

# Exploring the Use of Video Advance Directives

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Advance Care Planning Workgroup

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The North Carolina Serious Illness Coalition is a partnership of health leaders, providers and citizens that oversees and coordinates the implementation of the recommendations from the NC IOM Task Force on Serious Illness Care.

# Today's panelists

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Baptist

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Moderator: Adam Koontz  
Sr. Director Clinical Ethics, Advance Care Planning and Spiritual Care, Novant  
Health

# Legal perspective

Christine Coughlin, JD

# Where are Video Advance Directives Legal?

- Allowed exclusively as a video
  - Maryland
- Allowed as a supplement to the paper advance directive
  - New Jersey
- States with legislatively authorized health care advance directive registries
  - Arizona (Ariz. Rev. Stat. § 36-3291, enacted 2004)
  - California (Cal. Prob. Code §§ 4800, enacted 2000)
  - Idaho (Idaho Code Ann. § 39-4515, enacted 2006)
  - Louisiana (La. Rev. Stat. Ann. 40:1151.2, enacted 1991)
  - Maryland (2016 Maryland Laws Ch. 510 (H.B. 1385), enacted May 10, 2016)
  - Michigan (Mich. Comp. Laws Ann. 400.105d(1)(g), enacted 2014)
  - Montana (Mont. Code. Ann. 50-9-501, enacted 2005)
  - Nevada (Nev. Rev. Stat. Ann. 449.920, enacted 2007)
  - North Carolina (N.C. Gen. Stat. Ann. § 130A-465, enacted 2002)
  - Oklahoma (63 Okla. Stat. Ann. § 3102.1, enacted 2009, revised 2015)
  - Vermont (18 Vt. Stat. Ann. § 9719, enacted 2005, revised 2011. Vt. Admin. Code 12-5-15:8)
  - Virginia (Va. Code Ann. § 54.1-2994, enacted 2008)
  - Washington (Wash. Rev. Code Ann. § 70.122.130, enacted 2006)

## Maryland Statute § 5-602(c)(3). Procedure for making advance directive; notice to physician — Living wills

(3) The State-designated health information exchange may accept as valid an unwitnessed electronic advance directive in the form of a video record or file to state the declarant's wishes regarding health care for the declarant or to appoint an agent if the video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives service recognized by the Maryland Health Care Commission.

## N.J. Stat. § 26:2H-56. Advance directive for health care; execution

A declarant may execute an advance directive for health care at any time. The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of two subscribing adult witnesses, who shall attest that the declarant is of sound mind and free of duress and undue influence. A designated health care representative shall not act as a witness to the execution of an advance directive. Alternatively, the advance directive shall be signed and dated by, or at the direction of, the declarant and be acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths. An advance directive may be supplemented by a video or audio tape recording. A female declarant may include in an advance directive executed by her, information as to what effect the advance directive shall have if she is pregnant.

# Concerns & Issues

- AI Technologies and Deep Fakes (validity)
- Videos are susceptible to damage or deletion
- Conflicts with paper document
- Too emotionally taxing
- Lack of clarity to guide a clinical decision
- Accessibility & ability of older or vulnerable adults to create videos
- Some cultural norms may render these videos less acceptable
- Discomfort or nervousness during recording may be mistaken for confusion or duress

# Best Practices

- Do not rely solely on the video
- Create a paper document and a video advance directive when/if possible
- Educate the creator before the video is made
- Ensure the creator is not subject to undue influence or fraud
- Save the video in a secure digital location
- Have at least one neutral third party present during the creation
- Speak clearly and loudly and use a good quality camera if available



# Summary

Karen Monaco



# Potential benefits

- Your voice – your authentic wishes
- A gift: more powerful than legal documents for helping your family, friends, and health care team understand what matters most to YOU.

*Remember: a supplement to legally executed advance directives –  
not a replacement*

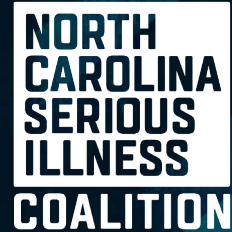
- May help resolve misunderstandings among family members about what you want
- Can alleviate burdens of end-of-life decision making for your surrogate
- A lasting legacy for loved ones to remember you by once you're gone

# Practical tips

- Use resources to help you plan ahead what you want to cover. Examples:
  - *Finish Strong* by Barbara Lee Combs
  - *The Four Things That Matter Most* by Ira Byock
  - *Advice for Future Corpses: A Practical Perspective on Death and Dying* by Sallie Tisdale
  - Five Wishes form
- Tailor to your particular values and healthcare situation
- Be prepared, but try not to read from a script
- Show some personality – be yourself; the more authentic the better
- Give thought to how you want to look and the setting
- Make it easy – you can use your smartphone
- Plan to do a practice run
- Update periodically as your health and wishes change



# Thank you.



Learn more at [NCSICoalition.org](https://NCSICoalition.org)

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