

California's Health Care Decisions Law

Frequently Asked Questions

This fact sheet is an overview of some of the key elements of California's Health Care Decisions Law of 2000, including amendments effective January 1, 2022, and September 8, 2023. Additional details can be obtained through the resources listed at the end.

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

A more generic advance directive, the Advance Health Care Directive (AHCD), replaced previous advance directive forms: the Natural Death Act Declaration and 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If a completed advance directive was previously valid, it remains so unless rescinded by the person.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 July 1, 2000, can still be used if desired. However, to avoid any confusion or risk of a healthcare provider not being familiar with these older forms, CCCO recommends using the current Advance Health Care Directive or other form that aligns with current California law. Prepare For Your Care offers an easy-to-read Advance Health Care Directive in many different languages:

<https://prepareforyourcare.org/en/advance-directive-state/ca>

What does the Advance Health Care Directive (AHCD) do?

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

- Appoint a Durable Power of Attorney for Health Care – someone to make healthcare decisions for the person when they cannot
- State instructions or preferences for future healthcare decisions

The AHCD can be used to indicate preferences for healthcare treatment, such as which treatments are provided or withdrawn/withheld when the person is terminally ill or permanently unconscious and specifying personal values about quality of life. The law allows – but does not require – other preferences to be documented, such as nomination of a conservator or guardian, autopsy and funeral arrangements, and organ and tissue donation. The only language required by law 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?

An AHCD is valid in California if it:

1. Is 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 to complete or execute an AHCD.

At least one witness must not be related or named in the will of the person. Persons excluded as

witnesses are the person's healthcare agent; physician or healthcare 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 you need to know about an AHCD?

- The AHCD is assumed valid unless there is substantial evidence to the contrary.
- The AHCD and the agent's authority extend to decisions regarding mental health treatment as well as physical.
- It becomes effective only if the person becomes incapable of making healthcare decisions for any reason (unless the directive stipulates otherwise).
- A physician should make the determination that the person is incapable of making healthcare decisions (unless the directive stipulates otherwise).
- It can direct that the healthcare agent's authority is to begin immediately even though the person retains decision-making capacity.
- It can be used to state who is *not* to make healthcare decisions for the person.
- Copies of an AHCD are just as valid 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 Healthcare Agent?

With a few exceptions, the healthcare agent designated in the AHCD has legal authority in all healthcare matters unless limitations are stipulated. The agent may, for example:

- Select or discharge healthcare 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.

In California, the agent also cannot consent to:

- (a) Commitment to or placement in a mental health treatment facility,
- (b) Convulsive treatment,
- (c) Psychosurgery,
- (d) Sterilization, or
- (e) Abortion.

Who may serve as a healthcare agent for a person?

Anyone over the age of 18 may serve as a healthcare agent, unless that person is:

- The supervising healthcare provider or an employee of the healthcare institution where the patient is receiving care, or
- An operator or employee of a community care facility or residential care facility where the patient is receiving care,
- **Unless** that person is related by blood, marriage, or adoption, or is a registered domestic partner of the patient, or unless the person is an employee, other than the supervising health care provider, who is employed by the same healthcare institution, community care facility, or residential care facility for the elderly as the patient.

Can a person make an oral advance directive?

Yes, with certain restrictions. A person may orally designate a surrogate to make healthcare decisions only by personally informing, orally or in writing, the supervising healthcare provider (see definitions) or their designee. This appointment is only effective during the course of treatment, or stay in the healthcare institution, or 60 days, whichever is shorter. A verbally designated surrogate supersedes a previously written directive only during that time frame.

Instructions for current or future care may be given orally at any time, but instructions for future care, such as one might put in AHCD, are more secure if they are supported by a written document and an informed healthcare agent.

How are healthcare decisions made for the patient?

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

- Healthcare decisions must be in accord with the patient's individual healthcare instructions, if any, and other wishes to the extent known to the healthcare agent, surrogate, or conservator.
- If the patient's wishes are not known, decisions are to be made in accord with the healthcare 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 healthcare professionals with respect to the AHCD?

- A healthcare 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 supervising healthcare provider must document all pertinent information about the existence or revocation of an AHCD or any oral communication about preferences in the healthcare 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 that determination in the patient's healthcare record.
- Before implementing a healthcare decision for a patient, the supervising healthcare professional must inform the patient of the decision and the identity of the person who made it.

Physicians and other healthcare 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 healthcare standards. In such cases, the healthcare provider must:

- Immediately inform the patient and healthcare agent of such decision;
- Make all reasonable efforts to assist in transfer of the patient to another provider;
- Continue care for the patient until transfer can be accomplished.

Immunity is explicitly granted to healthcare agents and healthcare providers who make good faith healthcare 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 healthcare providers.

- The designation of the agent may be revoked only in writing or by personally informing the supervising healthcare professional.
- Healthcare instructions can be revoked in any manner that communicates intent to revoke.

Is an Advance Health Care Directive from another state valid in California?

Yes! An advance health care directive from another state may be assumed to be valid in that state and in California, unless there is evidence to the contrary.

What if a person does not have an AHCD?

If a person does not have an AHCD and has not verbally designated a surrogate decision maker, the healthcare provider or designee of the healthcare facility caring for the person may select a decision maker from any of the following classes of adult person, in no particular order:

- The spouse or domestic partner of the patient
- An adult child of the patient
- A parent of the patient
- An adult sibling of the patient
- An adult grandchild of the patient
- An adult relative or close personal friend of the patient

The person selected should be the one who has demonstrated special care and concern for the patient, is familiar with the patient's personal values and beliefs to the extent known, and is reasonably available and willing to serve.

Definitions Provided in the Health Care Decisions Law

The following terms are explicitly defined in the legislation:

Advance health care directive or advance directive: either an individual health care instruction or a power of attorney for health care.

Agent: an individual designated in a power of attorney for health care to make a health care decision for the principal [person executing/signing the directive], regardless of whether the person is known as an agent or attorney-in-fact, or by some other term; includes a successor or alternate agent.

Capacity: a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes, in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives.

Conservator: a court-appointed conservator *having authority to make a health care decision* for a patient. (Note: not all conservators have authority to make health care decisions.)

Health care decision: 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, including mental health conditions.
- Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

Individual health care instruction or individual instruction: means a patient's written or oral direction concerning a health care decision for the patient.

Primary physician: a physician designated by a patient or the patient's agent, conservator, or surrogate to have primary responsibility for the patient's health care or, in the absence of a designation or if the designated physician is not reasonably available or declines to act as primary physician, the physician who undertakes that responsibility.

Supervising health care provider: the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

Surrogate: an adult, other than a patient's agent or conservator, authorized under this division [of the Health Care Decisions Act] to make a health care decision for the patient.

Additional Resources

Check the *Coalition for Compassionate Care of California* website for updates on materials, community and professional education programs, and curriculum at **CoalitionCCC.org**.

Text of Law:

AB 891 (Chapter 658, Statutes of 1999) codified at Probate Code sections 4600–4806. To view or print a copy, visit <https://leginfo.legislature.ca.gov>.

Analysis of Law:

- California Hospital Association Consent Manual. To order a copy, visit <https://calhospital.org/publications/consent-manual/>. The manual can be downloaded as a PDF at no charge to members.
- CMA Legal Resources, <https://www.cmadoocs.org/legal-resources>.

Advance Health Care Directive Forms:

- The Coalition for Compassionate Care offers a selection of forms. Visit **CoalitionCCC.org** and click on Advance Care Planning Resources.
- The California Hospital Association Consent Manual contains a copy of a suggested form in both English and Spanish. Manuals can be ordered from <https://calhospital.org/publications/consent-manual/>.
- The California Medical Association has an Advance Health Care Directive Kit available in English or Spanish. To order, visit <https://www.cmadoes.org/store>.
- CaringInfo.org has state-specific forms that can be downloaded at <https://www.caringinfo.org/planning/advance-directives/by-state/>.

Supporting Materials:

- ***Finding Your Way: Medical Decisions***. This 14-page, easy-to-read booklet helps those who are starting the advance care planning process or considering whether to initiate or withdraw life-sustaining treatment when the end of life is near. Also in Spanish. Available to view online or purchase through CCCC's online store at **CoalitionCCC.org**.