

## California's Health Care Decisions Law Fact Sheet



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*This fact sheet is an overview of some of the key elements of the New Health Care Decisions Law. Additional details can be obtained through resources listed at the end.*

Effective July 1, 2000, this new law consolidates California's previous advance directive laws to make it easier for individuals to make their preferences known through written and oral communication.

A more generic advance directive, the Advance Health Care Directive (AHCD), replaces previous advance directive forms, such as the Natural Death Act Declaration, the Directive to Physicians and the Durable Power of Attorney for Health Care (DPAHC).

### **Are those previous advance directive forms still valid?**

If a completed advance directive was previously valid, it remains so unless rescinded by the person. Forms that were legal before 7/1/2000 can also still be used if desired.

### **What does this new Advance Health Care Directive (AHCD) do?**

The AHCD allows a person to do either or both of two things:

- Appoint a Power of Attorney for Health Care
- State instructions for future healthcare decisions.

The AHCD can be used to indicate preferences for health care treatment, such as management of the dying process and specifying personal values about quality of life. The law allows – but does not require – other preferences to be documented, such as appointment of a conservator or guardian, autopsy and funeral arrangements, and organ and tissue donation. The only statutory language required in the document itself relates to the witnesses, so the use of a standardized form is convenient but not required.

### **What needs to be done to complete an AHCD?**

It is valid if (1) completed by a competent person over age 18, (2) includes the person's name, signature, and the date executed, and (3) is acknowledged by a notary public or signed by two witnesses. An attorney is not required.

At least one witness must not be related or named in the will of the person. Persons excluded as witnesses are the person's agent; physician or health care provider or their employees; the owner, operator, or employee of a nursing facility or residential care home in which the person resides. If the person resides in a nursing facility, one witness must be an ombudsman or patient advocate.

### **What else do healthcare professionals need to know about an AHCD?**

- The AHCD is assumed valid unless there is substantial evidence to the contrary.
- It becomes effective only if the person becomes incapable of making health care decisions for any reason (unless the directive stipulates otherwise).
- It can direct that the agent's authority is to take place immediately even though the person retains decision-making capacity.
- It can be used to state who is *not* to make health care decisions for the person.
- Copies of an AHCD have the same authority as the original.
- A person cannot be required to complete an AHCD as a precondition for admission to a hospital or nursing facility or for the provision of health care.

### **What is the role of the Power of Attorney for Health Care?**

With a few exceptions, the agent appointed by a Power of Attorney for Health Care has legal authority in all health care matters unless limitations are stipulated. The agent may, for example:

- Select or discharge health care providers and institutions;
- Accept or refuse medical treatments, including artificial nutrition and hydration and resuscitation attempts;

- Receive information on the person's condition, view the medical record, and authorize release of the medical record when needed;
- Consent to tissue and organ donation, authorize an autopsy, and arrange for disposition of the remains after death.

The agent does not assume responsibility for medical bills, debts held by the person or for managing the person's financial affairs. Restrictions on who can be appointed as a person's agent are similar to those restrictions on who can witness the AHCD.

#### **Can the person make an oral advance directive?**

Yes, with certain restrictions. A person may orally designate a surrogate to make health care decisions only by personally informing the supervising health care provider (SHCP, see definitions). This appointment is only effective during the course of treatment, illness, or stay in the health care institution. An oral designation of surrogate supersedes a previous written directive.

A person may give an individual health care instruction orally to any person at any time.

#### **How are health care decisions to be made for the patient?**

Health care decisions made by a designated agent, surrogate, or court-appointed conservator with authority to make health care decisions should meet the following standard:

- Health care decisions must be in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the agent, surrogate or conservator;
- If the patient's wishes are not known, decisions are to be made in accord with the agent, surrogate, or conservator's determination of the patient's best interest in light of the personal values and beliefs of the patient to the extent they are known.

#### **What are the duties of health care professionals?**

- A health care provider or institution must comply with a patient's advance directive or instructions from an agent or surrogate to the same extent as if the decision had been made by the patient.
- The SHCP must document all pertinent information about the existence or revocation of an AHCD or any oral communication about preferences in the health care record.
- The primary physician (see definition) who determines (or is informed of a determination) that a patient lacks capacity or has recovered capacity must record such in the health care record.
- Before implementing a health care decision for a patient, the SHCP must inform the patient of the decision and the identity of the person who made it.

Physicians and other health care providers may decline to comply with an AHCD or an agent's decision because of conscience (personal or in institutional policy) or because the care would be medically ineffective or contrary to generally accepted health care standards. In such case:

- The patient and agent must be immediately informed of such decision;
- All reasonable efforts to assist in transfer of the patient to another provider must be undertaken;
- Continuing care must be provided to the patient until transfer can be accomplished.

Immunity is explicitly granted to agents and health care providers who make good faith health care decisions in accord with the person's written or oral preferences.

#### **Can an AHCD be revoked?**

Yes. A person having capacity may revoke all or part of the AHCD at any time. The revocation must be clearly documented by health care providers.

- The designation of the agent may be revoked only in writing or by personally informing the SHCP.
- Health care instructions can be revoked in any manner that communicates intent to revoke.

#### **What if the person does not have an AHCD?**

If a person lacks the capacity to make decisions, the physician and health care team will usually turn to the most appropriate decision-maker from close family or friends of the person. The most appropriate decision-maker is that person who has a close, caring relationship with the person, is aware of the person's values and beliefs, and is willing and able to make the needed decisions. This person may or may not be the person's next-of-kin. (This process for appointing a decision-maker has been common practice in California for many years though not in statute.)

## DEFINITIONS PROVIDED IN THE HEALTH CARE DECISIONS LAW

The following terms are explicitly defined in the legislation:

**Capacity** means a patient's ability to understand the nature and consequences of proposed health care, including its significant benefits, risks, and alternatives, and to make and communicate a decision.

**Health care decision** means a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following:

- Selection and discharge of health care providers and institutions,
- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication,
- Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

**Primary physician** means a physician designated by a patient or the patient's agent to have primary responsibility for the patient's health care or, if the primary physician is not reasonably available, the physician who undertakes that responsibility.

**Supervising health care provider (SHCP)** means the primary physician, or if there is no primary physician or he or she is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

## ADDITIONAL RESOURCES

Check the California Coalition for Compassionate Care website for updates on materials, community and professional education programs and curriculum at [www.finalchoices.calhealth.org](http://www.finalchoices.calhealth.org).

### Text of law:

AB 891 (Chapter 658, Statutes of 1999) codified at Probate Code sections 4600-4805. To obtain a copy, visit [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

### Analysis of law:

- CHA Consent Manual 2000. To order a copy, call (800) 494-2001 or visit [www.calhealth.org](http://www.calhealth.org).
- CMA ON-Call, Information on Demand Service online at [www.cmanet.org](http://www.cmanet.org) or fax service (800) 592-4CMA.

### New Advance Health Care Directive Forms:

- CHA Consent Manual 2000 contains a copy of a suggested form in both English and Spanish. Manuals can be ordered by calling (800) 494-2001 or visit [www.calhealth.org](http://www.calhealth.org).
- CMA has developed an Advance Health Care Directive Kit, including a new form. To order, call CMA Publications at (800) 882-1CMA or visit [www.cmanet.org](http://www.cmanet.org).
- Choice in Dying has state-specific forms that can be downloaded from their website at [www.choices.org/ad.htm#download](http://www.choices.org/ad.htm#download).

### Supporting Materials:

- The Department of Health Services (DHS) is developing a new pamphlet containing the required Patient Self Determination Act (PSDA) language for California. DHS estimates that the new pamphlet will be available in August 2000.
- *Finding Your Way: A Guide for End-of-Life Medical Decisions*. This 13-page booklet was written for consumers by Sacramento Healthcare Decisions. For single or bulk orders, contact the CAHHS Sales/Distribution Center, P.O. Box 340100, Sacramento, CA 95834-0100 or visit [www.finalchoices.calhealth.org](http://www.finalchoices.calhealth.org).
- *10 Myths About Advance Directives* describes common misperceptions about advance directives. Contact [www.abanet.org/elderly/myths.html](http://www.abanet.org/elderly/myths.html).