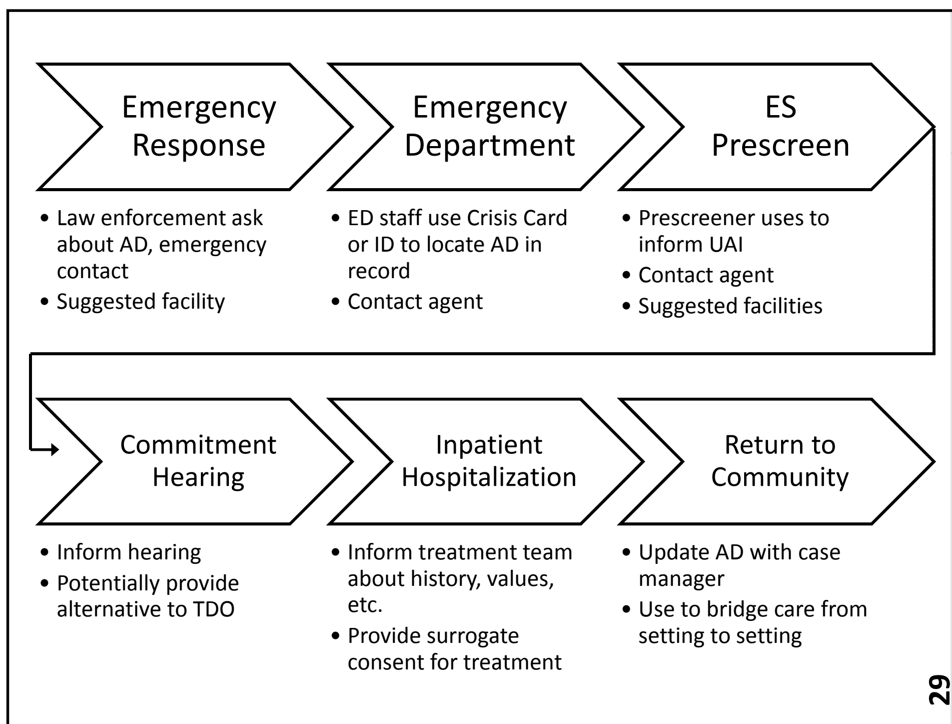

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