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 By: 
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<p>POLICY TITLE</p> <p>Advance Directive</p>	<p>Policy No: 300-2-1</p> <p>Date of Original Approval: May 31, 2004</p> <p>Date(s) of Revision(s): 7/11/2022</p>
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PURPOSE

This policy describes Alameda County Behavioral Health Care Services (ACBH)'s requirements for informing clients about and documenting advance directives.

AUTHORITY

- 42 C.F.R §§ 422.128 & 438.3(j)(1)-(3).
- California Law, Probate Code, § 4600-4806
- California Department of Health Care Services Behavioral Health Information Notice No. 21-056, Ongoing Compliance Monitoring Activities

SCOPE

All Alameda County Behavioral Health Care Services (ACBH) county-operated programs, in addition to entities, individuals, and programs providing mental health and substance use services under a contract or subcontract with ACBH.

POLICY

Providers will provide the information sheet or booklet entitled “Your Right to Make Decisions About Medical Treatment” to their client in the following situations:

- Upon enrollment for services if age 18 and over
- When the client turns 18 years of age
- Upon request

Providers should provide annual notification to the client that the Advance Directive materials are available for their review in the client “Informing Materials” packet.

ACBH is responsible for translating the “Your Right to Make Decisions About Medical Treatment” booklet into all threshold languages.

PROCEDURE

- I. ACBH and its contracted providers are not required to assist with the creation of advance directives.
- II. ACBH and its contracted providers will use the “Advance Directive Decision Makers Table” (attached as Appendix C) when implementing a client’s advance directive.
- III. After informing the client of their right to have an advance directive, providers must inquire if the client previously completed an advance directive and document the answer in a prominent part of the current clinical record. Providers should document this on the applicable section of the ACBH “Informing Materials” packet signature page.
- IV. Provision of care will not be conditioned upon whether a client has executed an advance directive, and clients will not be discriminated against based on whether an advance directive has been executed.
- V. Clients are to be informed that complaints concerning non-compliance with advance directive requirements may be filed with the California Department of Public Health (DPH) Licensing and Certification Program by calling 1-800-236-9747.
- VI. ACBH will educate staff regarding the Advance Directive policies and procedures.
 - A. The materials will define what constitutes an advance directive, emphasize that an advance directive is designed to enhance an incapacitated individual’s control over their medical treatment, and describe applicable state law about advance directives.
- VII. ACBH will provide community education regarding advance directives. This may include providing written materials such as “Your Right to Make Decisions About Medical Treatment” booklet, or presentations to community members.
 - A. The written materials will be updated by ACBH no later than 90 days after the effective date of state law changes.
 - B. The materials will define what constitutes an advance directive, emphasize that an advance directive is designed to enhance an incapacitated individual’s control over their medical treatment, and describe applicable state law about advance directives.

NON-COMPLIANCE

- I. Any failure to abide by this policy will be considered non-compliance and should be reported to the direct supervisor and Quality Assurance Office (QAOffice@acgov.org) for corrective action within 72 hours of identifying the issue.

- II. Reports of non-compliance can be made in writing or verbally to supervisors, and staff shall not face retribution for reporting non-compliance.
- III. Any communication that contains protected health information or otherwise confidential information should be sent through secure methods such as email with secure encryption.
- IV. Should an emergency situation arise where conformance with this policy is impractical, the supervisor(s) and Division Director should be notified immediately.

CONTACT

ACBH Office	Current Date	Email/Phone
Quality Assurance	10/04/21	QAOffice@acgov.org

DISTRIBUTION

This policy will be distributed to the following:

- ACBH Staff
- ACBH Contract Providers
- Public

ISSUANCE AND REVISION HISTORY

Original Authors: ACBH Staff

Original Date of Approval: 5/31/2004 by Marye Thomas, M.D., Mental Health Director

Revision Author	Reason for Revision	Date of Approval by (Name, Title)
Torfeh Rejali, LMFT, Quality Assurance Administrator	Updated to meet new state requirements	7/11/2022 by Karyn L. Tribble, PsyD, LCSW, Behavioral Health Director

DEFINITIONS

Term	Definition
Advance Health Care Directive or Advance Directive	An individual health care instruction or a power of attorney for health care [Probate Code Section 4605] A written advance health care directive is a document that may authorize another person (called the "agent") to make health care decisions for a patient, either immediately or when the patient is no longer able to make decisions for himself or herself. The advance care directive may also contain information about a patient's desires

	concerning health care decisions, particularly decisions concerning end-of-life care.
Agent	An individual designated in a power of attorney for health care to make a health care decision for a patient. An agent may include a successor or alternate agent [Probate Code Section 4607]
Surrogate	An adult, other than a patient's agent or conservator, authorized under the Health Care Decisions Law to make a health care decision for the patient [Probate Code Section 4643]. This is a person who has been designated orally by a patient. In contrast, an agent is designated in writing in an advance directive.
Health Care	Any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition [Probate Code Section 4615]
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: <ol style="list-style-type: none"> 1. Selection and discharge of health care providers and institutions; 2. Approval or disapproval of diagnostic tests, surgical procedures, and program medication; 3. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation [Probate Code Section 4617]
Health Care Provider	An individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business [Probate Code Section 4621]
Health Care institution	Any institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business [Probate Code Section 4619]

APPENDICES

- A. Your Right to Make Decisions About Medical Treatment
- B. California Hospital Association Advance Directive Requirements
- C. Advance Directive Decision Makers Table

APPENDIX A

Your Right to Make Decisions About Medical Treatment

Alameda County
Behavioral Health Care Services

Behavioral Health Plan

**Your Right to Make
Decisions About
Medical Treatment**



選擇治療方案的權利

**Sus derechos para tomar
decisiones sobre su
tratamiento médico**

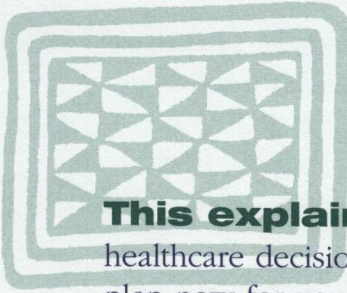
**Quyền Quyết Định
Của Bạn Về
Điều Trị Y Tế**

حقوق شما برای
تصمیم گیری در مورد
درمان پزشکی

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Your Right to Make Decisions About Medical Treatment



This explains your right to make healthcare decisions and how you can plan now for your medical care if you are unable to speak for yourself in the future. A federal law requires us to give you this information. We hope this information will help increase your control over your medical treatment. Alameda County Behavioral Health Care Services does not assist in the execution of an Advance Directive.

Who decides about my treatment?

Your doctors will give you information and advice about treatment. You have the right to choose. You can say “Yes” to treatments you want. You can say “No” to any treatment that you do not want—even if the treatment might keep you alive longer.

How do I know what I want?

Your doctor must tell you about your medical condition and about what different treatments and pain management alternatives can do for you. Many treatments have “side effects.” Your doctor must offer you information about problems that medical treatment is likely to cause you. Often, more than one treatment might help you—and people have different ideas about which is best. Your doctor can tell you which treatments are available to you, but your doctor cannot choose for you. That choice is yours to make and depends on what is important to you.

Can other people help with my decisions?

Yes. Patients often turn to their relatives and close friends for help in making medical decisions. These people can help you think about the choices you face. You can ask the doctors and nurses to talk with your relatives and friends. They can ask the doctors and nurses questions for you.

Can I choose a relative or friend to make healthcare decisions for me?

Yes. You may tell your doctor that you want someone else to make healthcare decisions for you. Ask the doctor to list that person as your healthcare “surrogate” in your medical record. The surrogate’s control over your medical decisions is effective only during treatment for your current illness or injury or, if you are in a medical facility, until you leave the facility.

What if I become too sick to make my own healthcare decisions?

If you have not named a surrogate, your doctor will ask your closest available relative or friend to help decide what is best for you. Most of the time that works. However, sometimes not everyone agrees about what to do. That is why it is helpful if you can say, in advance, what you want to happen if you cannot speak for yourself.

Do I have to wait until I am sick to express my wishes about health care?

No. In fact, it is better to choose before you get very sick or have to go into a hospital, nursing home, or other healthcare facility. You can use an Advance Health Care Directive to say who you want to speak for you and what kind of treatments you want. These documents are called “advance” because you prepare one before healthcare decisions need to be made. They are called “directives” because they state who will speak on your behalf and what should be done. In California, the part of an Advance Directive you can use to appoint an agent to make healthcare decisions is called a Power of Attorney for Health Care. The part where you can express what you want done is called an Individual Health Care Instruction.

Who can make an Advance Directive?

You can if you are 18 years or older and are capable of making your own medical decisions. You do not need a lawyer.

Who can I name as my agent?

You can choose an adult relative or any other person you trust to speak for you when medical decisions must be made.

When does my agent begin making my medical decisions?

Usually, a healthcare agent will make decisions only after you lose the

ability to make them yourself. However, if you wish, you can state in the Power of Attorney for Health Care that you want the agent to begin making decisions immediately.

How does my agent know what I would want?

After you choose your agent, talk to that person about what you want. Sometimes treatment decisions are hard to make, and it truly helps if your agent knows what you want. You can also write your wishes down in your Advance Directive.

What if I do not want to name an agent?

You can still write out your wishes in your Advance Directive, without naming an agent. You can say that you want to have your life continued as long as possible. Or you can say that you would not want treatment to continue your life. In addition, you can express your wishes about the use of pain relief or any other type of medical treatment. Even if you have not filled out a written Individual Health Care Instruction, you can discuss your wishes with your doctor, and ask your doctor to list those wishes in your medical record. Or you can discuss your wishes with your family members or friends. But it will probably be easier to follow your wishes if you write them down.

What if I change my mind?

You can change or cancel your Advance Directive at any time as long as you can communicate your wishes.

To change the person you want to make your healthcare decisions, you must sign a statement or tell the doctor in charge of your care.

What happens when someone else makes decisions about my treatment?

The same rules apply to anyone who makes decisions on your behalf—a healthcare agent, a surrogate whose name you gave to your doctor, or a person appointed by a court to make decisions for you. All are required to follow your Health Care Instructions or, if none, your general wishes about treatment, including stopping treatment. If your treatment wishes are not known, the surrogate must try to determine what is in your best interest. The people providing your health care must follow the decisions of your agent or surrogate unless a requested treatment would be bad medical practice or ineffective in helping you. If this causes disagreement that cannot be worked out, the provider must make a reasonable effort to find another healthcare provider to take over your treatment.

Will I still be treated if I do not make an Advance Directive?

Absolutely. You will still get medical treatment. We just want you to know that if you become too sick to make decisions, someone else will have to make them for you. Remember that a Power of Attorney for Health Care lets you name an agent to make decisions for you. Your agent can make most medical decisions—not just those about

life sustaining treatment—when you cannot speak for yourself. You can also let your agent make decisions earlier, if you wish. You can create an Individual Healthcare Instruction by writing down your wishes about health care or by talking with your doctor and asking the doctor to record your wishes in your medical file. If you know when you would or would not want certain types of treatment, an Instruction provides a good way to make your wishes clear to your doctor and to anyone else who may be involved in deciding about treatment on your behalf. These two types of Advance Healthcare Directives may be used together or separately.

How can I get more information about making an Advance Directive?

Ask your doctor, nurse, social worker, or healthcare provider to get more information for you. You can have a lawyer write an Advance Directive for you, or you can complete an Advance Directive by filling in the blanks on a form. If you wish to use the form, it will be provided.

Where do I complain about provider noncompliance?

Complaints concerning non-compliance with the Advance Directive requirements may be filed with the California Department of Health Services (DHS) Licensing and Certification by calling 1 (800) 236-9747 or by mail at PO Box 997413, Sacramento, CA 95899-1413.



你選擇治療方案的權利

本小冊向你介紹為自己作出醫療抉擇時的權利，以及如何預先計劃你的醫護計劃，以備你將來不能替自己發言時之用。聯想法例規定我們必須向你提供這些資料，希望能幫助你更好掌握自己的治療計劃。阿拉美達縣精神健康護理服務不會協助執行預設指示。

誰決定我的治療？

你的醫生將給你關於治療的資料及意見。你有權選擇，可以隨自己的意願接受某些治療，或是拒絕某些治療，就算該治療項目可以延長你的壽命。

我怎樣知道我需要什麼？

你的醫生必須告訴你關於你的健康狀況，以及不同治療計劃或止痛方法對你的影響。許多治療都會有副作用，你的醫生必須告訴你治療計劃可能引起的問題。通常會有超過一種的治療方法可供你選擇，那一種方法最好，各人有不同看法。你的醫生可以告訴你有那些治療方法，但卻不能替你作出選擇。你是作出選擇的人，並依據什麼對你最重要而作出選擇。

別人可以協助我作出決定嗎？

可以。病人通常會向親戚或好友徵詢治療意見。這些人可以幫你分析所面對的選擇，你也可以請醫生或護士與你的親友傾談，他們也可以替你提出問題。

我能指定親友替我作出醫療決定嗎？

可以。你可以向醫生說你想別人替你作出醫療決定，請醫生在醫療紀錄上登記該人的名字為代理人。代理人只可以就你目前的病況或損傷替你作出醫療決定，或是當你在醫療機構內，直至你離開為止。

如我病重不能替自己作出醫療決定時應如何辦？

如你沒有指定代理人，你的醫生會盡量找到你最親近的親戚或朋友替你作主。一般這都是行得通的，但有時不是每個人都會同意應如何作出決定，所以，十分重要的是，你能預先指示當你不能言語時，應如何為你提供治療。

我是否要等到發病才能表達醫療意願呢？

不是。相反，最好你能在病重或進醫院、安老院或其他醫療設施前便作出選擇。你可以使用預設醫護指示，指定誰人替你發言及作出醫療選擇。該份文件稱為“預設”，是因為在你接受治療前便先準備好的。稱之為“指示”，是因為它將說明誰會替你發言，及如何進行治療。在加州，預設指示中可以委任一名經理人為你作出醫療選擇，稱之為醫療護理委託人。說明你的治療意願的部份稱為個人醫療護理指示。

誰能做預設指示？

如你在十八歲以上，並能替自己作出醫療決定，不需律師，也可以作出預設指示。

誰可以作為我的代理人？

你可以選擇任何一位你信任的成年人在有需要時替你作出醫療決定。

代理人何時會替我作出醫療決定？

在一般情況下，只會在你不能替自己作出選擇時，才會要求代理人替你作出決定。不過，如你選擇，可以即時便由得到你授權的委託人作出選擇。

代理人如何曉得我的意願？

在選擇代理人後，告訴他／她你的意願。有些時候是很難作出醫療決定的，讓你的代理人曉得你的意願會有很大的幫助。你也可以在預設指示裡寫下你的意願。

不想委派代理人，該怎麼辦？

在不指定代理人之下，你仍可以在預設指示上寫下你的意願。你可以要求設法延長你的生命，或你不希望幫助延長生命的治療方法。此外，你也可以指示採用止痛劑的方法，或其他治療方法。就算你沒有寫好一份個人健康護理指示書，你仍可與你的醫生商討你的意願，並要求醫生把你的意願寫在醫療紀錄上。你也可以與你的朋友或家人商討你的意願，但書面的意願書是比較好執行。

假若我想改變主意？

只要你能清楚說出你的意願，你隨時可以更改或取消預設指示。要更改代理人，你必須要簽署一書面聲明，或向你的醫生提出。

假若由他人替我作出治療選擇，將會怎樣？

不論是醫療代理人、你向醫生指定的委託人或是由法院指定的人選，他們都是受到同一樣的條例約束。他們均須依從你的治療指示，或如沒有這種指示，將依據你對治療的一般指示，包括停止治療。如無法得知你的治療意願，委託人將會決

定那些選擇是最符合你的利益。為你提供治療的人員，必須要遵照你的代理人或委託人的指示，除非他們的選擇是不良的醫療行為，或是對你沒有幫助。如果雙方沒法達成共識，醫護人員必要合理地努力為你找尋新的醫護人員，接手你的治療。

如沒有預設指示，我會得到治療嗎？

肯定會，你仍然會得到醫治。我們只是想你明白，如你病重不能為自己作出醫治決定，將會由別人替你作出選擇。請記著，醫療授權書可以让你委託一名代理人替你作出治療決定。當你不能言語時，你的代理人可以作出大部份的治療決定，不單是繼續維持生命的決定。你也可以選擇請代理人在更早階段便開始替你作主。你可以自行撰寫個人醫護指示，寫下你的治療意願。或與你的醫生商量，請他把你的意願記錄在醫療紀錄內。如果你很清楚在什麼時候需要那一種治療方法，預設指示是一個好方法讓你的醫護人員或代理人明確執行你的意願。兩種預設醫護指示可以同時使用。

怎樣能取得更多關於預設指示的資料？

請向你的醫生、護士、社工或護理人員查詢更多資料。你也可以請律師為你寫預設指示，或在表格上填寫指示。如你選擇採用表格，可以提出要求。

向那裡投訴醫護人員不遵守指示？

可以向加州健康服務牌照部提出你的投訴。電話：1 (800) 236-9747 或郵寄投訴致
PO Box 997413, Sacramento, CA 95899-1413.

Sus derechos para tomar decisiones sobre su tratamiento médico



Este folleto explica sus derechos para tomar decisiones sobre la atención de su salud y cómo debe planear su atención médica en caso de que en el futuro no pueda decidir por sí mismo. Una ley federal obliga a que le demos esta información. Esperamos que esta información le ayude a un mejor control de su tratamiento médico. Alameda County Behavioral Health Care Services no supervisa el cumplimiento de las “Instrucciones por Adelantado para la Atención Médica.”

¿Quién toma las decisiones sobre mi tratamiento?

Sus médicos le darán información y consejos sobre su tratamiento. Usted tiene el derecho de escoger. Puede decir “Sí” a los tratamientos que usted quiera. Puede decir “No” a aquel tratamiento que no quiera, aún cuando el tratamiento le ayude a vivir más tiempo.

¿Cómo puedo saber qué es lo que quiero?

Su médico debe explicarle su condición médica y cómo pueden ayudarle los diferentes tratamientos y alternativas para controlar el dolor. Muchos tratamientos tienen “efectos secundarios.” Su doctor debe ofrecerle información sobre los problemas que le puede acarrear ese tratamiento médico.

Muchas veces, hay más de un tratamiento que le puede beneficiar— y cada persona tiene sus ideas sobre lo que puede resultar mejor. Su médico le puede explicar cuáles tratamientos están a su alcance, pero su médico no puede decidir por usted. Esa decisión es suya y depende de lo que es importante para usted.

¿Pueden otras personas ayudarme a tomar decisiones?

Sí. Con frecuencia, los pacientes acuden a sus parientes y amigos cuando necesitan ayuda al hacer decisiones médicas. Estas personas pueden ayudarle a pensar sobre las opciones que están ante usted. Usted puede pedir a los doctores y enfermeras que hablen con sus parientes y amigos. Ellos pueden hacer preguntas a doctores y enfermeras a nombre suyo.

¿Puedo seleccionar a un pariente o amigo para que tome las decisiones sobre mi cuidado de salud por mí?

Sí. Usted puede decirle a su doctor que quiere que alguien más tome decisiones a nombre suyo sobre la atención de su salud. Pida al doctor que anote en su expediente médico a tal persona como su “representante” en el cuidado de su salud. El control del representante sobre sus decisiones médicas es efectivo solamente durante el tratamiento de una enfermedad o

lesión actual o, si usted se encuentra en una institución médica, hasta el momento en que salga de tal institución.

¿Qué pasa si estoy demasiado enfermo para tomar mis propias decisiones sobre el cuidado de mi salud?

Si usted no ha designado a un representante, su médico le pedirá a su pariente o amigo más cercano que ayude a decidir lo mejor para usted. En la mayoría de los casos eso funciona. Sin embargo, hay ocasiones cuando no todos están de acuerdo en qué hacer. Por eso es bueno que diga usted, con anticipación, qué es lo que quiere que se haga en caso de que no pueda decidir por sí mismo.

¿Necesito esperar hasta que me enferme para expresar mis deseos sobre el cuidado de la salud?

No. Es mejor que usted decida antes de que caiga enfermo o tenga que ser internado en un hospital, en una casa de convalecencia, u algún otro centro de salud. Usted puede llenar la forma de "Instrucciones por Adelantado para la Atención Médica" donde designa quién quiere que hable en su nombre y qué clase de tratamientos prefiere. A estos documentos se les llama "por adelantado" porque los prepara antes de que tenga que hacer las decisiones sobre su atención médica. Se les llama "instrucciones" porque indican quién hablará a nombre de usted y qué debe hacerse. En California, se le llama

"Poder de Abogado para la Atención Médica" a la parte de la forma de las "Instrucciones por Adelantado" que puede utilizar para designar a un representante para que tome decisiones sobre la atención de su salud. La parte donde usted puede expresar lo que quiere que hagan se llama "Instrucciones Individuales para la Atención Médica."

¿Quién puede llenar la forma de "Instrucciones por Adelantado para la Atención Médica"?

Usted lo puede hacer si es mayor de 18 años y si tiene la capacidad para tomar sus propias decisiones médicas. No necesita abogado.

¿A quién puedo designar como mi representante?

Puede escoger a un pariente adulto o a cualquier otra persona en que usted confíe para que hable por usted cuando sea necesario tomar decisiones médicas.

¿Cuándo empieza mi representante a tomar decisiones médicas por mí?

Por lo general, su representante tomará decisiones sólo después de que usted pierda la capacidad para hacerlas por sí mismo. Sin embargo, si así lo desea, puede indicar en el "Poder de Abogado para la Atención Médica" que el representante empiece a tomar decisiones de inmediato.

¿Cómo sabe mi representante qué es lo que yo quiero?

Después de que haya seleccionado a su representante, hable con esa persona sobre lo que quiere. A veces las decisiones sobre el tratamiento son difíciles de hacer y verdaderamente ayuda que su representante conozca lo que usted quiere. También puede escribir sus deseos en la forma de “Instrucciones por Adelantado para la Atención Médica.”

¿Y qué tal si no quiero designar a un representante?

De todos modos puede anotar sus deseos por escrito en la forma de “Instrucciones por Adelantado para la Atención Médica,” sin designar representante. Puede indicar que desea que le prolonguen la vida cuanto sea posible. O puede indicar que no quiere que le den tratamiento que prolongue su vida. Además, puede dejar expresados sus deseos sobre el uso de medicinas para aliviar el dolor u otro tipo de tratamiento médico. Aún si no ha llenado por escrito las “Instrucciones Individuales para la Atención Médica,” puede discutir sus deseos con su doctor y pedirle que anote esos deseos en su expediente médico. O puede discutir sus deseos con sus familiares o amigos. Quizás sea más fácil cumplir sus deseos si los deja por escrito.

¿Qué tal si cambio de opinión?

Puede cambiar o cancelar la forma de “Instrucciones por Adelantado para la Atención Médica” en cualquier momento siempre y cuando comunique sus deseos. Para cambiar a la persona que quiere que tome las decisiones en su nombre, debe firmar una declaración o decírselo al doctor que esté a cargo de su atención.

¿Qué pasa cuando alguien más toma decisiones sobre mi tratamiento?

Las mismas reglas aplican a cualquier persona que tome decisiones por usted, ya sea un representante de la atención de su salud, un sustituto cuyo nombre usted le dió a su doctor, o una persona designada por la corte para tomar decisiones por usted. A todas se les exige seguir sus “Instrucciones Individuales para la Atención Médica,” o si no las hubo, sus deseos generales sobre su tratamiento, o la suspensión de su tratamiento. Si no se conocen sus deseos, el representante debe tratar de decidir qué tratamiento le conviene. Las personas que proveen el cuidado de salud deben seguir las decisiones de su representante o sustituto excepto cuando el tratamiento que se pida sea una mala práctica médica o no sea eficaz para usted. Si esto causa desacuerdos que no se pueden solucionar, el proveedor debe hacer un esfuerzo razonable por encontrar a otro doctor que se haga cargo de su tratamiento.

¿Se me dará tratamiento aunque no llene la forma de “Instrucciones por Adelantado para la Atención Médica?”

Definitivamente. Se le brindará tratamiento médico. Solamente queremos que sepa que si usted se pone muy enfermo y no puede tomar decisiones, alguien más tendrá que hacerlas por usted. Recuerde que el “Poder de Abogado para la Atención Médica” le permite designar a un representante para que haga decisiones a su nombre. Su representante puede tomar la mayoría de las decisiones médicas, no sólo las que tengan que ver con el tratamiento que lo mantenga con vida, cuando usted no pueda hablar por sí mismo. Si así lo desea, también puede permitir a su representante tomar decisiones desde el principio. Usted puede llenar las “Instrucciones Individuales para la Atención Médica” escribiendo los deseos sobre su atención médica con su médico y pidiéndole que anote sus deseos en su expediente médico. Si usted sabe cuando quiere y cuando no quiere ciertas clases de tratamiento, las “Instrucciones” ofrecen una buena manera de aclararle sus deseos al doctor y a quien quiera que participe en las decisiones sobre su tratamiento. Estas dos clases de “Instrucciones por Adelantado para la Atención Médica” pueden usarse juntas o separadas.

¿Cómo puedo obtener más información sobre la forma de “Instrucciones por Adelantado para la Atención Médica”?

Pida a su médico, enfermera, trabajadora social, o proveedor de servicios de salud que le consigan más información. Usted puede conseguir que un abogado le redacte la forma de “Instrucciones por Adelantado para la Atención Médica,” o puede completarlo por sí mismo. Si desea usar un forma, se le proporcionará.

¿Dónde puedo quejarme cuando el proveedor de servicios de salud no cumpla con los requisitos?

Las quejas que tengan que ver con fallas en el cumplimiento de los requisitos estipulados en las “Instrucciones por Adelantado para la Atención Médica” deben presentarse ante el Departamento de Servicios de Salud de California, División de Licencias y Certificaciones llamando al 1 (800) 236-9747 ó escribiendo al PO Box 997413, Sacramento, CA 95899-1413.



Quyền Quyết Định Của Bạn Về Điều Trị Y Tế

Điều này giải thích quyền quyết định của bạn về chăm sóc sức khỏe và bây giờ bạn có thể hoạch định việc chăm sóc y tế như thế nào nếu như trong tương lai, bạn không thể tự mình nói ra được. Luật liên bang đòi hỏi chúng tôi cung cấp cho bạn tin tức này. Chúng tôi hy vọng tin tức này sẽ giúp gia tăng sự kiểm soát của bạn về cách chữa trị cho bạn. Dịch Vụ Chăm Sóc Sức Khỏe Lành Mạnh Hạt Alameda không giúp đỡ trong việc thi hành bản Hướng Dẫn Chuẩn Bị (Advance Directive).

Ai quyết định về điều trị của tôi?

Các bác sĩ của bạn sẽ cung cấp cho bạn tin tức và lời khuyên về cách chữa trị. Bạn có quyền chọn lựa. Bạn có thể nói “Có” về các điều trị mình muốn. Bạn có thể nói “Không” cho bất cứ chữa trị nào mình không thích -- ngay cả cách trị liệu có thể giúp bạn sống thọ hơn.

Làm sao tôi biết mình muốn gì?

Bác sĩ của bạn phải nói cho bạn biết về tình hình điều trị cho bạn và những cách chữa trị khác nhau cũng như các phương thức làm giảm đau được chọn để có thể thực hiện cho bạn. Nhiều cách điều trị có “những hiệu quả phụ”. Bác sĩ phải cho bạn biết về các vấn đề mà việc chữa trị có thể gây ra cho bạn. Thông thường, có nhiều cách trị liệu khác nhau để chữa trị cho bạn

-- và có nhiều ý kiến khác nhau về cách điều trị nào thì tốt nhất. Bác sĩ có thể cho biết những phương thức nào được áp dụng cho bạn, nhưng bác sĩ không thể giúp bạn chọn. Sự chọn lựa là quyết định của bạn và nó tùy thuộc vào những gì là quan trọng cho bạn.

Người khác có thể giúp quyết định cho tôi không?

Có. Các bệnh nhân thường nhờ thân nhân hay bạn bè thân giúp đỡ trong các quyết định về chữa trị. Những người này có thể giúp bạn suy nghĩ về các sự chọn lựa. Bạn có thể yêu cầu các bác sĩ và y tá nói chuyện với thân nhân và bạn bè của mình. Họ có thể hỏi bác sĩ và y tá những câu hỏi cho bạn.

Tôi có thể chọn thân nhân hoặc bạn bè quyết định về chăm sóc sức khỏe cho tôi không?

Có. Bạn có thể nói với bác sĩ rằng bạn muốn nhờ một người nào đó để quyết định về sự chữa trị cho mình. Hãy nhờ bác sĩ liệt kê người đó như “người đại diện” của bạn trong hồ sơ y tế. Quyền kiểm soát của người đại diện về các quyết định trị liệu chỉ có hiệu lực trong lúc bạn đang điều trị hay bị thương hoặc nếu bạn đang ở trong cơ sở điều trị, cho đến khi bạn rời khỏi nơi này.

Giả sử nếu tôi trở nên quá yếu không thể quyết định về chữa trị cho mình thì sao?

Nếu bạn không nêu tên một người đại diện, bác sĩ sẽ hỏi thân nhân hoặc bạn bè thân nhất của bạn để giúp quyết định về cách điều trị nào là tốt nhất. Phần lớn việc này đều mang lại hiệu quả. Tuy nhiên, đôi khi không phải ai cũng đồng ý về những gì phải làm. Đó là lý do tại sao điều này có lợi nếu bạn có thể nói trước những gì mình muốn xảy ra, khi bạn không thể tự mình nói lên được.

Có cần phải đợi cho tới khi ốm đau tôi mới diễn tả được ý nguyện của mình về việc chăm sóc sức khỏe không?

Không. Thực ra, tốt hơn là nên chọn lựa trước khi bạn đau nặng hoặc phải vào bệnh viện, nhà dưỡng lão, hay các cơ sở chăm sóc sức khỏe khác. Bạn có thể sử dụng bản Hướng Dẫn Chuẩn Bị Chăm Sóc Sức Khỏe (Advance Health Care Directive) để cho biết ai là người sẽ thay bạn nói chuyện và các loại chữa trị nào bạn muốn. Những tài liệu này gọi là “chuẩn bị trước” (“advance”) vì bạn chuẩn bị trước các quyết định trị liệu cần được thực hiện. Chúng gọi là “các hướng dẫn” (“directives”), vì tài liệu này ấn định ai sẽ nhân danh bạn nói chuyện và những gì nên làm. Tại California, bạn có thể dùng phần hướng dẫn chuẩn bị trước để chỉ định một nhân viên đại diện

nhằm thực hiện các quyết định chữa trị gọi là “Quyền của Luật Sư về Chăm Sóc Sức Khỏe” (Power of Attorney for Health Care). Trong phần này, bạn có thể diễn tả những điều bạn muốn được làm, gọi là Chỉ Dẫn Chăm Sóc Sức Khỏe Cá Nhân (Individual Health Care Instruction).

Ai có thể làm bản Hướng Dẫn Chuẩn Bị?

Bạn có thể làm được nếu bạn đủ 18 tuổi trở lên và có khả năng quyết định về chữa trị cho mình. Bạn không cần một luật sư.

Tôi có thể chỉ định ai là nhân viên đại diện cho tôi không?

Bạn có thể chọn một thân nhân trưởng thành hoặc bất cứ người nào khác mà bạn tin tưởng để nói giùm cho bạn khi các quyết định về điều trị được thực hiện.

Khi nào nhân viên đại diện của tôi bắt đầu quyết định về điều trị cho tôi?

Thông thường, nhân viên chăm sóc sức khỏe sẽ có những quyết định chỉ sau khi bạn mất khả năng quyết định cho mình. Tuy nhiên, nếu muốn, bạn có thể nêu lên trong bản “Quyền của Luật Sư về Chăm Sóc Sức Khỏe” rằng bạn muốn nhân viên đại diện bắt đầu thực hiện các quyết định ngay.

Làm sao nhân viên đại diện biết tôi muốn gì?

Sau khi chọn người đại diện, hãy nói cho người đó biết về những gì bạn muốn. Đôi khi, các quyết định điều trị khó thực hiện, và nó chỉ thực sự có ích khi nhân viên đại diện biết bạn muốn gì. Bạn cũng có thể viết xuống các ý nguyện của mình trong bản Hướng Dẫn Chuẩn Bị.

Giả sử tôi không muốn chỉ định nhân viên đại diện thì sao?

Bạn cũng có thể viết ra những ý muốn của bạn trong bản Hướng dẫn Chuẩn Bị, mà không cần chỉ định người đại diện. Bạn có thể nói rằng bạn muốn đời sống của bạn tiếp tục thọ hơn nếu được. Hoặc bạn có thể nói, bạn không muốn việc chữa trị tiếp tục trong cuộc sống của mình. Ngoài ra, bạn có thể diễn tả ước muốn của bạn về việc sử dụng thuốc giảm đau hay bất cứ loại chữa trị nào khác. Mặc dù không điền vào bản Chỉ Dẫn Chăm Sóc Sức Khỏe Cá Nhân (Individual Health Care Instruction), bạn vẫn có thể thảo luận với bác sĩ về ý nguyện của bạn, và yêu cầu bác sĩ liệt kê các ý muốn đó trong hồ sơ y khoa. Hoặc bạn có thể thảo luận về ý muốn này với những người thân trong gia đình hay bạn bè. Nhưng điều này có thể không dễ dàng tuân theo hơn là khi bạn viết xuống bằng văn bản.

Giả sử tôi muốn đổi ý thì sao?

Bạn có thể thay đổi hoặc hủy bỏ bản Hướng Dẫn Chuẩn Bị bất cứ lúc nào khi bạn có thể nói lên được ý muốn của mình. Muốn thay đổi người bạn muốn thay mặt bạn để quyết định về chữa trị, bạn phải ký vào một bản xác nhận hay nói cho bác sĩ phụ trách điều trị cho bạn.

Điều gì sẽ xảy ra khi một người nào đó quyết định về sự điều trị của tôi?

Các luật lệ giống nhau áp dụng cho bất cứ người nào đó nhân danh bạn để quyết định -- thí dụ như một nhân viên chăm sóc sức khỏe, người đại diện mà bạn đưa tên cho bác sĩ, hoặc một người được tòa án chỉ định để quyết định cho bạn. Tất cả đều phải tuân theo các Chỉ Dẫn Chăm Sóc Sức Khỏe (Health Care Instructions), hoặc nếu không có, thì là ý muốn thông thường của bạn về trị liệu, kể cả việc ngưng điều trị. Nếu bạn không nói lên được ý muốn trị liệu cho mình, người đại diện phải cố gắng quyết định xem điều gì mang lại lợi ích tốt nhất cho bạn. Những người chăm sóc sức khỏe cho bạn phải theo các quyết định của nhân viên hay người đại diện, ngoại trừ trường hợp một yêu cầu trị liệu là một việc làm không đúng chữa trị y khoa hoặc không có hiệu quả giúp chữa trị cho bạn. Nếu việc này gây ra sự bất đồng ý kiến và không thể giải quyết được, cơ quan chữa trị phải có một giải pháp hợp lý để tìm một cơ quan chữa trị khác để thay thế việc trị liệu cho bạn.

Tôi có còn được chữa trị nữa không nếu tôi không làm bản Hướng Dẫn Chuẩn Bị?

Đương nhiên là còn. Bạn vẫn còn nhận được sự chữa trị. Chúng tôi chỉ muốn bạn hiểu rằng nếu bạn trở nên quá yếu không thể quyết định được, thì người nào đó sẽ làm thế cho bạn. Nên nhớ rằng, “Quyền của Luật Sư về Chăm Sóc Sức Khỏe” cho bạn chỉ định một nhân viên đại diện để quyết định cho bạn. Nhân viên này có thể thực hiện hầu hết các quyết định về trị liệu -- không phải chỉ là những chữa trị nhằm duy trì cuộc sống -- khi bạn không thể tự mình nói lên được. Bạn cũng có thể để cho người này quyết định sớm hơn, nếu bạn muốn. Bạn có thể thiết lập bản Chỉ Dẫn Chăm Sóc Sức Khỏe Cá Nhân bằng cách viết xuống các ý nguyện của bạn về chăm sóc sức khỏe hoặc nói với bác sĩ và yêu cầu bác sĩ thu băng lại ý muốn của mình trong hồ sơ y khoa. Nếu bạn biết khi nào muốn và khi nào không muốn một số loại chữa trị, một bản Chỉ Dẫn có cách giải quyết tốt làm cho ý muốn của bạn trở nên rõ ràng cho bác sĩ hay người nào đó có liên hệ đến quyết định về chữa trị nhân danh bạn. Hai loại Hướng Dẫn Chăm Sóc Sức Khỏe Chuẩn Bị này có thể được sử dụng chung hoặc riêng rẽ.

Tôi có thể biết thêm tin tức về cách làm bản Hướng Dẫn Chuẩn Bị bằng cách nào?

Bạn hãy hỏi bác sĩ, y tá, cán sự xã hội, hoặc cơ quan chăm sóc sức khỏe để biết thêm tin tức. Bạn có thể nhờ luật sư viết giùm bản Hướng Dẫn Chuẩn Bị trước cho bạn, hoặc khai trong Bản Hướng Dẫn này bằng cách điền vào các chỗ trống trong mẫu đơn. Nếu bạn muốn dùng mẫu này, nó sẽ được cung cấp cho bạn.

Tôi khiếu nại về sự khước từ của cơ quan chăm sóc sức khỏe ở đâu?

Các khiếu nại liên quan đến việc từ khước các đòi hỏi của bản Hướng Dẫn Chuẩn Bị có thể nộp cho Ban Dịch Vụ Sức Khỏe, Cấp Phát và Chứng Nhận Giấy Phép California (California Department of Health Services (DHS) Licensing and Certification), gọi số 1 (800) 236-9747 hoặc gửi thư về PO Box 997413, Sacramento, CA 95899-1413.

مداوایان اجرا کنند، که ممکن است این تصمیمات شامل قطع درمان باشد. اگر تصمیمات شما مشخص نیست، جانشین باید تصمیمی بگیرد که در برگیرنده تمام منافع شما باشد. اشخاصی که به مداوای شما اشتغال دارند باید تمام دستورات شما را در نظر بگیرند مگر اینکه آن دستورات تصمیم پزشکی غلطی باشند و یا در مورد شما مؤثر نباشند. اگر زمانی اختلاف غیر قابل حلی در مورد درمان پیش آید ارائه دهنده خدمات پزشکی باید ارائه دهنده دیگری پیدا کند که معالجه را ادامه دهد

اگر دستورالعمل پیش بینی شده نداشته باشم آیا هنوز هم میتوانم مداوا شوم؟

قطعاً. شما هنوز هم میتوانید درمان پزشکی دریافت کنید. هدف ما این است که به اطلاع شما برسانیم اگر بقدری بیمار شدید که نتوانید برای خود تصمیم بگیرید، شخص دیگری برای شما تصمیم خواهد گرفت. بخاطر داشته باشید که وکالت نامه پزشکی به شما اجازه میدهد نماینده ای برای تصمیم گیری درمانی داشته باشید. نماینده شما میتواند اکثر تصمیمات درمانی را برای شما بگیرد- و نه تنها تصمیماتی که به ادامه زندگی بستگی دارند، در هنگامی که شما قادر به مکالمه نباشید. همچنین میتوانید از نماینده تان بخواهید که زودتر برای شما تصمیم بگیرد. شما میتوانید یک دستورالعمل درمان شخصی بنویسید و تمام خواسته هایتان را در آن قید نمائید و یا از دکترتان بخواهید که خواسته هایتان را ضمیمه مدارک پزشکی بکند. اگر میدانید در چه

زمان به درمان مشخصی احتیاج دارید و یا درمان مشخصی مورد احتیاج شما نیست، دستورالعمل راه مناسبی است که این خواسته ها را برای دکتر یا شخص دیگری که بجای شما تصمیم میگیرد تعیین نماید. این دو نوع دستورالعمل پیش بینی شده درمانی ممکن است با هم و یا به صورت مجزا استفاده شوند.

چگونه میتوانم اطلاعات بیشتری در مورد دستورالعمل پیش بینی شده کسب کنم؟

از دکتر، پرستار، مددکار اجتماعی، یا ارائه دهنده خدمات درمانی بخواهید که این اطلاعات را برای شما کسب کند. میتوانید از یک وکیل دعاوی بخواهید که دستورالعمل را برای شما بنویسد و یا فرم مخصوص را پر کند. اگر به این فرم احتیاج دارید این فرم در اختیار شما قرار میگیرد.

به کجا میتوانم از ارائه دهنده ای که رعایت قوانین را نمیکند شکایت کنم؟

از ارائه دهنده ای که در مورد دستورالعمل پیش بینی شده ملزم است و آنرا رعایت نمیکند میتوانید با اداره خدمات درمانی کالیفرنیا California Department of Health Services (DHS) قسمت گواهی و پروانه Licensing and Certification با تلفن ۹۷۴۷-۲۳۶۱ (۸۰۰) تماس بگیرید و یا شکایت خود را به آدرس زیر بفرستید.

PO Box 997413, Sacramento, CA 95899-1413.

چه کسی را میتوانم بعنوان نماینده
انتخاب کنم؟

شما میتوانید یکی از بستگان بالغ
خود یا هرکس دیگری را که مطمئن هستید
برای تصمیمات درمانی خود انتخاب کنید.

چه موقع نماینده من شروع به تصمیم
گیری در مورد من میکند؟

معمولاً زمانی که شما قادر نیستید
برای خود تصمیم اتخاذ کنید نماینده تان
از طرف شما تصمیم میگیرد. اگر مایل
باشید میتوانید در وکالت نامه درمانی
شرط کنید نماینده تان در هر زمانی برای
شما تصمیم بگیرد.

چگونه نماینده من میداند که من چه
می خواهم؟

شما با نماینده تان صحبت میکنید و به
او میگویید که چه انتظاراتی دارید؟ بعضی
از تصمیمات درمانی دشوار هستند، و اگر
نماینده شما بداند که شما چه میخواهید
کمک بزرگی خواهد بود. همچنین میتوانید
خواستهای تان را در دستورالعمل
بنویسید.

اگر نماینده ای انتخاب نکنم چه میشود؟

هنوز هم میتوانید بدون ذکر نماینده
انتظارانتان را در دستورالعمل بنویسید.
میتوانید تأکید کنید که علاقه دارید حتی
الامکان در ادامه زندگیتان کوشش شود. یا
میتوانید ذکر کنید که علاقه ای به ادامه

درمان ندارید. علاوه بر آن میتوانید نظرات
خود را در مورد داروهای تسکین دهنده
درد و یا سایر معالجات توضیح دهید.
حتی اگر یک دستورالعمل شخصی پر
نکرده اید میتوانید با دکترتان مشورت
کنید و از او بخواهید نظرات شما را در
مدارک پزشکی تان بگنجانند. یا میتوانید
نظرات خود را با دوستان و بستگانتان در
میان بگذارید. ولی اگر نظرات خود را
بنویسد مسائل را آسانتر کرده اید.

چگونه میتوانم نظرات خود را عوض
کنم؟

تا زمانی که قادر هستید خواسته های
خود را ابراز کنید میتوانید دستورالعمل
پیش بینی شده درمانی را باطل و یا عوض
کنید. برای اینکه نام شخصی را که برای
شما تصمیمات درمانی میگیرد عوض کنید
به دکترتان اطلاع دهید، و یا ورقه مربوط
به این تغییر را امضاء کنید.

وقتی شخص دیگری در مورد مداوای من
تصمیم میگیرد چه اتفاقی خواهد افتاد؟

هر کدام از این افراد انتخاب شوند
فرقی در تصمیم گیری آنها نمیکند، نماینده
درمانی، جانشینی که شما اسمش را به
دکترتان داده اید، یا شخصی که دادگاه
تعیین کرده است بجای شما تصمیم بگیرد.
همه آنها باید دستورات شما را به مورد
اجراء بگذارند، و در صورت فقدان این
دستورات، تصمیمات کلی شما را در مورد

آیا من میتوانم یکی از دوستان یا بستگانم را برای تصمیم گیری در مورد مسائل درمانی انتخاب کنم؟

بلی، شما میتوانید به دکترتان بگویید که علاقه دارید شخص دیگری در مورد مسائل درمانی شما تصمیم بگیرد. از دکترتان بخواهید که در سوابق پزشکی شما نام آن شخص را بعنوان "جانشین" ثبت کند. دخالت جانشین در مورد درمان شما فقط تا زمانی که بیماری فعلی شما به درمان احتیاج دارد، و یا اگر در بیمارستان تحت مداوا هستید، تا زمان ترک بیمارستان اعتبار دارد.

اگر بیماری من به اندازه ای باشد که نتوانم تصمیمات درمانی خود را بگیرم چه میشود؟

اگر شما جانشین انتخاب نکرده اید دکترتان از نزدیکترین دوست یا بستگان شما میخواهد که در تصمیم گیری درمانی شما کمک کند. در اکثر موارد این روش نتیجه بخش است. در بعضی موارد همه نمیتوانند در اتخاذ تصمیم توافق کنند. به این دلیل بهتر است که شما از قبل، برای زمانی که احتمالاً نمیتوانید خودتان تصمیم بگیرید شخصی را تعیین نمایید.

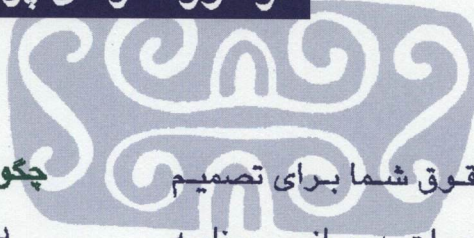
آیا لازم است منتظر یک بیماری با شرم تا بتوانم در مورد معالجاتم نظر بدهم؟

خیر، در حقیقت بهتر است قبل از اینکه در اثر بیماری مجبور شوید به بیمارستان، خانه سالمندان، و یا سایر سازمانهای درمانی مراجعه کنید انتخاب خود را کرده باشید. در مورد انتخاب اشخاصی که میخواهید بجای شما تصمیم بگیرند میتوانید از یک دستورالعمل پیش بینی شده درمانی استفاده کنید. به آن دستورالعمل میگویند بدین دلیل که قبل از اینکه احتیاج به تصمیم گیری باشد شما آنرا پیش بینی میکنید. در کالیفرنیا، بخشی از دستورالعمل پیش بینی شده را که شما میتوانید از آن استفاده کنید تا نماینده ای برای تصمیم گیری مسائل درمانی خود انتخاب کنید وکالت نامه درمانی میگویند. بخشی را که مشخص میکند چه کاری باید انجام شود دستورالعمل درمان شخصی می نامند

چه کسی میتواند یک دستورالعمل پیش بینی شده تهیه کند؟

اگر شما ۱۸ سال یا بالاتر هستید میتوانید برای خود تصمیم بگیرید و این دستورالعمل را تهیه کنید. شما به وکیل احتیاجی ندارید.

حقوق شما برای تصمیم گیری در مورد درمان پزشکی



چگونه بدانم که به چه نیاز دارم؟

دکترتان باید در مورد شرایط پزشکی شما و روشهای دیگر درمانی جایگزین با شما گفتگو نماید. خیلی از درمانها اثرات جانبی دارند. دکترتان در مورد مشکلات احتمالی که مداوای شما به همراه خواهد داشت باید به شما اطلاعات لازم را بدهد. اغلب ممکن است بیش از یک روش درمان مؤثر برای شما وجود داشته باشد- و افراد در مورد بهترین نوع مداوا نظرات مختلف دارند. پزشک شما روشهای درمانی مرسوم را به شما توصیه میکند، ولی انتخاب درمان با خود شما است. این انتخاب با توجه اولویت های شخص شما صورت میگیرد.

آیا شخص دیگری میتواند در تصمیم گیری به من کمک کند؟

بلی، بیماران معمولاً از دوستان و بستگان خود میخواهند که در مورد انتخاب مداوا به آنها کمک کنند. این اشخاص میتوانند در مورد نوع مداوا به شما کمک فکری بدهند. ممکن است از پزشکان و پرستاران بخواهید که با بستگان و دوستانتان صحبت کنند. آنها میتوانند برای شما از پزشکان و پرستاران سؤالات لازم را بنمایند.

در اینجا حقوق شما برای تصمیم

گیری در مورد خدمات درمانی و برنامه ریزی برای زمانیکه ناچار باشید تصمیمات درمانی خود را به اشخاص دیگر واگذار کنید توضیح داده میشود. قوانین فدرال ما را ملزم میکند که این اطلاعات را در اختیار شما قرار دهیم. امیدواریم که این اطلاعات به شما کمک کند تا بتوانید معالجات پزشکی را تحت اختیار خودتان قرار دهید. خدمات درمان رفتاری آلامیدا کانتی در مورد اجرای یک دستورالعمل نمیتواند کمک کند.

چه کسی در مورد درمان من تصمیم میگیرد؟

پزشکان در مورد درمانتان شما را راهنمایی میکنند. شما حق انتخاب دارید. میتوانید درمانی را که مورد قبول شما است بپذیرید. میتوانید به درمانی که مورد قبول شما نیست حتی اگر آن درمان به طول عمر شما کمک کند جواب منفی بدهید.

关于您的治疗决定权

本文就您所拥有的健康护理决定权做出相关说明，并指明如何立即规划医疗护理事宜，以应对将来无法自主做出此类决定的情形。依据联邦法律，我们必须为您提供此信息。我们希望它可以帮助您更好地控制治疗过程。Alameda County Behavioral Health Care Services（阿拉米达县行为健康护理服务）不协助完成预设医疗指示。

谁有权决定我的治疗？

您的医生会就您的治疗给出相关信息和建议。您有权做出选择。您可以根据自己的意愿接受或拒绝相关治疗，即使该项治疗可以延长您的寿命亦然。

我如何知道自己想要什么？

您的医生必须告知您相关医疗状况，以及不同的治疗和疼痛处理方法会对您的疾病起到何种作用。许多治疗都有“副作用”。您的医生必须讲明治疗可能会给您带来的各种问题。通常，提供多种治疗方案可帮助您及相关人员做出最佳选择。您的医生可以告诉您哪种治疗方案适合您，但不能代您做出选择。选择权始终在您手里，并取决于您认为什么最重要。

其他人可否帮我做出决定？

可以。患者在做医疗决定时，经常会向其亲友寻求帮助。亲友们可以帮助您一起思考所面临的选择。您可以请求医护人员与自己的亲友进行商议。他们可以代您向医护人员提出问题。

我是否可以指定一位亲友替我做出健康护理决定？

可以。您可以告诉医生，您想请他人代自己做出决定。请医生在您的病历中将所指定人选列为您的健康护理“代表”。该代表仅在您接受当前疾病或损伤治疗期间、或者出院前（如果是住院治疗）有权代您做出医疗决定。

如果我因病重而无法做出健康护理决定，该怎么办？

如果您并未指定可替您做出决定的代表，您的医生将询问与您关系紧密且能联系到的亲友，由其帮您选择哪种治疗最适合您。大部分情况下，这种方法都会奏效。但是有时，并非所有人的意见都一致。因此，您最好提前说明想要的治疗方案，而不要等到无法自主做出决定的时候。

关于您的治疗决定权

我需要等到生病后才能表明自己的医疗护理意愿吗？

不需要。其实，您最好在病重或必须入院、去疗养院或其他医疗机构接受治疗之前做出选择。您可以使用《预设医疗指示》指定您的代表人选以及您想要的治疗方法。这些文档之所以称为“预设”，是因为您需要在做出健康护理决定前准备完成。之所以称为“指示”，是因为它可指明谁将代您行事以及该做些什么。在加州，预示指示中包含可用于指定代理、由其帮助您做出健康护理决定的内容，这部分内容称为《健康护理委托书》。您可以通过称作《个人健康护理说明》的部分，表明您想要的治疗方式。

谁可以建立预设指示？

您须年满 18 岁并能自行做出医疗决定。建议这一指示无需律师。

我可以指定谁为我的代理？

您可以选择一位成年亲属或任何其他您信任的人，代您做出医疗决定。

我的代理什么时候开始帮我做医疗决定？

通常情况下，您的健康护理代理只有在您失去自主决定能力时才可帮您做决定。但是，如果愿意，您也可以可以在《健康护理委托书》中做出声明，指出希望代理立即帮您做决定。

我的代理如何知道我想要什么？

选好代理后，您需要告诉代理您的意愿。有时做出治疗决定是一个艰难的过程，因此将您的想法告诉代理将起到很大的帮助。您也可以将自己的意愿写在预设指示中。

如果我不想指定代理，该怎么办？

即使在未指定代理的情况下，您仍可以将自己的意愿写入预设指示中。您可以写：希望尽可能延长生命时间。或者写：不希望通过治疗来维持生命。此外，您还可以针对使用止痛药或任何其他类型的治疗手段表达个人意愿。即使您未填写书面的《个人健康护理说明》，您也可以就自己的意愿与医生进行

讨论，并请医生将这些意愿列入病历之中。或者，您可以与亲朋讨论您的意愿。但是，为方便遵循您的意愿实施治疗，建议您将其写下来。

如果我改变想法，该怎么办？

只要您可以表达自己的意愿，您就可以随时更改或取消预设指示。若要变更您指定的代理，必须签署一份声明，或告知负责您护理事宜的医生。

关于您的治疗决定权

如果我改变想法，该怎么办？

只要您可以表达自己的意愿，您就可以随时更改或取消预设指示。若要更改您指定的代理，您须签署一份声明，或告知负责您护理事宜的医生。

如果他人帮我做出医疗决定，会发生什么？

代您做出医疗决定的任何人均适用同样的法则，包括健康护理代理、您将其名字告知医生的代表或者由法庭任命的帮您做决定的人。上述所有人均应遵循您的《健康护理说明》，如果没有该份说明，则应遵循您的一般治疗意愿，包括停止治疗。如果不清楚您的治疗意愿，代表须以您的最大利益为考量而做出相应决定。健康护理提供者须遵循您的代理或代表做出的决定，除非所请求的治疗为不利的医疗实践或对您不起作用。如果因此出现不可调和的争议，健康护理提供者须尽其力寻找另一位健康护理提供者接手您的治疗。

如果我不建立预设指示，是否仍能接受治疗？

当然可以。您仍将获得治疗。我们只是想确定，如果您因病重而无法自主做出决定，是否有人可以帮您做决定。切记：您可以通过《健康护理委托书》指定一位代理帮您做决定。您的代理可以在您无法自主决定期间，帮您做出大部分医疗决定，不仅仅包括关于生命维持治疗的决定。如果愿意，您也可以更早地让代理做医疗决定。您可以创建一份《个人健康护理说明》，在当中写明您的健康护理意愿，或咨询医生并请其将您的意愿记录在医疗档案中。如果您知道什么时候您想要或不想要哪种类型的治疗，请将其写下来，这可让医生或其他代您做医疗决定的任何人能更清楚您的意愿。这两种类型的《预设医疗指示》可共同或单独使用。

如何获取关于建立预设指示的更多信息？

可咨询您的医生、护士、社会工作者或健康护理提供者，以了解更多信息。您可以请律师帮您编写预先指示，或者通过填写表单自己完成预先指示。如果您要使用该表单，我们可以提供。

如何投诉健康护理提供者的违规行为？

如遇违反预先指示之要求的情况，您可向加州健康服务局 (DHS) 授权与认证部门投诉，致电 1-800-236-9747 或将信件寄往 Post Office Box 997413, Sacramento, California 95899-1413 即可。

**Ang Inyong Karapatan na
Magdesisyon Tungkol sa
Medikal na Paggagamot**

Ang Inyong Karapatan na Magdesisyon Tungkol sa Medikal na Paggagamot

Ipinapaliwanag nito ang inyong karapatan na magdesisyon tungkol sa pangangalaga ng kalusugan at kung paano kayo makakapag-plano ngayon para sa inyong medikal na pangangalaga kung hindi kayo makakapagsalita para sa inyong sarili sa hinaharap. Hinihiling ayon sa pederal na batas na ibigay namin sa inyo ang impormasyong ito. Umaasa kami na ang impormasyon ito ay makakatulong na mapalawak ang inyong kontrol sa inyong medikal na paggagamot. Ang Alameda County Behavioral Health Care Services ay hindi tumutulong sa pagpapatupad ng isang Advance Directive (Paunang Kautusan).

Sino ang nagpapasya sa aking paggagamot?

Ang inyong mga doktor ang magbibiyga sa inyo ng mga impormasyon at payo tungkol sa paggagamot. May karapatan kayong pumili. Maaari kayong magsabi ng "Oo" sa mga paggagamot na nais ninyo. Maaari kayong magsabi ng "Hindi" sa anumang paggagamot na hindi ninyo gusto—kahit na mas tatagal ang buhay ninyo sa nasabing paggagamot.

Paano ko malalaman kung ano ang gusto ko?

Dapat ay sabihin sa inyo ng inyong doktor ang tungkol sa inyong medikal na kondisyon at kung ano ang magagawa para sa inyo ng iba't ibang mga alternatiba sa paggagamot at sa pamamahala ng pananakit. Ang karamihan sa mga paggagamto ay may mga "side effects." Dapat ay bigyan kayo ng inyong doktor ng impormasyon tungkol sa mga problema na marahil na madudulot sa inyo ng mga medikal na paggagamot. Madalas, higit sa isang paggagamot ang maaaring makatulong sa inyo—at ang mga tao ay may iba't ibang mga ideya kung alin ang pinakamainam. Masasabi sa inyo ng inyong doktor kung aling mga paggagamot ang magagamit ninyo, ngunit hindi makakapili para sa inyo ang inyong doktor. Ang desisyon na iyon ay nasasa inyo at depende kung ano ang mahalaga para sa inyo.

Makakatulong ba ang ibang tao sa aking mga desisyon?

Oo. Madalas ay humihingi ng tulong ang mga pasyente mula sa kanilang mga kamag-anak at malalapit na kaibigan para sa mga medikal na pagpapasya. Ang mga taong ito ay makakatulong sa inyong pag-isipan ang mga hinaharap ninyong pagpapasya. Maaari ninyong hilingin mula sa mga doktor at nars na makipag-usap sa inyong mga kamag-anak at kaibigan. Maaaring sila ang magtanong sa mga doktor at nars para sa inyo.

Maaari ba akong pumili ng kamag-anak o kaibigan para magdesisyon sa aking pangangalaga ng kalusugan para sa akin?

Oo. Maaari ninyong sabihin sa inyong doktor na nais ninyong iba ang magdesisyon para sa inyo hinggil sa inyong pangangalagang pangkalusugan. Hilingin sa doktor na ilista ang nasabing tao bilang inyong "surrogate (kahalili)" sa pangangalaga ng kalusugan sa inyong medikal na rekord. Ang kontrol ng kahalili ninyo sa inyong mga medikal na pagdedesisyon ay mabisa lang habang nagpapagamot para sa inyong kasalukuyang sakit o pinsala o, kung kayo ay nasa isang medikal na pasilidad, hanggang makaalis kayo ng pasilidad.

Paano kung masyadong lumala ang aking sakit para makapagdesisyon ng mag-isa sa aking pangangalagang pangkalusugan?

Kung hindi ninyo napangalananan ang inyong kahalili, sa gayon ay tatanungin ng doktor ang pinakamalapit ninyong makakausap na kamag-anak o kaibigan para makatulong na magpasya kung ano ang pinakamainam para sa inyo. Kadalasan ay magagamit rin ito. Gayunman, minsan ay hindi sumasang-ayon ang lahat kung ano ang dapat gawin. Ito ang dahilan kung bakit nakakatulong kung pauna ninyong masasabi, kung ano ang nais ninyong mangyari kung hindi ninyo magawang makapagsalita nang mag-isa.

Kailangan ko bang maghintay hanggang sa magkasakit ako para mapahayag ang aking mga nais tungkol sa aking pangangalaga ng kalusugan?

Hindi. Sa katotohanan, mas mainam na piliin na bago pa man kayo magkasakit o kailangang magpunta sa ospital, nursing home, o iba pang pasilidad para sa pangangalaga ng kalusugan. Maaari kayong gumamit ng Advance Health Care Directive (Paunang Kautusan para sa Pangangalaga ng Kalusugan) para sabihin kung sino ang nais ninyong kumatawan para sa inyo at anong mga uri ng paggagamot ang nais ninyo. Ang mga dokumentong ito ay tinatawag na “pauna” dahil inihahanda ninyo ito bago kinakailangang magpasya para sa pangangalaga ng kalusugan. Ang mga ito ay tinatawag na “mga kautusan” dahil nakasaad sa mga ito kung sino ang magiging kinatawan ninyo at ano ang nararapat na gawin. Sa California, ang parte ng isang Advance Directive na magagamit ninyo para magtalaga ng isang ahente para sa mga pagdedesisyon sa pangangalaga ng kalusugan ay tinatawag na “Power of Attorney for Health Care”. Ang parte kung saan maipapahayag ninyo kung ano ang nais ninyong gawin ay tinatawag na “Individual Health Care Instruction.”

Sino ang maaaring gumawa ng isang Advance Directive?

Magagawa ninyo ito kung kayo ay may edad na 18 taong gulang o mas matanda at kayang magsagawa ng mga medikal na pagdedesisyon ng mag-isa. Hindi ninyo kailangan ng abogado.

Sino ang maaari kong italaga bilang aking ahente?

Maaari kayong pumili ng isang nasa hustong edad na kamag-anak o iba pang taong mapagkakatiwalaan ninyo na magsalita para sa inyo kapag kailangan ng mga medikal na desisyon.

Kailan magsisimula ang aking ahente sa pagsasagawa ng mga medikal na kondisyon?

Karaniwan, ang ahente sa pangangalaga ng kalusugan ay magdedesisyon lang makalipas kayong mawalan

ng kakayahan na gawin ito ng mag-isa. Gayunman, kung nais ninyo, maaari ninyong ipahayag sa Power of Attorney for Health Care na nais ninyong magsimula kaagad ang ahente sa pagdedesisyon.

Paano malalaman ng aking ahente kung ano ang mga nais ko?

Makalipas na kayo ay makapili ng ahente, kausapin ang taong iyon tungkol sa nais ninyo. Minsan ang mga desisyon para sa pagpapagamot ay mahirap gawin, at tunay na nakakatulong kung alam ng inyong ahente ang nais ninyo. Maaari rin ninyong isulat ang inyong mga nais sa inyong Advance Directive.

Paano kung ayaw kung magtalaga ng isang ahente?

Maaari pa rin ninyong isulat ang inyong mga nais sa inyong Advance Directive, ng hindi nagbabanggit ng sinumang ahente. Masasabi ninyong nais ninyong patuloy na mabuhay hangga’t maaari. O masasabi ninyong hindi ninyo nais na mabuhay sanhi lang ng mga pagpapagamot. Dagdag pa dito, maipapahayag ninyo ang inyong mga nais tungkol sa paggamit ng mga pain relief o iba pang mga uri ng medikal na paggagamot. Kahit na wala kayong sinulatan na Individual Health Care Instruction, maaari ninyong talakayin ang inyong mga nais sa inyong doktor, at hilingin sa inyong doktor na ilista ang mga ninanais na iyon sa inyong medikal na rekord. O matatalakay ninyo ang inyong mga nais kasama ng inyong mga kapamilya o kaibigan. Ngunit marahil ay mas madali na masundan ang inyong mga kahilingan kung isusulat ninyo ang mga ito.

Paano kung magbago ako ng isip?

Maaari kayong magbago ng isip o kanselahin ang inyong Advanced Directive kahit kailan basta’t sabihin ninyo ang mga ninanais na ito.

Para baguhin ang taong magsasagawa ng mga desisyon para sa inyong pangangalaga ng kalusugan, kailangan ninyong lagdaan ang isang pahayag o sabihin sa doktor na namamahala sa inyong pangangalaga.

Ano ang mangyayari kung may ibang magdesisyon para sa aking pagpapagamot?

Ang parehong mga tuntunin ang ipapataw kung sino man ang magdedesisyon sa ngalan ninyo—isang ahente ng pangangalaga ng kalusugan, isang kahalili na binanggit ninyo sa inyong doktor, o taong itinalaga ng korte para magdesisyon para sa inyo. Ang lahat ay kinakailangang sumundo sa inyong Health Care Instructions o, kung wala, ang inyong pangkalahatang mga kahilingan tungkol sa paggagamot, kasama na ang pagpapahinto sa pagpapagamot. Kung hindi alam ang inyong mga kahilingan sa pagpapagamot, kailangang subukan ng kahalili na magpasya kung alin ang pinakamainam para sa inyo. Ang mga taong nagkakaloob ng inyong pangangalaga sa kalusugan ay dapat sumunod sa mga desisyon ng inyong ahente o kahalili maliban na lang kung ang hinihiling na paggagamot ay isang hindi wastong medikal na pamamalakad o hindi mabisa at di nakakatulong sa inyo. Kung ito ay maging sanhi ng di pagkakasunduan na hindi maayos, ang tagapagkaloob ng serbisyo ay dapat magsagawa ng makatuwirang pagsisikap upang makahanap ng iba pang tagapagkaloob ng serbisyo para sa pangangalaga ng kalusugan upang pumalit sa inyong pagpapagamot.

Gagamutin pa rin ba ako kung hindi ako gumawa ng isang Advance Directive?

Oo naman. Makakatanggap ka pa rin ng medikal na paggagamot. Nais lang namin malaman kung sa kaganapan na masyado lumala ang inyong sakit para makapagdesisyon, may ibang taong makakagawa nito para sa inyo. Tandaan na ang isang Power of Attorney for Health Care ay nagpapahintulot sa inyong pangalanan ang isang ahente na magdesisyon para sa inyo. Ang inyong ahente ay maaaring magdesisyon para sa mga karamihan—hindi lang iyong mga tungkol sa paggagamot na magpapanatili sa inyong mabuhay (life sustaining treatment)—kapag hindi ninyo kayang

magsalita o magdesisyon para sa inyong sarili. Maaari rin ninyong pahintulutan ang inyong ahente na maaga pang ay magdesisyon para sa inyo, kung nais ninyo. Maaari kayong gumawa ng isang Individual Healthcare Instruction sa pamamagitan ng pagsusulat ng inyong mga nais tungkol sa pangangalaga ng kaluugan o sa pamamagitan ng pakikipag-usap sa inyong doktor at tanungin sa doktor na irekord ang inyong mga kahilingan sa inyong medikal na file. Kung alam ninyo kung kailan ninyo nais o hindi nais ang ilang mga uri ng paggagamot, ang isang Instruction ay isang mabuting paraan na linawin ang inyong mga ninanais sa inyong doktor at sa iba pang kabilang sa pagpapasya ng inyong pagpapagamot. Ang dalawang uri na ito ng Advance Healthcare Directives ay magagamit nang sabay o hiwalay.

Paano ako makakakuha ng mas maraming impormasyon tungkol sa pagsasagawa ng Advance Directive?

Tanungin sa inyong doktor, nars, social worker, o tagapagkaloob ng serbisyo para sa pangangalaga ng kalusugan para makakuha ng karagdagang impormasyon para sa inyo. Maaari ninyong ipasulat sa isang abogado ang Advance Directive para sa inyo, o maaari ninyong kumpletuhin ang isang Advance Directive sa pamamagitan ng pagsusulata sa mga blangko na nasa form. Kung nais ninyong gamitin ang form, ibibigay ito.

Saan ako maaaring magreklamo tungkol sa hindi pagsunod ng isang tagapagkaloob ng serbisyo?

Para sa mga reklamo hinggil sa di pagsunod sa mga kahilingan sa ilalim ng Advance Directive, maaaring isampa ang mga ito sa California Department of Health Services (DHS) Licensing and Certification sa pamamagitan ng pagtawag sa 1 (800) 236-9747 o sa pamamagitan ng koreo sa PO Box 997413, Sacramento, CA 95899-1413.

치료에 관해
결정할
권리

치료에 관해 결정할 권리

여기서 설명하는 점은 귀하가 의료 결정을 내릴 권리가 있다는 점과 미래에 본인 스스로 의사표시를 할 수 없는 경우 지금 의료 계획을 세울 수 있는 방법에 관한 것입니다. 연방법에 따라 저희는 이 정보를 귀하에게 제공해야 합니다. 본 정보가 귀하의 치료에 대한 관리 능력을 높이는 데 도움이 되기를 바랍니다. 앨러미다 카운티 행동 의료 서비스(Alameda County Behavioral Health Care Services)는 사전 의료 지시서(Advance Directive)의 실행을 지원하지 않습니다.

누가 내 치료를 결정합니까?

담당 의사는 치료에 대한 정보와 조언을 귀하에게 제공할 것입니다. 귀하는 선택할 권리가 있습니다. 귀하는 원하는 치료에 대해서 "예"라고 말할 수 있습니다. 심지어 그 치료법이 귀하를 좀 더 오래 살게 할지라도, 귀하는 원하지 않는 치료에 "아니요"라고 말할 수 있습니다.

내가 원하는 것을 어떻게 알 수 있습니까?

담당 의사는 환자의 건강 상태에 관해 그리고 다른 치료법 및 통증 관리 대안이 어떻게 작용하는지에 대해 알려주어야 합니다. 많은 치료법에는 "부작용"이 있습니다. 담당 의사는 치료로 인해 발생할 수 있는 문제에 관한 정보를 귀하에게 제공해야 합니다. 보통 하나 이상의 치료법이 도움이 될 수 있으며, 최선의 치료법에 관한 사람들의 생각은 각각 다릅니다. 담당 의사는 어떤 치료법을 사용할 수 있는지 말해 줄 수 있지만, 귀하를 대신하여 선택해 줄 수는 없습니다. 그 선택은 귀하의 몫이고 귀하에게 중요한 것이 무엇인지에 따라 다릅니다.

다른 사람이 저의 결정에 도움을 줄 수 있습니까?

예. 환자는 종종 친척과 친한 친구에게 건강상의 결정에 관해 도움을 청합니다. 이 사람들은 귀하가 직면한 선택 문제를 생각하는 데 도움을 줄 수 있습니다. 귀하는 의사와 간호사에게 친척이나 친구들과 상의하라고 요청할 수 있습니다. 그들은 의사와 간호사에게 귀하에 대한 질문을 할 수 있습니다.

저를 위해 의료 결정을 내려줄 친척이나 친구를 선택할 수 있습니까?

예. 귀하는 누군가 다른 사람이 귀하를 대신해 의료 결정을 내려주길 바란다고 담당 의사에게 말할 수 있습니다. 그 사람을 귀하의 의무 기록에 의료 "대리인(surrogate)"으로 기재하도록 의사에게 요청하십시오. 귀하의 의료 결정에 관한 대리인의 관리는 귀하가 현재 질병이나 부상으로 치료 중일 때, 또는 귀하가 의료 시설에 있는 경우, 귀하가 시설을 떠날 때까지만 유효합니다.

제가 너무 아파서 자신의 의료 결정을 내리기 어려우면 어떻게 합니까?

대리인을 지정하지 않은 경우, 담당 의사는 귀하의 가장 가까운 친척이나 친구에게 무엇이 귀하를 위해 최선인지 결정하도록 도와 달라고 요청할 것입니다. 대부분의 경우 그렇게 하면 됩니다. 그러나 때로는 모든 사람이 무엇을 해야 할지에 대해 동의하는 것은 아닙니다. 이것이 바로 귀하가 자신의 의사를 표현할 수 없을 경우, 어떻게 하길 바라는지 미리 말해두면 도움이 되는 이유입니다.

의료에 관한 저의 의사를 표현하기 위해 아플 때까지 기다려야 합니까?

아닙니다. 사실, 귀하가 몹시 아프거나 병원, 요양원 또는 기타 의료 시설에 들어가기 전에 선택하는 것이 좋습니다. 사전 의료 지시서(Advance Health Care Directive)를 사용하여 본인을 대변해 줄 사람과 원하는 치료법을 말해 둘 수 있습니다. 이러한 서류는 의료 결정이 필요하기 전에 준비해야 하므로 "사전"이라고 합니다. 귀하를 대신하여 발언할 사람과 해야 할 일을 명시해 두기 때문에 "지시서"라고 합니다.

캘리포니아에서는, 의료 결정을 내리기 위한 에이전트를 지명하는 데 사용할 수 있는 사전 의료 지시서의 일부를 의료 위임장(Power of Attorney for Health Care)이라고 합니다. 자신이 원하는 것을 표현할 수 있는 부분을 개별 의료 지침(Individual Health Care Instruction)이라고 합니다.

누가 사전 의료 지시서를 만들 수 있습니까?

귀하가 18 세 이상이며 자신의 의료 결정을 내릴 능력이 된다면 만들 수 있습니다. 변호사는 필요하지 않습니다.

에이전트로 누구를 지명할 수 있습니까?

의료 결정을 내려야 할 때 귀하가 믿는 성인 친척이나 다른 사람을 귀하를 대변하도록 선택할 수 있습니다.

제 에이전트가 저의 의료 결정을 내리기 시작하는 시점은 언제입니까?

일반적으로, 의료 에이전트는 귀하가 스스로 결정할 수 있는

능력을 상실한 후에만 결정을 내리게 됩니다. 그러나, 원한다면, 에이전트가 즉시 의사 결정을 내리기 시작하길 바란다고 의료 위임장에 명시할 수 있습니다.

에이전트가 제가 원하는 것을 어떻게 압니까?

에이전트를 선택한 후에, 그 사람에게 원하는 것을 말씀하십시오. 때때로 치료를 결정하는 것은 매우 어렵고, 이때 에이전트가 귀하가 원하는 것을 안다면 정말 도움이 됩니다. 사전 의료 지시서에 귀하의 의사를 적어둘 수 있습니다.

에이전트를 지명하고 싶지 않으면 어떻게 합니까?

에이전트를 지명하지 않고도, 사전 의료 지시서에 원하는 사항을 기재할 수 있습니다. 귀하는 가능한 한 오랫동안 생명이 유지되길 원한다고 말할 수 있습니다. 또는 귀하의 생명유지를 위한 치료를 원하지 않는다고 말할 수 있습니다. 더욱이, 통증 완화 사용 또는 기타 유형의 치료에 대한 귀하의 의사를 표현할 수 있습니다. 서면으로 개별 의료 지침을 작성하지 않은 경우에도, 담당 의사와 본인의 바람을 상의할 수 있고, 담당 의사에게 의무 기록에 기재하도록 요청할 수 있습니다. 또는 본인의 의사를 가족이나 친구와 상의할 수 있습니다. 그러나 기록해 둔다면, 아마 본인의 의사를 따르기가 더욱 쉬울 것입니다.

제 마음이 바뀌면 어떻게 합니까?

귀하는 본인이 의사표시를 할 수 있는 한, 언제든지 사전 의료 지시서를 변경하거나 취소할 수 있습니다.

의료 결정을 내리길 원하는 사람을 변경하려면, 진술서에 서명하거나 진료 담당 의사에게 알려야 합니다.

다른 사람이 제 치료에 대한 결정을 내리면 어떻게 됩니까?

본인이 담당 의사에게 지명한 의료 에이전트, 대리인, 또는 귀하를 위해 의사결정을 내리도록 법원에서 임명한 사람이든지 간에, 본인을 대신하여 의사결정을 내리는 사람에게는 똑같은 규칙이 적용됩니다. 이들 모두는 귀하의 의료 지침을 준수해야 하며, 의료 지침이 없는 경우, 치료 중단을 포함하여, 치료에 대한 귀하의 일반적인 의사를 따라야 합니다. 본인의 치료 의사가 알려지지 않은 경우, 대리인은 무엇이 제일 나은 방법인지 결정하려고 노력해야 합니다. 귀하에게 의료를 제공하는 사람들은 요청된 치료가 나쁜 의료행위가 되거나 귀하를 돕는 데 효과가 없는 경우가 아니라면 귀하의 의료 에이전트 또는 대리인의 결정을 따라야 합니다. 만약 이로 인해 해결할 수 없는 의견 차이가 발생하는 경우, 의료 제공자는 귀하의 치료를 대신할 수 있는 다른 의료 제공자를 찾도록 합당한 노력을 해야 합니다.

사전 의료 지시서를 작성하지 않아도 치료받을 수 있습니까?

물론입니다. 귀하는 똑같이 치료를 받을 것입니다. 다만, 귀하가 결정을 내리기에 너무 위중한 상태가 될 경우, 다른 누군가가 귀하를 위해 결정을 내릴 수도 있음을 알려드리고자 하는 것입니다. 의료 위임장을 통해 귀하를 대신해 의사 결정을 할 수 있는 에이전트를 지명할 수 있다는 것을 기억하십시오. 귀하가 스스로 의사표시를 할 수 없게 된 경우, 에이전트는

생명 연장 치료에 국한하지 않고 대부분의 의료 결정을 내릴 수 있습니다. 원한다면, 에이전트가 더 일찍 결정을 내리게 할 수도 있습니다. 귀하는 의료에 관한 귀하의 바람을 적어 두거나 의사와 상의하여 의료 파일에 기록하도록 요구함으로써 개별 의료 지침을 만들 수 있습니다. 귀하가 언제 특정 유형의 치료를 원하거나 원하지 않을지를 안다면, 지침서는 담당 의사와 귀하를 대신하여 치료 결정에 관여할 수 있는 다른 누군가에게 귀하의 바람을 분명히 하는 좋은 방법을 제공합니다. 이 두 종류의 사전 의료 지시서는 함께 또는 개별적으로 사용될 수 있습니다.

사전 의료 지시서 작성에 대한 추가 정보는 어떻게 얻을 수 있습니까?

의사, 간호사, 사회 복지사 또는 의료 제공자에게 문의하여 자세한 정보를 얻으십시오. 귀하는 변호사에게 사전 의료 지시서를 작성하게 하거나, 귀하가 양식의 공란을 채워 사전 의료 지시서를 완성할 수 있습니다. 양식 사용을 원한다면, 양식을 제공해 드립니다.

의료 제공자의 불이행에 대해 어디에 불만을 제기해야 합니까?

사전 의료 지시서의 요구 사항 불이행에 대한 불만 제기는 캘리포니아 의료 서비스(Department of Health Services, DHS) 면허 및 인증 부서에 1(800) 236-9747 번으로 전화하거나, PO Box 997413, Sacramento, CA 95899-1413 으로 우편 발송하여 접수할 수 있습니다.

APPENDIX B

California Hospital Association Advance Directive Requirements

3 Who May Consent for Adults Lacking Capacity

I. INTRODUCTION

A. Background

The determination of who has the legal authority to consent to medical treatment for a patient is based on the patient's legal status (for example, minor, emancipated minor, adult, adult under conservatorship) and on the physical and mental condition of the patient.

An adult patient generally has the right to make his or her own health care decisions. However, in some cases, a patient's physical or mental condition may render him or her unable to consent to medical treatment, either temporarily or permanently. If the patient lacks "capacity," someone else must consent to the treatment on his or her behalf, except in emergency situations. (See B. "Emergency Treatment Exception," page 2.3.)

For purposes of consent for medical treatment, an adult patient may be in one of five categories:

1. Adult with capacity.
2. Adult who has appointed an agent or surrogate to make health care decisions. An agent may be named in an advance health care directive or other similar document; surrogates may be appointed verbally by the patient.
3. Conservatee specifically adjudicated to lack the capacity to make health care decisions.
4. Conservatee not specifically adjudicated to lack the capacity to make health care decisions.
5. Adult lacking capacity without a conservator, agent, or surrogate for health care decisions (whether the patient temporarily or permanently lacks capacity).

This chapter focuses on decision making for medical treatment for living patients. (See chapter 14 about consent for autopsies, anatomical gifts, and disposition of remains.)

B. Summary of Decision Makers for Medical Treatment of Adults

A table titled "Decision Makers for Medical Treatment of Adults" (CHA Table 2-A) summarizing the information in this chapter is included in the back of the manual as well as online for CHA members at www.calhospital.org/free-resources.

II. ADULTS WITH CAPACITY TO MAKE HEALTH CARE DECISIONS

An adult patient with capacity has the right to make his or her own health care decisions [Probate Code Section 4670]. This includes consenting to medical treatment and refusing medical treatment, including life-sustaining treatment.

A. "Adult" Defined

For the purpose of making health care decisions, an adult is a person who has reached the age of 18, or a minor who has entered into a valid marriage or domestic partnership (whether or not it was later terminated by divorce or death of the spouse/partner), who is on active duty with the armed forces of the United States of America, or who has been declared emancipated pursuant to Family Code Section 7122 *et seq.* [Family Code Section 7002]. (See III. "Minors With Legal Authority to Consent," page 4.13.)

B. "Capacity" Defined

A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate [Probate Code Section 4657]. However, if there are indications that the patient lacks the capacity to make health care decisions, the primary physician should evaluate the patient.

"Capacity" means 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 [Probate Code Section 4609; see also *Probate Code Sections 812 and 813*].

The primary physician usually makes the determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual health care instruction or the authority of an agent or surrogate. However, the patient may state in the advance directive that someone else is required to make this determination. [Probate Code Section 4658]

C. Determination of Capacity

WHO DETERMINES CAPACITY?

The primary physician should determine whether a patient has the capacity to make health care decisions [Probate Code Section 4658]. The primary physician is the physician designated by the patient to have primary responsibility for the patient's health care, or, in the absence of such a designation or if the designated physician is not reasonably available or declines to act as the primary physician, any physician who undertakes the responsibility [Probate Code Section 4631].

FACTORS TO CONSIDER

A patient may lack capacity permanently (for example, a patient with late-stage Alzheimer's disease) or temporarily (for example, a patient with a head injury or under the influence of illegal drugs). The primary physician should make the determination of capacity on a case-by-case basis, reasonably close in time to the performance of the procedure for which consent is sought.

A physician determining a patient's capacity to give informed consent may wish to consider the same factors a judge would be required to consider in the context of judicial determination of incapacity. A judge would evaluate whether a patient is able to do all of the following:

1. Respond knowingly and intelligently to queries about the proposed medical treatment.
2. Participate in the treatment decision by means of a rational thought process.
3. Understand all of the following items of minimum basic treatment information with respect to the proposed treatment:
 - a. The nature and seriousness of the illness, disorder or defect that the person has.
 - b. The nature of the medical treatment that is being recommended by the person's health care providers.
 - c. The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.
 - d. The nature, risks and benefits of any reasonable alternatives.

A patient who has the capacity to give informed consent to a proposed treatment also has the capacity to refuse consent to that treatment. [Probate Code Section 813]

PATIENT WITH MENTAL HEALTH DISORDER OR ON MEDICATIONS/DRUGS

Generally, it may be assumed that a patient presenting himself or herself for treatment has the capacity to make health care decisions unless there is evidence to the contrary [Probate Code Sections 810 and 4657]. In the case of mental health patients, it should be noted that Welfare and Institutions Code Section 5331 provides that:

No person may be presumed to be incompetent because he or she has been evaluated or treated for a mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received.

Patients who have been diagnosed with a mental illness may or may not have the capacity to give informed consent, depending upon the degree to which their illness affects their thought processes. The mere fact that a patient has a mental health or neurologic condition, or has recently taken prescription or recreational drugs, does not determine whether the patient has the requisite mental ability to make a treatment decision. The primary physician must make an individual assessment, which should be clearly documented. A psychiatric consult is not required, although it may be useful, particularly when the patient has a serious mental illness or another psychiatric or neurological condition.

D. Documentation

A primary physician who determines that a patient lacks (or has recovered) capacity must promptly record that determination in the patient's medical record. The physician must communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient. [Probate Code Section 4732]

E. Special Circumstances Involving Adults With Capacity

MARRIED PATIENTS

The patient has the right to consent to, or to refuse, medical treatment. A patient's spouse does not have the legal authority to make health care decisions for the patient simply because they are married. However, in some circumstances a spouse may make health care decisions on the basis of another legal relationship (for example, the spouse is the patient's conservator or agent appointed pursuant to a power of attorney for health care) or on the basis that the patient lacks capacity and the spouse is the closest available relative.

ADULTS IN CUSTODY OF LAW ENFORCEMENT OFFICERS

A person in the custody of law enforcement officers must still consent to a nonemergency medical examination, treatment, or operation before such procedures may be performed. If the person in custody lacks the capacity to make health care decisions, an appropriate legal representative should be found, if possible. Although law enforcement officers may not consent for the patient, in narrowly defined circumstances law enforcement officers may request limited medical examinations and tests pursuant to their authority to make constitutionally permissible searches. In addition, specific rules govern drug and alcohol tests performed pursuant to Vehicle Code Section 23612. (See chapter 9 for more information about patients in the custody of law enforcement officers.)

DEVELOPMENTALLY DISABLED ADULTS

A developmentally disabled adult should not be presumed incompetent to make his or her medical treatment decisions. If a developmentally disabled adult is determined by his or her physician to be mentally incapable of consenting to treatment, consent can be provided by the patient's agent or surrogate, conservator legally authorized to consent to treatment, the closest available relative, or by court order (see D. "Court Order Authorizing Medical Treatment," page 3.21).

The director of a regional center (an agency that contracts with the state to provide services to developmentally disabled persons) or his or her designee may consent to medical, dental and surgical treatment of a regional center client in certain circumstances. The hospital should consult its legal counsel in these cases. [Welfare and Institutions Code Section 4655]

POTENTIAL EXPOSURE OF PUBLIC SAFETY WORKERS AND MEDICAL PERSONNEL TO COMMUNICABLE DISEASES

There is a limited ability to test for the presence of communicable diseases without the patient's consent when a public safety worker or medical personnel may have been exposed. The specific procedures and legal requirements for these exceptions are described in D. "Testing in Instances of Occupational Exposure," page 5.7.

III. ADVANCE DIRECTIVES: THE HEALTH CARE DECISIONS LAW

The Health Care Decisions Law sets forth the requirements for executing a written advance health care directive, and for orally designating a surrogate decision maker. It also outlines how an advance health care directive should be implemented by health care providers. This law also defines "capacity" for purposes of health care decision making and contains many administrative requirements [Probate Code Sections 4600-4805].

A written advance health care directive is a document that may authorize another person (called the "agent") to make health care decisions for a patient, either immediately or when the patient is no longer able to make decisions for himself or herself. The advance directive may also contain information about a patient's desires concerning health care decisions, particularly decisions concerning end-of-life care.

The California Attorney General has some good, basic information for patients about advance directives that may be found at <https://oag.ca.gov/consumers/general/care#advance>. Hospitals may give this information to patients if they wish. If a patient indicates a desire to execute an advance directive, the hospital may (but is not required to) provide the patient with a copy of the "Advance Health Care Directive" (CHA Form 3-1).

NOTE: The form should not be printed with the hospital's name on it and hospital personnel should not attempt to answer legal questions regarding an advance directive. (To do so could raise questions regarding practicing law without a license.) The hospital may not require any patient to complete an advance directive as a condition of admission. However, it is appropriate to educate patients about the usefulness of an advance directive and for the patient's physicians to encourage its use in appropriate cases. (See II. "The Patient Self-Determination Act," page 1.1, for information about the federal law that requires hospitals to inform patients about their right to make an advance directive.)

Patients who need further clarification regarding an advance health care directive should be directed to call their attorney. If they do not have an attorney, they may be given the name and telephone number of the area's state or county bar association's attorney referral service.

The requirements for executing a written advance health care directive and the limitations on an agent's authority are discussed below.

In addition, recommended procedures are described that hospitals and other health care providers may use to determine whether a patient has executed a valid advance directive and to carry out their other obligations under an advance directive. A form meeting the statutory requirements, "Advance Health Care Directive" (CHA Form 3-1), can be found at the end of this manual; it may also be downloaded from www.calhospital.org/free-resources. Hospitals may give this form to patients and may encourage staff physicians to discuss the use of such forms in appropriate cases.

The Health Care Decisions Law applies to health care decisions for adults who lack capacity to make health care decisions for themselves. It does not affect the right of an individual to make decisions while he or she has the capacity to do so. It does not affect the law governing health care in an emergency (see *chapter 2*), and does not affect the law governing health care for unemancipated minors (see *chapter 4*). [Probate Code Section 4651]

A. Definitions

"Advance health care directive" or "advance directive" means either an individual health care instruction or a power of attorney for health care [Probate Code Section 4605]. A "Physician Order Regarding Life-Sustaining Treatment" (POLST) is not considered an advance directive [Probate Code Section 4780(a)]. (See IX. "POLST (Physician Orders For Life-Sustaining Treatment)," page 6.24, for information about POLST forms.)

"Agent" means an individual designated in a power of attorney for health care (which is usually a part of the Advance Directive form) to make a health care decision for a patient. An agent may include a successor or alternate agent [Probate Code Section 4607].

"Capacity" means 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 [Probate Code Section 4609].

"Conservator" means a court-appointed conservator having authority to make a health care decision for a patient [Probate Code Section 4613].

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition [Probate Code Section 4615].

"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:

1. Selection and discharge of health care providers and institutions;
2. Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication;
3. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation [Probate Code Section 4617].

"Health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business [Probate Code Section 4619].

"Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by California law to provide health care in the ordinary course of business or practice of a profession [Probate Code Section 4621].

"Individual health care instruction" or "individual instruction" means a patient's written or oral direction concerning a health care decision [Probate Code Section 4623].

"Power of attorney for health care" means a written instrument designating an agent to make health care decisions for the principal (the patient) [Probate Code Section 4629].

"Primary physician" means 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, a physician who undertakes the responsibility [Probate Code Section 4631].

"Principal" means an adult who executes a power of attorney for health care [Probate Code Section 4633]. Although the law uses the term "principal," we use the term "patient" in this manual for ease in reading.

"Reasonably available" means readily able to be contacted without undue effort and willing and able to act

in a timely manner considering the urgency of the patient's health care needs [Probate Code Section 4635].

“Supervising health care provider” means 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 of a patient's health care [Probate Code Section 4641].

“Surrogate” means an adult, other than a patient's agent or conservator, authorized under the Health Care Decisions Law to make a health care decision for the patient [Probate Code Section 4643]. This is a person who has been designated orally by a patient. In contrast, an agent is designated in writing in an advance directive.

B. Individual Health Care Instruction

An adult having capacity may give an individual health care instruction orally or in writing. The individual instruction may be limited to take effect only if a specified condition arises, if the patient so desires. [Probate Code Section 4670]

C. Oral Designation of a Surrogate Decision Maker

A patient may orally designate an adult as a surrogate to make health care decisions for him or her. The patient must do so by personally informing the supervising health care provider. The designation of a surrogate must be promptly recorded in the medical record. (As mentioned previously, **“supervising health care provider”** means 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.) [Probate Code Section 4641]

The designation of a surrogate is effective only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made or for 60 days, whichever period is shorter. However, the patient may specify a shorter period of time [Probate Code Section 4711].

The expiration of a surrogate designation does not affect any role the designated person may have in making health care decisions for the patient under any other law or standard of practice. For example, if a patient designates her husband as a surrogate, 60 days pass, and the patient is comatose and health care decisions need to be made, the husband may be the appropriate legal representative to make those decisions although he would no longer be called the “surrogate” designated under Probate Code Section 4711.

If a patient has designated an agent under a power of attorney for health care (such as in an advance directive form) as well as a surrogate pursuant to Probate Code Section 4711, the surrogate is the appropriate decision maker for the applicable time period. The designation of a surrogate does not revoke the designation of an agent unless the patient also communicates the intention to revoke (*see I. “Revocation of an Advance Directive,” page 3.8*). Thus, the agent will again become the appropriate decision maker after the applicable time period has passed.

A surrogate must make decisions in accordance with the standards discussed in “Responsibilities of the Agent,” page 3.11 [Probate Code Section 4714].

A patient having capacity at any time may disqualify another person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification [Probate Code Section 4715].

D. Components of a Written Advance Directive

An adult having capacity may execute an advance health care directive, which may include one or more of the following:

1. The designation of an “agent” to make health care decisions on behalf of the patient [Probate Code Section 4671(a)]. This portion of an advance directive is sometimes called a durable power of attorney for health care. A durable power of attorney for health care may also be a separate document.
2. Individual health care instructions [Probate Code Section 4671(a)].
3. A grant of authority for the agent to make decisions about the personal care of the patient, including, but not limited to, determining where the patient will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment [Probate Code Section 4671(b)].
4. Nomination of a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the individual's person or estate are thereafter commenced [Probate Code Section 4672]. A “conservator of the person” makes personal and health care decisions. A “conservator of the estate” makes financial decisions.

The patient may complete one or more of these portions of the advance directive.

E. Prerequisites to a Valid Advance Directive

A written advance health care directive is legally sufficient if all of the following requirements are satisfied [Probate Code Sections 4673-4675].

DATE

The advance directive must contain the date of its execution.

SIGNATURE OF PATIENT

The advance directive must be signed either:

1. By the patient, or
2. In the patient's name by another adult, in the patient's presence and at the patient's direction (for example, if the patient can't write).

SIGNATURE OF NOTARY OR WITNESSES

The advance directive must be acknowledged before a notary public or signed by at least two adult witnesses who satisfy the following requirements:

1. Each witness must witness either the signing of the advance directive by the patient, or the patient's acknowledgment of his or her signature on the advance directive. The witnesses do not have to be told what the advance directive says; they just must watch the patient sign the advance directive, or must see and hear the patient state that the signature on the advance directive is indeed his or hers.
2. Neither witness may be:
 - a. The patient's health care provider or an employee of the patient's health care provider,
 - b. The operator or an employee of a community care facility,
 - c. The operator or an employee of a residential care facility for the elderly, or
 - d. The agent (if the advance directive includes a power of attorney for health care).
3. Each witness must make the following declaration in substance:

I declare under penalty of perjury under the laws of California (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

4. At least one of the witnesses must be an individual who is neither related to the patient by blood, marriage, or adoption, nor entitled to any portion of the patient's estate upon the patient's death under a will existing when the advance directive is executed or by operation of law then existing. This witness must sign the following declaration in substance:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

The requirements applicable to witnesses do not apply to a notary public [Probate Code Section 4674(g)].

VOLUNTEERS AS WITNESSES

Hospitals have asked whether volunteers may serve as witnesses. There is no definitive answer to this question in the law. The intent of the Legislature when enacting the provisions of the Probate Code related to witnesses was to ensure that witnesses were independent from the health care provider/facility. Volunteers are under the direction and control of the hospital, so their independence is debatable. In addition, many hospitals cover volunteers under their workers' compensation policy, and treat volunteers as they treat employees with regard to fire training, HIPAA training, etc. Hospitals may wish to consult with their legal counsel

about allowing volunteers to serve as witnesses. Hospitals that want to provide witness “services” for their patients may decide to have an employee who is also a notary public notarize a patient’s advance directive; Probate Code Section 4674(g) states that notaries do not have to meet the same requirements as witnesses.

ELECTRONIC ADVANCE DIRECTIVE

An electronic advance directive or power of attorney for health care is legally sufficient if it is dated and contains the signature of the patient as noted above. However, the electronic advance directive must be acknowledged before a notary; the option of using witnesses is not available.

If a digital signature is used by a patient/notary, it must meet all of the following requirements:

1. The digital signature must meet the requirements of Government Code Section 16.5 (these requirements are also included in this statute — *see 2 through 5, below*) and Title 2, California Code of Regulations, Section 22000 *et seq.*, or the digital signature uses an algorithm approved by the National Institute of Standards and Technology.
2. The digital signature must be unique to the person using it.
3. The digital signature must be capable of verification.
4. The digital signature must be under the sole control of the person using it.
5. The digital signature must be linked to data in such a manner that if the data are changed, the digital signature is invalidated.
6. The digital signature must persist with the document and not by association in separate files.
7. The digital signature must be bound to a digital certificate.

SPECIAL REQUIREMENTS FOR A PATIENT IN A SKILLED NURSING FACILITY

If an individual is a patient in a skilled nursing facility when a written advance health care directive is executed, the advance directive must be signed by a patient advocate or ombudsman designated by the California Department of Aging for this purpose. The advocate or ombudsman must sign as one of two witnesses or in addition to notarization.

The patient advocate or ombudsman must declare that he or she is serving as a witness as required by this law. A witness who is a patient advocate or ombudsman may rely on the representations of the administrators or staff of the skilled nursing facility, or of family members, as convincing

evidence of the identity of the patient if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the patient. [Probate Code Section 4675]

F. Out-of-State and Military Advance Directives

OUT-OF-STATE ADVANCE DIRECTIVES

An advance directive or similar document executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction, or of California, is valid to the same extent as an advance directive validly executed in California [Probate Code Section 4676].

ADVANCE MEDICAL DIRECTIVES OF MILITARY AND DEPENDENTS

A military lawyer may assist specified active duty members of the armed forces, retired military, Public Health Service officers, reserve members, dependents, survivors of deceased members, and civilian federal employees to prepare an advance directive [10 U.S.C. Section 1044].

An advance medical directive executed by a person eligible for legal assistance from a military lawyer is exempt from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a state. These directives must be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the state concerned.

For purposes of this law, an advance medical directive is any written declaration that:

1. Sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the patient whenever the patient has a terminal physical condition or is in a persistent vegetative state; or
2. Authorizes another person to make health care decisions for the patient, under circumstances stated in the declaration, whenever the patient is incapable of making informed health care decisions.

An advance medical directive prepared by a military attorney must contain a statement that it is exempt from requirements of state law. However, the directive is valid even if the required statement is not included.

[10 U.S.C. Section 1044c]

G. Who May Be an Agent or Surrogate

The surrogate or the agent named in an advance directive may be any person designated by the patient, subject to the following limitations [Probate Code Section 4659]:

1. Except as provided in 2., below, the following persons may not make a health care decision for a patient as an agent or surrogate:
 - a. The patient's supervising health care provider.
 - b. An employee of the health care institution where the patient is receiving care.
 - c. An operator or employee of a community care facility or residential care facility where the patient is receiving care.
2. The prohibition in 1., above, does not apply to the following persons:
 - a. An employee, other than the supervising health care provider, who is related to the patient by blood, marriage, or adoption, or is a registered domestic partner of the patient.
 - b. An employee who is employed by the same health care institution, community care facility, or residential care facility for the elderly as the patient. This exception exists so that a patient employed by a health facility can name a colleague as the agent, if desired.
3. The patient's conservator appointed under the Lanterman-Petris-Short Act (which differs from a conservator appointed under the Probate Code; see A. "Caution: Type of Conservatorship," page 3.16) may not be designated as an agent or surrogate to make health care decisions, unless the advance directive is otherwise valid and the conservatee (patient) was represented by an attorney who signed a certificate stating in substance:

I am a lawyer authorized to practice law in the state where this advance health care directive was executed, and the principal or patient was my client at the time this advance directive was executed. I have advised my client concerning his or her rights in connection with this advance directive and the applicable law and the consequences of signing or not signing this advance directive, and my client, after being so advised, has executed this advance directive.

AGE OF AGENT OR SURROGATE

A surrogate must be an adult. The law does not say that the agent must be an adult. However, when the agent is called upon to exercise decision-making authority on behalf of the principal, the agent must be legally capable of doing so. It is not clear that even an emancipated minor would have the capacity to serve as an agent.

CAPACITY OF AGENT OR SURROGATE

The agent or surrogate must have the capacity to make a health care decision on behalf of the patient. The same standards used to determine a patient's capacity should be used to determine the capacity of an agent or surrogate. (See B. "'Capacity' Defined," page 3.1.)

STANDARDS FOR MAKING A DECISION

An agent or surrogate must make decisions in accordance with the standards discussed in "Responsibilities of the Agent," page 3.11.

H. Duration of an Advance Directive

Unless the document states otherwise, a power of attorney for health care (which may be a part of the advance directive form) is of unlimited duration [Probate Code Section 4686].

I. Revocation of an Advance Directive

The advance directive, to be valid, must not have been revoked.

A patient having capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke [Probate Code Section 4695(b)]. The most common way is to tear up the document.

However, the designation of an agent may be revoked only by a written, signed document or by personally informing the supervising health care provider [Probate Code Section 4695(a)]. If the patient informs a hospital employee who is not the supervising health care provider of his or her desire to revoke the designation of agent, the supervising health care provider should be contacted immediately. The supervising health care provider should then talk to the patient about his or her expressed desire to revoke the designation of agent, and document accordingly.

Execution of a new (more recent) valid power of attorney is sufficient to revoke the previous power of attorney.

An advance directive that conflicts with an earlier advance directive revokes the earlier advance directive to the extent of the conflict [Probate Code Section 4698].

An advance directive may also be revoked or modified by a court, as described in Q. “Court Review When Questions Arise,” page 3.14.

A health care provider, agent, conservator, or surrogate who is informed of a revocation of an advance health care directive must promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution where the patient is receiving care [Probate Code Section 4696].

EFFECT OF DIVORCE IF SPOUSE IS DESIGNATED AGENT

If after executing a power of attorney for health care, the patient’s marriage to the agent is dissolved or annulled, the patient’s designation of the former spouse as agent to make health care decisions for the patient is revoked. However, the agent’s authority is revived if the patient remarries the agent. [Probate Code Section 4697]

The law is silent regarding a similar situation between registered domestic partners.

J. Registration With Secretary of State

A person who has executed a written advance health care directive may register it with the California Secretary of State [Probate Code Sections 4800-4805; Title 2, California Code of Regulations, Sections 22610.1 to 22610.4]. The registration form may be found at www.sos.ca.gov/registries/advance-health-care-directive-registry. The Secretary of State may transmit the advance directive, upon request, to a health care provider, the public guardian, or the legal representative of the registrant.

SECRETARY OF STATE PROCESS

Information that may be collected by the Secretary of State is limited to:

1. Registrant’s name;
2. Social Security number;
3. Driver’s license number or other individual identifying number established by law;
4. Address, date and place of birth;
5. The advance health care directive;
6. An intended place of deposit or safekeeping of an advance directive; and

7. The name and telephone number of the agent and any alternative agent.

Each registrant receives a wallet card from the Secretary of State indicating that an advance directive (or information about an advance directive) is on file at the registry.

The Secretary of State is required to advise each registrant of the following:

1. A health care provider may not honor a written advance health care directive until it receives a copy from the registrant.
2. Each registrant must notify the registry upon revocation of the advance directive.
3. Each registrant must re-register upon execution of a subsequent advance directive.

Failure to register an advance directive with the Secretary of State does not affect its validity. Registration with the Secretary of State does not affect the ability of the registrant to revoke his or her advance directive or a later executed advance directive, nor does registration raise any presumption of validity or superiority among any competing advance directives or revocations.

K. Hospital Obligations When Receiving Unconscious Patients

A hospital that receives an unconscious patient in its emergency department is required to make reasonable efforts to contact the patient’s agent, surrogate, family member, or other legal representative. One step that an emergency department must take toward fulfilling this duty is to check the patient’s personal effects for a wallet card from the Secretary of State, indicating that the patient has filed an advance directive (or information about the advance directive).

If the hospital finds a wallet card, the hospital must contact the Secretary of State. (*See F. “Right to Have Family Member and Personal Physician Notified of Admission,” page 1.7, for further details about the requirement to contact an unconscious patient’s family.*)

The Secretary of State requires that this request for information be in writing and include:

1. The name, address and telephone number of the hospital;
2. Credible evidence establishing the identity of the requestor. In determining whether the identity of the requestor is established by credible evidence, the Secretary of State may consider the requestor’s use of business letterhead in making the request, a copy

of a driver's license or identification card issued by the California Department of Motor Vehicles, a copy of a United States passport or copies of other credible identification documents;

3. A statement by the requestor establishing his or her authority to receive the information requested;
4. The identity of the individual about whom the information is requested. In establishing the identity of the individual for whom the information is requested, the Secretary of State may consider the presentation by the requestor of any information contained in or on the filed registration form, including a file number (which will be on the patient's wallet card), date of birth, place of birth, Social Security number, driver's license number or other identifying number; and
5. A statement setting forth the reason the information is needed.

The hospital should fax this information to the Secretary of State's Special Filings and Trademarks unit at (916) 651-9805.

[Title 2, California Code of Regulations, Section 22610.4]

The Secretary of State must respond to a request for information from a hospital emergency department by the close of business on the next business day. Hopefully, the Secretary of State will respond sooner than this outside limit. The Secretary of State may release the information it has collected, except that the registrant's Social Security number may be released only when necessary to verify the identity of the registrant.

The Secretary of State charges a fee to each registrant, but may not charge a fee to a health care provider, the public guardian, or the legal representative of a registrant. The Secretary of State must establish procedures to verify the identities of health care providers, the public guardian, and other authorized persons requesting information. The Secretary of State may, at the request of the registrant or his or her legal representative, transmit the information noted above to the registry system of another jurisdiction.

Health care providers with questions about the registry may contact:

California Secretary of State
 Advance Health Care Directive Registry
 P.O. Box 942870
 Sacramento, CA 94277-2870
 (916) 651-9810
 Hours: Monday – Friday, 8:00 a.m. – 5:00 p.m.
 (excluding State holidays)
[www.sos.ca.gov/registries/
 advance-health-care-directive-registry](http://www.sos.ca.gov/registries/advance-health-care-directive-registry)

L. Effect of an Advance Directive

When the primary physician has determined the patient lacks capacity to make medical decisions, the agent has the authority and responsibilities detailed below. (See C. "Determination of Capacity," page 3.2, for more information.)

AUTHORITY OF AGENT

Unless a power of attorney for health care (which is usually a part of the advance directive form) states otherwise, the authority of an agent becomes effective only on a determination that the patient lacks capacity, and ceases to be effective on a determination that the patient has recovered capacity [Probate Code Section 4682].

Unless the power of attorney for health care states otherwise, an agent may make all health care decisions for the patient to the same extent the patient could make those decisions if he or she had the capacity to do so, subject to the restrictions discussed in "Restrictions on an Agent's or Surrogate's Authority to Consent," page 3.11. This includes decisions affecting the patient before and after death. [Probate Code Section 4683] Specifically, an agent may:

1. Select and discharge health care providers and institutions.
2. Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
3. Direct a provider to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.
4. Make a disposition under the Uniform Anatomical Gift Act [Health and Safety Code Section 7150 *et seq.*] (*see chapter 14*).
5. Authorize an autopsy under Health and Safety Code Section 7113 (*see chapter 14*).
6. Direct the disposition of remains under Health and Safety Code Section 7100 (*see chapter 14*).
7. Receive and review medical records and information, and authorize its release, to the extent necessary for the agent to fulfill his or her duties as agent. However, the right of the agent is subject to any limitations that exist on the right of the patient to obtain his or her own medical records.
8. Consent to HIV testing and information about test results, when necessary to render appropriate care or to practice preventative measures [Health and Safety Code Section 121020].

[Probate Code Sections 4617, 4678 and 4683]

In addition, an agent may be able to bind the patient to arbitration of medical malpractice claims (see X. “Arbitration,” page 11.15).

Before implementing a health care decision made for a patient, a supervising health care provider, if possible, must promptly communicate to the patient the decision made and the identity of the person making the decision [Probate Code Section 4730].

Consultation

If the patient becomes wholly or partially incapacitated, or if there is a question about the patient’s capacity, the agent may consult with a person previously designated by the patient for this purpose. The agent may also consult with and obtain information needed to carry out the agent’s duties from the patient’s spouse, physician, supervising health care provider, attorney, a member of the patient’s family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care.

A person described in the paragraph above from whom information is requested must disclose information that the agent requires to carry out his or her duties. Disclosure under this provision of law is not a waiver of any privilege that may apply to the information disclosed.

[Probate Code Section 4690]

Emergency Exception

The Health Care Decisions Law does not affect the laws about obtaining consent in an emergency [Probate Code Section 4651]. If a patient lacks the capacity to give consent and treatment is immediately needed to prevent the patient’s death or serious disability, or to alleviate severe pain, efforts may be made to contact a known agent if there is time to do so before treatment must be provided. Emergency treatment may be provided if the agent is unavailable or there is insufficient time to contact him or her. (See chapter 2 regarding the emergency treatment exception to the general rules governing consent.)

Restrictions on an Agent’s or Surrogate’s Authority to Consent

An agent or surrogate may not consent to the following on behalf of a patient:

1. Commitment to or placement in a mental health treatment facility (see chapter 15 for laws about voluntary and involuntary admission for mental health treatment).
2. Convulsive treatment (see XIV. “Convulsive Therapy and Insulin Coma Treatment,” page 5.37).
3. Psychosurgery (see XIII. “Psychosurgery,” page 5.35).
4. Sterilization (see V. “Sterilization,” page 5.10).
5. Abortion (see VII. “Abortions,” page 5.20).
6. Administration of aid-in-dying medication (see chapter 6).

[Probate Code Section 4652]

Priority of Agent

As of Jan. 1, 2002, California law regarding the priority of an agent became muddled. Existing law, Probate Code Section 4685, stated that unless a court or the power of attorney indicates otherwise, an agent who the health care provider knows is reasonably available and willing to make health care decisions has priority over all other persons, including conservators, to make health care decisions for the patient.

However, Probate Code Section 4711(d), effective Jan. 1, 2002, states that if a patient has designated an agent under a power of attorney for health care and designated a surrogate under Probate Code Section 4711(a) (see B. “Individual Health Care Instruction,” page 3.5), the surrogate has priority over the agent for the period provided in Probate Code Section 4711(b).

Rules of statutory construction suggest that because Probate Code Section 4711(d) was passed after Probate Code Section 4685, Section 4711(d) should be followed. Facilities should consult their legal counsel if this situation arises.

AGENT WITH DUAL ROLES

An advance directive does not affect any right that the person designated as an agent under a power of attorney may otherwise have to make or participate in making health care decisions on behalf of the patient. [Probate Code Section 4687] For example, an agent may also be named as a conservator.

RESPONSIBILITIES OF THE AGENT

An agent must make a health care decision in accordance with the patient’s individual health care instructions, if any, and other wishes to the extent known to the agent. If the patient’s wishes are not known, the agent must make the decision in accordance with the agent’s determination of the patient’s best interest. In determining the patient’s best interest, the agent must consider the patient’s personal values to the extent known to the agent. [Probate Code Section 4684]

If the advance directive requires it, the agent must notify any persons whose names are provided by the patient of the patient’s death.

DOUBT ABOUT AGENT ACTING IN PATIENT'S INTEREST

A hospital may wish to consult legal counsel or call adult protective services in cases where:

1. A patient has been (or is believed to have been) subjected to domestic violence, neglect, or abuse by the agent;
2. There is another reason to believe that the agent could endanger the patient (for example, the agent is bringing the patient illegal drugs while the patient is hospitalized);
3. The agent has a conflict of interest; or
4. The agent is not acting in the patient's best interests.

The fact that the agent disagrees with the physician's treatment recommendations does not mean that the agent is not acting in accordance with the patient's best interests and should be disqualified on that basis. Hospitals may wish to obtain a second opinion or an ethics consult in such cases, or to file a petition in the superior court to determine whether the agent is the appropriate decisionmaker (see Q. "Court Review When Questions Arise," page 3.14). [*Stewart v. Superior Court*, 16 Cal.App. 87 (2017)]

PATIENT OBJECTION TO AGENT'S DECISION

The Health Care Decisions Law does not authorize an agent to make a health care decision if the patient objects to the decision. If the patient objects, the matter must be governed by the law that would apply if there were no power of attorney for health care. The provider should assume that the patient has capacity to consent. [Probate Code Section 4689]

M. Recommended Procedure

Patients who indicate that they have executed an advance directive and persons indicating that they have been designated a patient's agent should be asked to give the hospital a copy of the advance directive.

The advance directive should be reviewed to assure it meets the requirements listed in E. "Prerequisites to a Valid Advance Directive," page 3.6. This review need be only a general good faith examination to determine whether the form appears to comply with the requirements.

In the absence of knowledge to the contrary, a physician or other health care provider may presume that a written advance directive or similar instrument, whether executed in another state or jurisdiction or in California, is valid

[Probate Code Section 4676]. A valid advance directive executed before July 1, 2000 (such as a Durable Power of Attorney for Health Care or Natural Death Act declaration) must also be considered valid after July 1, 2000.

Any limitations or special instructions in the advance directive should be noted and implemented. A copy of the advance directive should be placed in the patient's medical record.

If significant questions arise regarding the validity of an advance directive or an agent's directions, hospitals should consult their legal counsel and, when appropriate, file a petition to obtain judicial clarification.

N. Duties of Health Care Providers

A supervising health care provider who knows of the existence or revocation of an advance directive, or a designation or disqualification of a surrogate, must promptly record this information in the medical record. If an advance directive exists, the provider must ask for a copy and place it in the medical record. [Probate Code Section 4731(a)]

A supervising health care provider who knows of a revocation of a power of attorney for health care or a disqualification of a surrogate must make a reasonable effort to notify the agent or surrogate thereof [Probate Code Section 4731(b)].

Except as provided below, a health care provider or institution providing care to a patient must do the following:

1. Comply with an individual health care instruction of the patient and with a reasonable interpretation of that instruction made by a person authorized to make health care decisions for the patient.
2. Comply with a health care decision for the patient made by a person authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

[Probate Code Section 4733]

DECLINING TO COMPLY

A health care provider may decline to comply with an individual health care instruction or health care decision for reasons of conscience [Probate Code Section 4734(a)]. In addition, a health care institution may decline to comply with an individual health care instruction or health care decision if it is contrary to a policy of the institution based on reasons of conscience. The policy must be timely communicated to the patient or the person authorized to

make health care decisions for the patient [Probate Code Section 4734(b)].

A health care provider or institution also may decline to comply with an instruction or decision that requires medically ineffective health care or health care contrary to generally accepted health care standards [Probate Code Section 4735].

A provider or institution that declines to comply must do the following:

1. Promptly inform the patient, if possible, and any person authorized to make health care decisions for the patient.
2. Unless the patient or person authorized to make decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another provider or institution that is willing to comply with the instruction or decision.
3. Provide continuing care to the patient until a transfer can be accomplished or until it appears that transfer cannot be accomplished.

In all cases, appropriate pain relief and other palliative care must be continued.

[Probate Code Section 4736]

The Patient Self-Determination Act, discussed in chapter 1, requires that hospitals provide information to patients upon admission about any limitations they have on honoring specific requests based on conscience. The statement of limitation must clarify any difference between hospital-wide conscience objections and those that may be raised by individual physicians. (See *B. "Provide Information to Patients," page 1.2.*)

PROHIBITIONS

Health care providers, insurers, and other third party payers may not condition admission to a facility, the provision of treatment or insurance, or the scope of insurance coverage on the requirement that a patient execute, not execute, or revoke an advance directive [Probate Code Section 4677].

O. Special Considerations Regarding Withholding and Withdrawing Life-Sustaining Treatment

An agent may authorize the withholding or withdrawing of life-sustaining treatment. This authority is subject to the following limitations:

1. The agent must act in accordance with the patient's desires regarding the withholding or withdrawal of life-sustaining treatment. Thus, life-sustaining treatment

may not be withheld or withdrawn in the situations noted below (This provision should not be interpreted to require futile care to be provided, however.):

- a. Where the patient objects (see "*Patient Objection to Agent's Decision," page 3.12.*)
 - b. Where the patient expressed a desire to have life-sustaining treatment continued. Such desires may be expressed in the advance directive or in another written form or orally to the agent or health care provider. The law specifies that an attempted suicide must not be construed to indicate a desire of the patient that health care be restricted or inhibited. [Probate Code Section 4655(b)]
 - c. In cases of conflicting expressions of a patient's desires, the hospital should consult its legal counsel.
2. This law must not be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia. This law is not intended to permit any affirmative or deliberate act or omission to end life other than withholding or withdrawing health care pursuant to an advance health care directive or by a surrogate so as to permit the natural process of dying. [Probate Code Section 4653] The general principles discussed in chapter 6 remain applicable when an agent is involved. Also, the guidelines established by the Second Appellate District Court of Appeal in *Barber v. Superior Court*, 147 Cal.App.3d 1006 (1983), apply when an agent is involved (see chapter 6). An agent may not authorize the administration of aid-in-dying medication.
 3. The health care provider must make a good faith effort to determine the desire of the patient, to the extent the patient is able to communicate these desires. The results of this effort must be documented in the patient's medical record.
 4. A health care provider may decline to comply with a patient's individual health care instruction or with a decision made by an agent or surrogate for reasons of conscience (see "*Declining to Comply," page 3.12.*)
 5. This law does not authorize or require a health care provider or health care institution to provide health care contrary to generally accepted health care standards [Probate Code Section 4654].

Death resulting from withholding or withdrawing health care in accordance with the Health Care Decisions Law does not for any purpose constitute a suicide or homicide or legally impair or invalidate an insurance policy or an

annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary [Probate Code Section 4656]. (See chapter 6 for a complete discussion of withholding or withdrawing life-sustaining treatment.)

P. Special Considerations Regarding Use of Organs or Tissue Donated in Advance Directive

A hospital or other donee may not accept an anatomical gift unless the forms and procedures used by the hospital or other donee state that:

1. Tissue banks work with both nonprofit and for-profit tissue processors and distributors.
2. It is possible that donated skin may be used for cosmetic or reconstructive surgery purposes.
3. Donated tissue may be used for transplants outside of the United States.

The consent form must allow the donor or, if the donor is deceased, the donor's representative, to withhold consent for any of the following:

1. Donated skin to be used for cosmetic surgery purposes.
2. Donated tissue to be used for applications outside of the United States.
3. Donated tissue to be used by for-profit tissue processors.

Unfortunately, the legislator who authored this law did not consider that the advance directive forms signed by thousands and thousands of patients over the decade or two prior to the effective date of this law which purport to donate organs and/or tissue do not contain this required language. Thus, the law appears to be that hospitals and other donees may not legally accept an anatomical gift based solely upon an otherwise valid advance directive (unless it contains the language mentioned above), even if the donated skin will not be used for cosmetic surgery, outside of the United States, or by a for-profit tissue processor.

The legislator who authored this law did not intend this consequence. However, she did not pursue legislation to correct this error.

If a hospital wishes to accept an anatomical gift from a deceased patient who had executed an advance directive indicating the desire to make an anatomical gift, but not including the language described above, it is suggested that the hospital contact the agent named in the advance directive, or another legally authorized substitute decision

maker and have that person sign a valid anatomical gift consent form (see XI. "Anatomical Gifts," page 14.9). Hospitals that accept anatomical gifts should work with their legal counsel to develop an appropriate policy for these situations.

The penalty for a violation of this law is a civil penalty in an amount between \$1,000 and \$5,000, plus court costs. A separate penalty may be assessed against each individual or entity that violates this law. In addition, a violation of this law by a licensed health care provider constitutes unprofessional conduct and may result in professional discipline, including license revocation or suspension. [Health and Safety Code Section 7158.3]

Q. Court Review When Questions Arise

The Health Care Decisions Law explicitly states that in the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life-sustaining treatment [Probate Code Section 4650(c)]. The law also states that an advance directive is effective and exercisable free of judicial intervention. In addition, a health care decision made by an agent or surrogate for a patient is effective without judicial approval. [Probate Code Section 4750] However, if questions arise concerning an advance directive, judicial direction may be sought.

SITUATIONS IN WHICH COURT REVIEW MAY BE SOUGHT

A procedure has been established for a court to resolve questions that may arise about an advance directive. Court direction may be sought for the following purposes:

1. Determining whether or not the patient has capacity to make health care decisions.
2. Determining whether an advance health care directive is in effect or has terminated.
3. Determining whether the acts or proposed acts of an agent or surrogate are consistent with the patient's desires as expressed in an advance directive or otherwise made known to the court or, when the patient's desires are unknown or unclear, whether the acts or proposed acts of the agent or surrogate are in the patient's best interest.
4. Declaring that the authority of an agent or surrogate is terminated, if the court determines that the agent or surrogate made a health care decision for the patient that authorized anything illegal, or the court determines both of the following:

- a. The agent or surrogate has violated, has failed to perform, or is unfit to perform, the duty under an advance directive to act consistent with the patient's desires or, where the patient's desires are unknown or unclear, is acting (by action or inaction) in a manner that is clearly contrary to the patient's best interest.
 - b. At the time of the determination by the court, the patient lacks capacity to execute or to revoke an advance directive or disqualify a surrogate.
5. Compelling a third person to honor individual health care instructions or the authority of an agent or surrogate.

[Probate Code Section 4766]

PROCEDURE FOR INITIATING COURT REVIEW

Court proceedings are initiated by a petition to the superior court. The petition may be filed by the patient; the patient's spouse, unless legally separated; a relative of the patient; the patient's agent or surrogate; the conservator of the person of the patient; the court investigator or public guardian of the county where the patient resides; the supervising health care provider or health care institution involved with the patient's care; or any other interested person or friend of the patient [Probate Code Section 4765]. There is no right to a jury trial [Probate Code Section 4754].

In limited situations, the power of attorney for health care may restrict who may file the petition. This restriction requires the completion of a special process; therefore, CHA Form 3-1, "Advance Health Care Directive," does not address this issue. (*See Probate Code Section 4753.*)

R. Immunity From Liability

A health care provider or institution acting in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for any actions in compliance with the Health Care Decisions Law, including, but not limited to, the following:

1. Complying with a health care decision of a person that the provider or institution believes in good faith has the authority to make a decision for a patient, including a decision to withhold or withdraw health care.
2. Declining to comply with a health care decision of a person based on a belief that the person lacked authority.

3. Complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
4. Declining to comply with an individual health care instruction or health care decision as described in "Declining to Comply," page 3.12.

[Probate Code Section 4740]

In addition, an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith [Probate Code Section 4741].

S. Penalties

A health care provider or institution that intentionally violates the Health Care Decisions Law is subject to liability to the aggrieved individual for damages of \$2,500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees [Probate Code Section 4742(a)].

A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance directive or a revocation of an advance directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance directive, is subject to liability to that individual for damages of \$10,000 or actual damages, whichever is greater, plus reasonable attorney's fees [Probate Code Section 4742(b)].

A person who alters or forges an advance directive of another, or willfully conceals or withholds personal knowledge of a revocation of an advance directive, with the intent to cause a withholding or withdrawal of health care necessary to keep the patient alive contrary to the desires of the patient, and thereby directly causes such health care to be withheld or withdrawn and the death of the patient to be hastened, is subject to prosecution for unlawful homicide [Probate Code Section 4743].

The damages provided in this law are cumulative and not exclusive of any other remedies provided by law [Probate Code Section 4742(c)].

T. Psychiatric Advance Directives

A psychiatric advance directive is an instrument that mental health patients may use to document their preferences regarding future mental health treatment, in preparation for the possibility of losing capacity to give or withhold consent to treatment in the future. The mental health advocacy community advocates the use of such documents, particularly with respect to involuntary treatment, psychiatric medications, restraint and seclusion.

Neither California nor federal law recognizes a special document called a “psychiatric advance directive.” The California advance health care directive laws and statutory form were created with end-of-life issues in mind, not mental health matters. However, the law does not prohibit a person who executes an advance health care directive from including instructions regarding mental health treatment. Whether such wishes are required to be followed by a health care provider if the patient loses capacity depends upon several factors, including:

1. Whether the patient would have the legal ability to consent or withhold consent to the recommended treatment if he or she were competent. For example, a patient who is detained pursuant to Welfare and Institutions Code Section 5150 *et seq.* is, by law, unable to withhold consent to be evaluated for a mental disorder and may not leave the facility. Therefore, if such a patient has executed an advance directive denying consent to such care, a hospital need not comply with this instruction.
2. Whether the wishes stated in the advance directive are medically ineffective or contrary to generally accepted health standards. In such a case, the facility need not comply with the patient’s instructions (see “Declining to Comply,” page 3.12).

There are no statutes, regulations, or judicial decisions regarding “psychiatric” advance directives in California. However, California law does contain one reference to advance directives in the context of mental health care. Health and Safety Code Section 1180.4(a) requires psychiatric units of general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, and other specified facilities to conduct an assessment of each patient prior to a placement decision or upon admission, or as soon thereafter as possible. This assessment must include, based on the information available at the time, the patient’s advance directive regarding de-escalation or the use of seclusion or behavioral restraints. This law does not authorize “psychiatric advance directives,” nor does it require a provider to comply with a patient’s stated preferences. It merely requires the specified providers to assess a patient’s advance directive, if any.

A hospital should consult legal counsel if a situation arises regarding a psychiatric advance directive.

U. Request to Forgo Resuscitative Measures

California law permits a patient or the patient’s legal representative to execute a “Request Regarding Resuscitative Measures,” including a “Prehospital Do Not Resuscitate” form. These documents are not advance

directives, as a legal matter [Probate Code Section 4780(a)(1)]. Information about these documents is discussed in chapter 6.

IV. ADULTS UNDER CONSERVATORSHIP

An adult patient under a conservatorship may be able to make health care decisions. The determination of who may make health care decisions — the patient (the conservatee) and/or the conservator — will depend on whether or not the conservatee has been adjudicated to lack the capacity to make health care decisions. The letters of conservatorship should specify whether a patient has been adjudicated to lack the capacity to make health care decisions.

The hospital should obtain a copy of the certified letters of conservatorship, review them carefully and place them in the patient’s medical record. If the hospital has any questions about the documents, legal counsel should be consulted.

[Probate Code Sections 1880-1898 and 2353-2357]

A. Caution: Type of Conservatorship

A conservatorship under the Lanterman-Petris-Short Act (LPS) (which is found in the Welfare and Institutions Code) is different from a conservatorship under the Probate Code. If a patient is under a conservatorship, hospitals should review the conservatorship documents issued by the court to determine the type of conservatorship and the conservator’s scope of authority. A patient may be subject to both an LPS conservatorship and a Probate Code conservatorship; however, this is not common. Both types of conservatorship are described below.

LPS CONSERVATORSHIP

An LPS conservatorship is meant for psychiatric patients. The purpose of an LPS conservatorship is the provision of individualized psychiatric treatment, supervision, and placement for a patient who is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism. An LPS conservator may authorize the admission of the conservatee to a mental health facility. (A Probate Code conservator may not authorize placement in a mental health facility.)

An LPS conservator may consent to, or refuse, routine medical treatment (other than psychiatric treatment) of the conservatee *only* if the court order establishing the conservatorship specifically states that the conservator may consent to routine medical treatment unrelated to remedying or preventing the recurrence of the

APPENDIX C

Advance Directive Decision Makers Table

Decision Makers for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, abortion and experimental treatment)

Person who can consent to treatment	Definition
<i>The following hierarchy must be followed:</i>	
1. Adult patient with capacity	Able to understand the nature and consequences of the decision; adult is a person age 18 or older
2. Surrogate decision maker	Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days
3. Agent	Appointed in an Advance Health Care Directive or Power of Attorney for Health Care
4. Conservator	Appointed by a court
5. Court-appointed surrogate decision maker	Court appoints a surrogate to make health care decisions
6. Closest available relative	See "Closest Available Relative" table, below
7. Interdisciplinary team	See "Adults Lacking Capacity and Not Under a Conservatorship" in CHA's Consent Manual for important information

Emergency Exception When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.

Closest Available Relative

Health Care Decisions	Autopsy	Anatomical Gifts	Disposition of Remains
<p>No statutory hierarchy¹</p> <ul style="list-style-type: none"> Spouse/domestic partner Adult child Either parent Adult sibling Grandparent Adult aunt/uncle Adult niece/nephew 	<p>No statutory hierarchy</p> <ul style="list-style-type: none"> Spouse/domestic partner Adult child or parent Adult sibling Any other kin or person who has the right to control disposition of remains Public administrator Coroner or other official, such as the California Curator of the Unclaimed Dead 	<p>In the order listed</p> <ol style="list-style-type: none"> An agent who could have made an anatomical gift immediately before decedent's death Spouse/domestic partner Adult child Either parent Adult sibling Adult grandchildren Grandparent An adult who exhibited special care and concern for the decedent during the decedent's lifetime Guardian or conservator of the decedent at the time of death Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above 	<p>In the order listed</p> <ol style="list-style-type: none"> An agent named in an advance directive Spouse/domestic partner Adult child or majority of children Parent Adult sibling or majority of siblings Surviving adults in degree of kinship or a majority of the same degree Conservator of person Conservator of estate Public administrator, if the patient has assets
	Reference: Health and Safety Code Section 7113	Reference: Health and Safety Code Section 7150.40	Reference: Health and Safety Code Section 7100

¹For general medical decisions, case law (not a statute) authorizes decisions by the "closest available relative" and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient's values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor's recommendations is not a proper criterion for selection.

See chapter 3, "Who May Consent for Adults Lacking Capacity," of CHA's Consent Manual for additional information.
 See chapter 14, "Deaths, Autopsies and Anatomical Gifts" of CHA's Consent Manual for additional information regarding autopsies, anatomical gifts, and disposition of remains.
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