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Fact Sheet: California Advance Health Care Directive

The California Health Care Decisions Law, effective July 1, 2000, consolidated previous advance directives into the new Health Care Directive (AHCD). Advance health care directives allow you to have legal control over your health care treatment in the event that you are unable to speak for yourself. California's Advance Health Care Directive provides an efficient and flexible format for planning your future health care.

Are previous directives still valid?

Any previous advance directive such as a Durable Power of Attorney for Health Care or a Natural Death Act that was valid in California as of July 1, 2000 is still valid. If you completed a Durable Power of Attorney for Health Care before 1992, it has expired. If you have already executed a Durable Power of Attorney for Health Care and/or a Natural Death Act, you should check to see that the forms have not expired and still reflect your wishes.

Laws concerning advance directives vary from state to state. If you have executed an advance directive in another state, you will also want to complete a California AHCD to ensure that you meet California's legal requirements for stating your health care wishes.

For additional information see these FCA Fact Sheets: *End-of-Life Decision Making*; *Durable Powers of Attorney and Revocable Living Trusts*; *Legal Planning for Incapacity*; and *Conservatorships*.

What is the Advance Health Care Directive (AHCD)?

The AHCD allows you to do either or both of the following two things to prepare yourself in the event that you become incapacitated:

1) Appoint a health care agent. The AHCD allows you to appoint a health care agent (also known as "Durable Power of Attorney for Health Care" or "attorney-in-fact"), who will have the legal authority

to make health care decisions for you if you are no longer able to speak for yourself.

2) Prepare instructions for health care. The AHCD allows you to make specific written instructions for your future health care in the event of any situation in which you can no longer speak for yourself. The AHCD replaces the Natural Death Act and is now recognized as the legal format for a *living will* in the state of California.

Whom should I choose as a health care agent?

In selecting a health care agent, you should choose a person whom you trust, such as a family member, spouse, partner or close friend. The person you choose should know your personal values and beliefs. If possible, you should choose someone who lives in your area in case they are called upon to direct your treatment for an extended period of time. You should discuss your health care wishes with your agent and be sure he or she understands the responsibilities of a health care agent and is willing to act on your behalf.

Are there restrictions on who can become a health care agent?

Yes. The law excludes certain people from acting as your health care agent or alternate agent. Your agent cannot be your supervising health care provider or the operator of a community or residential care facility in which you are receiving assistance. Nor can your agent be an employee in a residential, community or health care facility in which you are receiving care, unless that person is a relative, spouse or co-worker.

Should I choose an alternate health care agent?

You should choose at least one alternate person to act as your agent in case your first choice is unable or unwilling to make health care decisions for you.

Most standardized forms will provide a designated place for you to write in your alternate agents.

How much decision-making power can I give my health care agent?

The AHCD allows you to give your health care agent as broad or as limited powers as you choose. The powers you can give to your agent include:

- The right to select or discharge care providers and institutions;
- The right to refuse or consent to treatment;
- The right to access medical records; and
- The right to withdraw or withhold life-sustaining treatment.

In the case of death, you may also permit or restrict your agent to make organ donations, authorize an autopsy, and direct the disposition of your remains.

When does an agent begin making decisions for me?

Your health care agent begins making decisions for you only when you are no longer able to make decisions for yourself. However, if you choose, you may stipulate in the AHCD to have your health care agent begin making decisions for you immediately. You may revoke a health care agent at any time (see below on changing and revoking your AHCD).

Does my agent take responsibility for my medical bills?

Your agent will not be liable for any of your medical bills, unless that person is already legally responsible for your debts. In the event of death, your health care agent may be responsible for fees concerning the disposition of your body if you have not made other arrangements.

May I give my health care agent power over my finances?

The AHCD does not give your healthcare agent the authority to make financial decisions for you. To give your healthcare agent (or another individual) authority over your financial affairs, you can do so through a separate legal procedure, such as a Durable Power of Attorney for Assets Management or a Revocable Living Trust.

If you would like to give your health care agent or another person you trust power over your finances, you should consult an attorney about your legal options (See FCA Fact Sheets: *Durable Powers of Attorney and Revocable Living Trusts; Legal Plan-*

ning for Incapacity; Conservatorships; and End-of-Life Decision Making).

If I choose a health care agent, do I need to write out my health care instructions?

You are not required to write out your health care instructions, but it is a good idea to do so in case your health care agent is unavailable in an emergency. Your health care instructions will also help to remind your health care agent of your wishes. Both your physicians and your health care agent are obligated by law to follow your health care instructions.

What kinds of health care instructions am I able to give?

Most standardized AHCD forms will ask you to state your wishes about accepting or withholding life-support measures. The AHCD also allows you to specify any additional healthcare instructions you may have. For example, you may specify instructions for the refusal or acceptance of pain medication, antibiotics, respirator or cardiopulmonary resuscitation. In the event of death, you may provide instructions for tissue and/or organ donation.

Note: In the event of an emergency, paramedics may not be aware of your health care instructions. If you do not want cardiopulmonary resuscitation, you may also want to fill out a “Prehospital Do Not Resuscitate (DNR)” form and wear a “Do Not Resuscitate - EMS” medallion approved by California’s Emergency Medical Services Authority. You may order the DNR forms from the California Medical Association, listed at the end of this fact sheet.

What if I have additional instructions that do not fit in the space provided on a standardized AHCD form?

If your AHCD form does not provide enough space for your health care instructions, you may write out and attach your additional instructions on one or more sheets of paper. You should sign and date each additional sheet of paper at the same time that you have the AHCD form notarized or witnessed.

Does the AHCD allow me to choose a primary physician?

Yes. The AHCD allows you to designate a medical doctor who will act as your primary physician.

How do I execute an Advance Health Care Directive?

Any California resident who is at least 18 years of age and mentally competent may execute a valid AHCD. Two qualified adult witnesses or a notary public must sign the AHCD, acknowledging that you are competent and acting under your own volition. No attorney is required.

Can any adult qualify as a witness to my AHCD?

No. Witnesses cannot be your health care agent, your alternate health care agent, your supervising health care provider, or the employee or operator of a community, residential, or health care facility. In addition, one witness must not be a family member (by blood, marriage, or adoption) and must not be entitled to any part of your estate.

Note: If you are a resident of a skilled nursing facility, one witness must be a patient advocate or state designated ombudsman.

What should I do with my completed AHCD form?

A completed form must include your name, your signature, the date executed, and the signature of two witnesses or the stamp of a notary public. You will want to keep your original copy in a place where family or friends will find it if needed. You should also give a copy of the AHCD to your primary physician, your agent, your alternate agent(s), family members, and any health facilities where you are receiving care. Make a list with the names and phone numbers of persons to whom you have given a copy of your AHCD so you can easily notify them if you make any changes. Put a card or notation in your wallet or purse stating that you have an AHCD. Some people take a copy of their AHCD when they travel. If you spend extended time in another state, you should also complete advance directives there, using that state's forms and rules. If you are going to be admitted to a hospital or institution, be sure to bring a copy of your AHCD. All copies of the AHCD have the same effect as the original.

May I change or revoke my AHCD?

Yes. You may change or revoke your AHCD at any time. To revoke a health care agent, you may inform your supervising health care provider in person or in writing. A supervising health care provider is your primary physician or the physician who has primary control over your health care in a given situation. If

you wish to change or cancel your health care instructions, you may do so at any time and in any way that communicates your intent. Executing a new AHCD will automatically revoke your previous AHCD. To avoid possible confusion, you should notify anyone who has a copy of your AHCD of any changes or revocations. An AHCD remains valid forever unless you revoke your AHCD, execute a new AHCD, or specify a date on which you would like your AHCD to expire.

Where can I find a standardized Advance Health Care Directive form?

Standardized forms are not required to complete an AHCD. However, any AHCD will need to include the statutory language concerning witnesses or notary public. Standardized forms will also provide you with guidelines for completing a thorough AHCD. You can order a standardized AHCD kit for \$5.00 from the California Medical Association at CMA publications (800) 882-1262. You may also order kit for \$5.00 from the CMA website, www.cmanet.org/bookstore/fulllist.cfm.

Credits

California Coalition For Compassionate Care
(2000). *California's Health Care Decisions
Law Fact Sheet.*
www.finalchoices.calhealth.org

California Medical Association (2000). *Introduction
to Advance Health Care Directives.*
www.cmanet.org

Partnership for Caring: America's Voices for the
Dying (2000). *Introduction to Your California
Health Care Directive.*
www.partnershipforcaring.org

Resources

California Department of Aging
The California Department of Aging has a toll-free
number to help seniors and functionally impaired
adults locate legal services in their community. The
phone number to call is (800) 510-2020.

California Medical Association
P.O. Box 7690
San Francisco, CA 94120-7690
Phone: (415) 541-0900
Website: www.cmanet.org

CMA's Advance Health Care Directive kit can be
ordered for \$5.00 by phone at (415) 882-3388. Both
English and Spanish are available.

Reviewed by California Coalition for Compassionate Care and Harriet Prensky, Attorney at Law, Prensky & Tobin in Mill Valley, California. Ms. Prensky is an elder law attorney certified by the National Academy of Elder Law foundation. Prepared by Family Caregiver Alliance in cooperation with California's Caregiver Resource Centers, a statewide system of resource centers serving families and caregivers of brain-impaired adults. Funded by the California Department of Mental Health. January 2002. ©All rights reserved.

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Spanish and Chinese AHCD fact sheets are available.

State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Phone: (415) 538-2000
Website: www.calbar.org

**Partnership for Caring: America's Voices
for the Dying**
1620 Eye Street, NW, Suite 202
Washington, DC 20006
Phone: (202) 296-8071
Fax: (202) 269-8352
Hotline: (800) 989-9455
Website: www.partnershipforcaring.org
Email: pfc@partnershipforcaring.org

Advance Directive forms for all States can be or-
dered by mail for \$5.00 or downloaded for free from
the Partnership for Caring website.