

Motivation for Getting Legal Papers in Place

The study examines the actual use and reasons for not using specified legal documents and communication of end-of-life issues with family members. Thirty-nine women enrolled in a preparation of important papers workshop at the University Week for Women conference held at South Dakota State University in early June 2004. Sixty-five percent had a will, 20% had a trust, and 41% responded they had an advance directive for health care. Keeping the will up-dated seemed to be a problem for nearly two-thirds of those with wills, but all those with a trust were up-to-date. The majority (over 80%) of those with an advance directive had both a living will and power of attorney; very few had only one or the other. The reason most often selected for not having a will was "procrastination"; the reason for not having a trust and an advance directive for health care was "lack of information." Nearly 80% had either planned or already communicated with their family about end-of-life issues.

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Introduction

It is generally accepted that adults should have their legal papers in place and ready for reference as needed. However, there is no agreed upon set time for this activity to take place. Most people feel there is no need for a will until assets are accumulated. It is only when a child is born to a couple that parents feel a need to name a guardian. A trust is thought to be desirable by those wishing to avoid probate and estate taxes; keep such transactions private; specify the transfer of a complex estate; safeguard the inheritance of survivors; and provide for heirs who might need the assets immediately. It is recommended that every household with assets and every parent with dependent children should have legalized plans for disposal of their estate and care of their children. Indeed, estate planning is a wise precaution at any stage of life (American Bar Association, 2004).

Whenever a person enters the hospital where Medicare funds are accepted, they are asked if they have a living will, but very seldom are adults otherwise entreated to get an advance directive for health care. However, the most important legal documents that everyone at any age should have in place are a medical designee and a living will (Colgate, 2003).

Total agreement on what constitutes 'legal papers in place' does not exist. Moreover, additional research is needed to determine whether or not increased knowledge and understanding will motivate people to prepare estate planning documents in a timely fashion. A brief one-page survey was utilized to gather data to aid in the design of a national curriculum to encourage participants to act on their legal matters.

Review of Literature

Use of legal documents

A large proportion of Americans die without a will, a trust, or an advanced health directive. According to the United Way (American Bar Association, 2004), approximately 60% of Americans die intestate or without a will. Only 42% of adult Americans possess a will and 21% of the respondents have created a trust. More White Americans (46%) have a will than African-Americans or Hispanic-Americans (Martindale-Hubbell, 2004).

A survey, conducted by the American Association of Retired Persons (AARP) Research Group (2000), indicates that the preparation of legal documents by adults aged 50 and over is inadequate. Of the 1,028 respondents, 60% had wills, 23% had living trusts; but 36% had none of these legal documents and only 17% had all three. Those with higher incomes (\$50,000 and over) and more education (college degree or higher) were more adequately prepared. Those at different age levels (55, 65 and 80 and over) were more prepared than those at other ages. These results were similar to a 1991 survey conducted by AARP of 1,652 respondents aged 45 years and over.

It is well understood that some legal means for the transfer or disposal of our estate and provisions for dependent children, should a parent die unexpectedly, are needed. Fewer have understood and taken steps in getting

an advance directive for health care in place. With the enactment of the Patient Self-Determination Act of 1991, everyone has the right to legally formalize the level of health care they wish taken in instances of incapacitation. Though it has been declared a basic right of all adult Americans, advance directives for health care have not been readily adopted. In a 2004 survey (Martindale-Hubbell), neither a living will nor a medical directive for health care existed for 70% of respondents and only 27% have powers of attorney for health care. Of 3,600 completed surveys of American Association of Retired Persons (AARP) members in North Carolina, close to 75% agreed that not being able to communicate their wishes would be worse than death (Straw & Cummins, 2002). Yet, only slightly more than 50% had taken definite steps to legalize an advance directive for health care.

Estate Planning

Estate planning provides a blueprint for the disposition of property upon death. An estate consists of all property including: the home and other real estate; tangible personal property such as cars and furniture; and intangible property such as bank accounts, stocks and bonds, and pension and Social Security benefits. While there are many components which make up an estate plan, such as wills, trusts, advance health care directives, financial plans, etc., individuals often think that estate planning is only for the elderly and the wealthy. Indeed, there are many reasons, both emotional and financial, for having a sound estate plan. Regardless of age, families can be spared much grief and expense if an estate plan is in place (Colgate, 2003).

Emphasis is placed on estate plans because it determines how property is distributed according to a person's wishes rather than by state law. It can outline a plan to provide for minor children in case of the death of a parent. It can save money on probate, taxes, and other expenses associated with settling an estate, and determine who is in charge of carrying out a person's wishes.

According to Colgate (2003), there are three reasons why people fail to plan for the distribution or transfer of assets and for health care: 1) a belief that families should not discuss wills, trusts, and the probate process; 2) they don't want to spend money to have a will or trust prepared; and 3) they are intimidated or afraid. Decisions concerning end-of-life issues affecting estates and health care are often made under intense emotional strain. Reasons posed why these decisions are not handled in an estate plan are given as "lack sufficient assets" and some were "not old enough" while others don't have a plan because they are in denial and don't want to think or talk about death or incapacitation (Martindale-Hubbell, 2004).

According to Martindale-Hubbell (2004), respondents' motivation to have an estate plan were "arrival or preparation for children" (25%) and "a long-term relationship, such as a marriage" (7%); other reasons prompting the creation or update of an estate plan are life changes such as marriage or divorce and a significant change in income. Reviewing and keeping estate plans up-to-date on a regular basis were common practices of those with plans in place.

Wills

A will is a legal document that provides directions and instructions for an executor and/or personal representative to distribute property when the owner dies (Colgate, 2003). Having a will prepared is important as persons who die without a will (intestate), will leave their property to be distributed according to state laws which might not reflect their wishes. Also, a will can permit a guardian to be named for minor children.

The AARP Research Group (2000) found that the percentage of people with a will varies by age, income, education, and race. While 44% -- or fewer than half -- of persons age 50-54 have a will, 85% of those of age 80 and older have one. While just 51% of those with a high school education or less have a will, 80% of those with a college degree have one. Fifty percent of those with incomes of less than \$15,000 have wills while 74% of those earning \$50,000 or more have one. Forty-six percent of White Americans have a will while 28% of African-Americans and 20% of Hispanic-Americans possess wills (Martindale-Hubbell, 2004).

Bodnar (2002) reports that 74% of parents with minor children don't have a will and nearly one-third of the parents surveyed said they had never contemplated getting a will. Common reasons why people do not prepare wills include not enough time; can't afford an attorney; and too busy to think about it (LegalZoom.com, 2004). Unfortunately, the death of a loved one is the event that motivates most people to prepare a will (Colgate, 2003). The Wall Street Journal (Frangos, 2001) reported that terrorist attacks and deployment in the armed services has spurred more people to get a will.

Trusts

A trust is a legal document that transfers title of a property to an individual or entity for the benefit of an individual or another entity. There are several reasons for creating a trust. A person can control their property while

they are living. Also, property owned in a trust does not have to be probated when the person dies, thus avoiding costs associated with probate. Use of a trust can also mean lower estate taxes.

There is a much smaller percentage (23%) of the 50 and older population of Americans who have a trust compared to those who have a will (60%) and percentages of those holding a trust vary by age and income but not by education (AARP Research, 2000). By age, 19% were age 50 to 64, 25% were age 65 to 74 and those 75 years or more constituted 29% of study participants having a trust. Over one-third (34%) of the participants with incomes of over \$50,000 had a trust.

Limited research is available on Americans utilizing trusts; however, persons often think of a trust as a tool only for the wealthy. Further research is needed to understand how providing education about trusts might modify the behavior of individuals.

Advance Directive for Health Care

An advance directive decision takes into consideration the availability or specificity of a living will, family wishes, physicians' attitudes, and legal issues. Simply put, an advance care directive involves legal documents that may be completed in any state that allows a person to provide written directions relating to their future health care and financial affairs should that person become incapacitated and unable to speak for themselves. An advance directive for health care provides an opportunity for a person to direct the affairs of their life prior to no longer being capable of making decisions regarding their health care. Usually they consist of either 1) a living will – a written statement specifying what type of life-prolonging treatments or procedures to perform if in a terminal condition or vegetative state; 2) a durable power of attorney for health care or designation of a health care surrogate – the selection of a person to make medical decisions for if the patient should be temporarily or even permanently unable to make those decisions for themselves, 3) or both (E-Medicine Consumer Health, 2004).

Fourteen percent of participants in the North Carolina AARP survey (Straw & Cummins, 2002) were uncomfortable even talking about death. This feeling of discomfort was likely a factor in so few getting a living will, a power of attorney for health care, or both. Cugliari, Miller, and Sobal (1995) studied factors promoting the completion of advance directives in the hospital. Information regarding advance directive preparations received from a physician during an office visit just a few days prior to a planned hospital admission rather than after discharge provided the best results. In an attempt to increase the use of elders' use of advance directives, Luptak and Boulton (1994) tested two methods: 1) distribution of written materials and 2) distribution of written materials followed by a discussion of emotionally laden end-of-life issues with the patient and his family. The latter method was the most effective in increasing use of advance directives. Though health care professionals receiving Medicare funding are responsible for making certain that patients receive information regarding their health care rights, Winick (1998) reported on ways in which attorneys were using case study examples to deal with client denial and resistance in the use of advance directives for health care.

Knapp (1991) suggests that the elderly are wary of the use of an advance directive and see it as a burden. They would rather share emotional, financial and physical burdens with family members instead of appointing a future proxy for health care decisions and outlining the level of care to be given near the end-of-life. They point to the potential threat of power misused by one holding a durable power of attorney for health care. Misuse of power would be the continuation of ineffective treatments just to keep the person alive to be able to continue collecting government benefits or the refusal of a routine, clearly beneficial treatment to save on costs and conserve the future estate. Ideally, according to Knapp (1991), communication of all parties – the patient, the doctor, and family members – about the future care of the patient is needed. The expectations of all parties for end-of-life care would be openly discussed and documented guidelines for future care of the patient would be the outcome.

Gamble, McDonald, and Lichstein (1991), in their study of knowledge, attitudes and behavior of elderly regarding living wills, found the following barriers to signing a living will: a) lack of knowledge, b) misconceptions in the use of technical language, c) lack of communication between physicians and patients, and d) preferred desire to have family share in these decisions rather than relying on a written document they did not trust.

Behavior Change

One of the major challenges of an educational curriculum such as *Legally Secure Your Financial Future: Organize, Communicate, Prepare*, is to motivate targeted individuals and families to make prescribed behavioral changes. Those who enroll in such a program are aware that they need to have their personal and legal papers in order and up-to-date. They are looking for guidance and motivation for the task.

Understanding processes of change to help people intentionally change behavior is the focus of the "transtheoretical model." The first application of the model was in connection with the cessation of smoking (Prochaska, Velicer, DiClemente & Fava, 1988). The change of behavior sought in the *Legally Secure Your*

Financial Future program is to enable participants to overcome their lack of action in organizing, communicating and preparing personal and legal papers and documents. Change in behavior occurs over time according to Prochaska, DiClemente, & Norcross (1992) and Prochaska & Velicer (1997); it is a process and not just an event that suddenly takes place. This process involves progress through a series of five stages:

- 1) Pre-contemplation is when a person anticipates no action in the foreseeable future (usually six months). People in this stage are uninformed or under-informed about the consequences of their behavior or they may have been previously discouraged about their ability to change. They are characterized as resistant and unmotivated.
- 2) Contemplation is the stage when a person intends to make a change (in the next six months). They are more aware of the reasons (pro and con) for making a change and are weighing the costs and benefits of making that change. They often are characterized as procrastinators who are not ready for traditional action oriented programs.
- 3) Preparation is when a person intends to take action in the immediate future (usually next month). Typically, they have taken some significant action (enrolled in a class, consulted a professional, read up on the subject) to move them closer to making a change. They are characterized as ready to put their plan into action.
- 4) Action is the stage characterized by a definite and sustained modification of a person's lifestyle (usually over six months). Guarding against relapse is critical at this stage.
- 5) Maintenance is when there is an attempt to prevent relapse but, more importantly, an increase in confidence that they will be able to continue the change and remain in control.

A person proceeds through the stages outlined but may have a tendency to spiral back to previous stages before again following the pattern of stages for behavior change (Prochaska & Velicer, 1997). Some may remain at a particular stage for what others might term an excessive amount of time before proceeding to the next stage. Most applications of the transtheoretical model have been proposed for changing addictive behaviors. A major challenge of its application, by those who would assist others in changing their behaviors, is how best to assess the current stage of behavior the participant is exhibiting and, then to select the most appropriate tool to motivate that individual to move to the next stage.

While seeking to change people's undesirable behavior, it is important to determine how best to acquire desirable behaviors. To resolve the challenges preventing a person to organize, communicate, and prepare their end-of-life decisions in a legally written format is a first step. The next step is to determine what methods of intervention are best to encourage and sustain the desired behavior change. The challenge then, for the *Legally Secure Your Financial Future: Organize, Communicate, Prepare* program developers, is to design the program so as to encourage the creation of a complete personalized estate plan by its participants; one that is updated appropriately as situations change.

Methodology

Data was collected from a June 2004 survey of thirty-nine females attending a University Week for Women Conference in Brookings, SD. The two-page multiple choice survey, designed by the authors, was administered at the beginning of the workshop. Only pre-conference enrollees in the legal papers preparation workshop (of their choice) were surveyed.

Sample Characteristics

These women had higher levels of education as indicated in Table 1. All graduated from high school and 64% possessed undergraduate and graduate degrees compared to 30.6% of the women across the state of South Dakota. They ranged in age from 30 to 86 years with the bulk fairly evenly distributed in the ages ranging from 46 to 75 years; median age was 57.7 years. Though South Dakota has a high percentage (14.3%) of its population in the 65 years and over age range, as compared to other states in the U.S., this sample has twice the 2000 census percentage of population of this age in South Dakota (U.S. Census Bureau, 2000).

Table 1
 Frequencies of demographic variables, age and level of education.

Survey Variables	Number	Percentage of Sample
Age		
30 - 45 years	6	15.4
46 - 55 years	11	28.2
56 - 65 years	11	28.2
66 - 75 years	10	25.6
76 years and over	1	2.6
Total	39	100.0
Level of education		
High school graduation	14	35.9
Some college	3	7.7
Bachelor's Degree	16	41.0
Master's Degree	5	12.8
Doctorate	1	2.6
Total	39	100.0

Results

Results of the survey, in Table 2, reveal a slightly higher percentage of respondents possessing a legal will (64.8 %) when compared to respondents in the 2000 AARP study (60 %). A slightly lower percentage of participants in the South Dakota workshop had trusts (20.5%) than was true for the multi-state AARP respondents at 23% (AARP Research Group, 2000). Forty-one percent of the workshop participants had an advance directive for health care; most (over 80%) had both a living will and a durable power of attorney for health care.

The major reason selected by workshop participants for not having a valid legal will was “procrastination.” “Lack of information” was the top response for those without a trust and also for those without an Advance Directive for Health Care. (See Table 3.)

Too often, discussions about end-of-life issues are only held at the time when an emergency arises in the family. Nearly 80% of the workshop participants were engaged in some stage of discussions with their family concerning estate transfer, distribution and, also, health care directives.

Table 2
 Possession and status of will, trust, and advance directive for health care.

Legal Instrument and Status	Number	Percentage of Sample
Will		
None	13	35.2
Yes, and up-to-date	9	24.3
Yes, but needs updating	15	40.5
Total	37	100.0
Trust		
None	31	79.5
Yes, and up-to-date	8	20.5
Yes, but needs updating	0	0.0
Total	39	100.0
Advance directive for health care		
None	23	59.0
Yes, both living will and power of attorney	13	33.3
Yes, living will only	1	2.6
Yes, power of attorney only	2	5.1
Total		100.0

Table 3

Major reason for not having a will, trust and advance directive for health care.

Legal Instrument and Reason	Number	Percentage of Sample
Will		
Lack of information	1	2.8
Procrastination	7	19.4
Language too technical	0	0.0
Procrastination / no attorney appointment made	3	8.3
No attorney appointment made	0	0.0
Need to know family preferences	1	2.8
Don't need one	1	2.8
Not applicable (already had one)	23	63.9
Total	36	100.0
Trust		
Lack of information	14	40.0
Procrastination	4	11.4
Language too technical	0	0.0
No attorney appointment made	1	2.9
Need to know family preferences	1	2.9
Don't need one	9	25.7
Not applicable (already had one)	6	17.1
Total	35	100.0
Advance directive for health care		
Lack of information	14	37.9
Procrastination	7	18.9
Language too technical	0	0.0
Lack of communication (physicians-patients)	0	0.0
Family shares in decision – not using living will	0	0.0
Lack of information and procrastination	1	2.7
Don't need one	0	0.0
Not applicable (already had one)	15	40.5
Total	37	100.0

Table 4

Existence of discussions with family about end-of-life issues.

Discussion Type and Status	Number	Percentage of Sample
For estate transfer or distribution		
No, none planned	8	20.5
No, but planned	4	10.3
Yes, but only initially	21	53.8
Yes, with more planned	6	15.4
Total	39	100.0
For level of health care		
No, none planned	8	21.1
No, but planned	7	18.3
Yes, but only initially	15	39.5
Yes, with more planned	8	21.1
Total	38	100.0

Discussion

Concern for writing a curriculum that motivates people to take action was the primary reason for surveying a group of thirty-nine women enrolled in a conference workshop designed to provide them information for planning their estate and end-of-life health care. The small size of the sample and the fact that it is a sample of convenience limits its usefulness in describing the behavior of adults towards organizing, communicating and preparing their legal documents regarding end-of-life issues. However, the practices of this group of South Dakota adult women somewhat parallels results from studies using a random national sample.

The AARP studies (2000 and 2002), targeted their members - those 45 years and up or 50 years and up. The range in age of the sample was somewhat surprising. The average age of the first marriage in the U.S. for men is 26.9 years and 25.3 for women (U.S. Census Bureau, 2003). The average age of mothers at birth of their first child is 25.1 years (Martin, et al., 2003). One of the most important things new parents are admonished to do is to assign a guardian to care for their child in the event of their death. Today, in the earlier stages of a marriage, the couple may have accumulated more debt than owned assets, but often, even those older, feel they have too few assets to warrant legalizing their transfer.

Fewer South Dakota workshop participants were without advance health care directives than in national studies. Fifty-nine percent of South Dakota workshop participants indicated they did not have an advance health care directive compared to 75 to 80% in national surveys. With an older population in rural South Dakota, the elderly are often exposed to health care professionals who may impress upon them the importance of having a health care directive.

Participants recognized that communication of end-of-life preferences with family members or others is important. The majority of this sample might be termed at least in the contemplation or preparation stages of the change model; those responding "yes, with more planned" might be considered in the action stage or maintenance stage. This is a behavior that needs to be sustained over time in order to up-to-date legal documents as situations change. Keeping others informed of end-of-life preferences provides an opportunity for less stressful and less costly transitions.

Workshop participants were appreciative of the survey that identified some major documents that they needed to prepare in the future. However, most indicated they had limited knowledge about a trust and an advance directive for health care. It is not expected that a trust would be adopted by every adult citizen, but it is expected that they would have either a will or a trust.

It is maybe too easy to give the response of "procrastination" regarding the preparation of specified legal documents. It does suggest, however, that they are not in the pre-contemplation stage for behavioral change. If they have given it some thought and researchers probe for deeper understanding of why they are procrastinating, there may be multiple reasons for not completing the task. It may be because they are uncomfortable in discussing end-of-life issues with family members or are reluctant to face death; they lack the ability to plan for their future; they believe that property will pass on to their heirs under state intestacy statutes in a manner they would like or that the form of property ownership will suffice under all circumstances of death. Some may fail to realize the significance of the impact it might have to make specific legal arrangements to protect their survivors. Other reasons frequently mentioned in popular literature are a belief that assets are insufficient to warrant transfer tax liability; estate planning is not important for young adults; concerns regarding costs of preparing wills and important documents; a distrust of others, preventing the revealing of intentions of their heart to a legal professional; and not wanting to make those "final decisions" - a preference to leave such matters for family members to sort out after their death.

Guided by the literature review and this simple survey, there are several elements that need to be incorporated in a program to motivate adults to get their legal papers in place. The group to target for the *Legally Secure Your Financial Future: Organize, Communicate, Prepare* program must include women who traditionally leave such tasks to their husbands and more often outlive him. It will probably be accepted more readily by those 50 years and older, but should welcome younger adults, especially parents of young children. Special thought needs to be given as to how the program is promoted to encourage participation by both men and women; different ethnic and racial groups; different age group levels, e.g., at 55 years and 65 years; and parents of young children. As a means of encouraging behavioral change, suggested times for regularly organizing or updating legal documents might include: "9-11"; at the beginning of a new year; or when planning holiday celebrations or family reunions. Goals and objectives of the program need to be clearly outlined and anticipate the true needs of participants. A personalized goals form and inventory forms are needed to guide actions of participants. In as much as possible, easily adapted materials to address the basics need to be written at an eighth-grade level and printed in a 14-characters-per-inch size. Seminars need to include the use of PowerPoint presentations (with a suggested alternate overhead transparency format) for visual learners. Though all materials need to be made available to educators

electronically on the National Extension Initiative Web site for Financial Security in Later Life (<http://www.csrees.usda.gov/fsll>), participants need to receive a packet of printed materials for their current and future reference.

To allow participants an opportunity to become familiar with types of professionals with whom they will need to consult in completion of their own health care and estate plans, a respected health care professional and a state-licensed attorney need to be invited presenters. One or more attorneys and health care professionals need to play an integral role in making the online, easily-adapted materials state specific (parts for adaptation marked by “state specific” icon). Educators/presenters need to be admonished to use anecdotal situations in the seminars and to allow time to respond to participant questions of a general nature. Caution will need to be taken to insure audiences do not get the impression that sponsors of the program are endorsing any one invited professional speaker. Participants will be empowered to ask questions by composing their own questions in advance and receive a list of other suggested questions to use in the question-and-answer session of the attorney seminar. Case studies and a quiz need to be included for interactive group discussions and as patterns encouraging communication with family members regarding end-of-life issues. Suggestions need to be provided for identifying the behavioral change stage of participants and for assisting them to progress to the next stage. Use of assessments – pre-assessment with registration, post assessment at the end of the series of seminars, and a three to six-month follow-up assessment are needed to determine the impact the program is having on attitude and behavioral change of participants. A pilot program needs to be conducted to observe impact and signal needed adaptations to the program before its final release in 2005.

Summary

This study has provided limited insight into the responses of one state’s citizens regarding their preparation for end-of-life situations. Wills were held by 65% of workshop participants while 41% held advance directives for health care, and 20% held trusts. Proposed and actual involvement in discussions with family members regarding end-of-life issues was high at 80%. Components of an educational program are outlined based on survey responses and the literature review. Hopefully, the educational program will be able to address the participants’ responses: “procrastination” for those not prepared with a will and “lack of information” for those that might benefit from holding a trust and a health care directive. Attempts will be made to assess the behavioral change stage of participants, both before and after incorporation of the *Legally Secure Your Financial Future: Organize, Communicate, Prepare* program.

Endnotes

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