

Legislative Action to Address NCIOM Recommendations On Advance Care Planning



Legislative Action Needed from NCIOM Recommendations

- 1) Permanently change the requirement from signatures by two witnesses AND notarization of advance directives to EITHER two witnesses' signatures OR notarization.
- 2) Revise NCGS § 130a-468 to allow for electronic transfer of advance care planning documents to and from the Secretary of State's Advance Directive Registry.

BACKGROUND

In 2020, a Serious Illness Care Task Force ("Task Force") convened by the North Carolina Institute of Medicine (NCIOM) made [30 consensus and evidence-based, actionable recommendations](#) to improve serious illness care in North Carolina. The Task Force identified important ways that individuals can highlight and achieve their goals for care, including improving how they understand, complete, and make known their advance care planning documents.

WHAT IS ADVANCE CARE PLANNING (ACP)?

Advance care planning is a process by which individuals can discuss, identify, and document future health care preferences should they be unable to make decisions or speak for themselves.¹

WHAT IS AN ADVANCE DIRECTIVE?

An advance directive is a legal document that goes into effect when an individual can no longer make or communicate decisions.² It allows individuals to express preferences for health care, including end-of-life care, and may be revised as circumstances or diagnoses change.³ The two major types of Advance Directives are:

Health Care Power of Attorney – This document enables one to name another person to serve as his or her "health care agent." A health care agent is authorized to make health care decisions if one is not able to make or communicate those decisions oneself.

Living Will – This document describes an individual's preferences regarding health care for certain medical conditions.

TAKING ACTION ON TASK FORCE RECOMMENDATIONS

The North Carolina Serious Illness Coalition was created to meet NCIOM task force *Recommendation 2.14* to establish coordinated statewide leadership to advance recommendations on serious illness. The Coalition's Work Group on Advance Care Planning has worked to modernize the process of completing and communicating ACP documents.

CURRENT PRACTICE FOR ADVANCE CARE PLANNING IN NORTH CAROLINA

The NC Secretary of State's Office maintains a registry of advance directives where individuals can choose to complete a registration form and submit their paper documents with a fee of \$10 per document. Individuals receive back a registry card with a file number and password that can be given to family members and health care providers.⁷ Currently, the registry permits only paper document submissions.

NC is one of three states requiring both notarization AND two witnesses' signatures for completion of advance directives; most states require *either* notarization *or* witnesses.⁵ Research shows that states with less restrictive signature requirements have no greater incidence of fraud or abuse.⁶

¹ Finalization Requirements for Health Care Directives. Nolo. <https://www.nolo.com/legal-encyclopedia/finalization-requirements-health-care-directives.html>. Accessed January 5, 2021.

² North Carolina Institute of Medicine. Improving Serious Illness Care in North Carolina. April 2020. https://nciom.org/wp-content/uploads/2020/06/NCIOM_Improving-Serious-Illness-Care-in-North-Carolina_Full-Report_April-2020-2.pdf.

³ CDC. Advance Care Planning: Ensuring Your Wishes Are Known and Honored if You Are Unable to Speak for Yourself. <https://www.cdc.gov/aging/pdf/advanced-care-planning-critical-issue-brief.pdf> Accessed January 30, 2020.

⁴ Phelps M. Presentation to NCIOM Task Force on Serious Illness Care. May 2019.

⁵ Advance Care Planning: Healthcare Directives. <https://www.nia.nih.gov/health/advance-care-planning-healthcare-directives>. National Institute of Aging. Accessed February 19, 2020.

⁶ North Carolina Institute of Medicine. Improving Serious Illness Care in North Carolina. April 2020. https://nciom.org/wp-content/uploads/2020/06/NCIOM_Improving-Serious-Illness-Care-in-North-Carolina_Full-Report_April-2020-2.pdf.

⁷ Finalization Requirements for Health Care Directives. Nolo. <https://www.nolo.com/legal-encyclopedia/finalization-requirements-health-care-directives.html>. Accessed January 5, 2021.

⁸ North Carolina Institute of Medicine. Improving Serious Illness Care in North Carolina. April 2020. https://nciom.org/wp-content/uploads/2020/06/NCIOM_Improving-Serious-Illness-Care-in-North-Carolina_Full-Report_April-2020-2.pdf.

⁹ North Carolina Secretary of State Advance Health Care Directive Registry Registration Form. https://www.sosnc.gov/documents/forms/advance_healthcare_directives/registration_form.pdf. Accessed January 5, 2021.

The Following Organizations sign on in Support of Senate Bill 666:

Association for Home & Hospice Care of North Carolina

Health Sciences Health Innovations Group

North Carolina Secretary of State