

Advance Health Care Directives

Frequently Asked Questions for Consumers

What is an Advance Health Care Directive?

An Advance Health Care Directive (AHCD) is a way to appoint someone to make your healthcare decisions when you can't and make your healthcare wishes known if you are unable to speak for yourself. You can use an AHCD to do one or both of the following:

- Appoint a Power of Attorney for Health Care (or "healthcare agent")
- Write down Instructions for Health Care (to indicate your wishes, especially related to end-of-life care)

Why should I complete an AHCD?

People of all ages may unexpectedly need medical treatment when they cannot speak for themselves, such as an accident or severe illness. In these situations, your AHCD lets your doctor and your loved ones know your wishes about the kind of treatment you want and don't want and/or the person you want to make decisions on your behalf. Without an AHCD, your doctors and your loved ones might have to guess what you want.

Is the AHCD different from a Durable Power of Attorney for Healthcare?

California legislation enacted in July 2000 replaced the Durable Power of Attorney for Health Care and the Natural Death Act Declaration with the Advance Health Care Directive. Durable Power of Attorney forms completed prior to July 1, 2000, are still considered valid; however, if you have such a form, it would be a good idea to update it.

Does this mean only one person can decide for me? What if I want others involved too?

Legally, when you can't speak for yourself, someone else must be empowered to make decisions for you. Often many family members are involved in decision making, but one person should have legal authority to speak for you. Occasionally, loved ones will disagree about the best course of action, so the person named as your official healthcare agent has the final say. You can also appoint a back-up or alternate agent if the first person you name is not available or can't serve for any reason. You may also indicate if there is someone whom you do NOT want to make your decisions for you.

I thought the doctors make all those life-and-death decisions – don't they?

Doctors tell you about your medical condition, the different treatment options that are available to you, and what may happen with each type of treatment. Though doctors provide guidance, you or your designated decision maker makes the decision to have a treatment, refuse a treatment, or stop a treatment.

What if something happens to me and no form has been completed?

If you suddenly become ill or injured but are still able to speak for yourself, you can tell your doctor if there is someone else you want to make decisions for you. This oral instruction is just as legal as a written one, though this decision maker is formally called a "surrogate" instead of a "healthcare agent."

The surrogate has all the authority of a healthcare agent for the time that you are ill, staying in a healthcare facility, or 60 days, whichever is shorter.

If you are not able to speak for yourself, the doctor and healthcare team will choose a decision maker from among your family members or friends. Unlike many other states, California does not dictate the order in which these people must be chosen. Your healthcare providers must try to select the person who knows you best, has a close, caring relationship with you, is aware of your values and beliefs, and is willing and able to make the needed decisions.

This can be hard for healthcare providers to do, especially in a situation that needs important decisions to be made quickly. It's best to make and document your choice for decision maker in an AHCD well ahead of the crisis.

Why is it important to talk about my values and beliefs? Aren't we talking about medical treatment here?

The particular medical treatments that you might need or the decisions that might need to be made are impossible to predict. If your decision maker and your other family members and close friends know what is important to you regarding quality of life, how you want to be cared for during serious illness, and where you would want to spend your last days, they can make decisions based on your values and beliefs.

What if I don't want to appoint a healthcare agent? Or don't have one to appoint?

You do not have to appoint a healthcare agent. You can still complete the Instructions for Health Care, and this will provide your doctors with some basic information to guide your care.

What kinds of things can I write in my Instructions for Health Care?

You can, if you wish, write your preferences about accepting or refusing life-sustaining treatment (like CPR, feeding tubes, breathing machines), receiving pain medication, and making organ donations. You can indicate your main doctor for providing your care, and nominate a person who should be appointed as your conservator if you might need one. You can also express other wishes and values.

If you have a chronic or serious illness, you may also want to talk with your doctor about specific treatments that you could face and ask them to help you document your decisions on a POLST form.

Do my doctors have to follow the instructions in my AHCD?

Unfortunately, there is nothing in the law that says a doctor **MUST** follow your instructions in your AHCD. However, doctors generally want to know what their patients would want, and if they have an AHCD with clear instructions, they are very likely to follow them. If your AHCD also appoints a healthcare agent who can, in person, state your preferences and make decisions according to your values, there's a very high likelihood your choices will be honored. Without any statement of your wishes, or a healthcare agent to speak for you, the chances are very slim that you'll get the care you want and not get the care you don't want.

What is a POLST form?

POLST stands for Physician Orders for Life-Sustaining Treatment. Adopted in California in 2009, it is a voluntary form, which must be signed by you (or your healthcare agent) and your physician, nurse practitioner, or physician assistant. It indicates the types of life-sustaining treatment you do or do not want if you are seriously ill, specifically your preferences for CPR and feeding tubes, and lets you choose your overall goals for care – to maximize comfort, extend life by any medical means, or

something in between.

POLST doesn't replace your AHCD, but when you are seriously ill, it converts key choices into medical orders. Unlike the instructions in your AHCD, the choices on your POLST are orders that, according to the law, must be followed in all healthcare settings.

If I appoint a Healthcare Agent, what can that person do?

Your healthcare agent can make all decisions for you, just like you would if you could. Your healthcare agent can choose your doctor and where you will receive your care, speak with your healthcare team, review your medical record and authorize its release, accept or refuse medical treatments, and make arrangements for your funeral or what you want done with your body. You should instruct your healthcare agent on these matters, so they know how to decide for you. The more you tell your healthcare agent, the better they will be able to make those decisions on your behalf.

When does my Healthcare Agent make decisions for me?

Usually, the healthcare agent makes decisions only if you are unable to make them yourself – such as when you can't understand things or communicate clearly enough to make medical decisions. A doctor may have to formally judge whether you are able to make the decisions needed.

However, if you want, your healthcare agent can speak on your behalf at any time, even when you are still capable of making your own decisions. You just have to specifically state that in your AHCD.

You can also appoint a temporary agent or "surrogate decision maker" – for example, if you suddenly become ill, you can tell your doctor if there is someone else you want to make decisions for you. This oral instruction is just as legal as a written one.

Are there other oral instructions that don't involve a written form?

Yes. You can state your treatment and care preferences to any person at any time. All healthcare providers must document your wishes in your medical record. But there may be times when you aren't able to speak up for yourself, so written instructions are very helpful.

Can I make up my own form or use one from another state?

Yes. Any type of form is legal in California as long as it has at least three things:

1. Your signature and date,
2. The signature of two qualified witnesses with their witness statements (see below) or a notary signature, and
3. If you reside in a skilled nursing facility, the signature of the patient advocate or ombudsman.

What is a Witness Statement?

Witnesses must sign a statement on the AHCD indicating that they (a) know who you are or have been shown proof of your identity, (b) are 18 years old or more, (c) are not your healthcare provider or working for your provider, (d) are not your healthcare agent, and (e) are not employed in the place where you live.

One of the two witnesses must sign a statement indicating that they are not related to you by blood, marriage, or adoption and will not receive any property or money from you after your death.

Do I need an attorney to help with this?

No. Completing an AHCD isn't difficult, and an attorney is not necessary. See below for where to find the forms. The most important part of this is talking to your loved ones about your choices and what is most important to you. Without that conversation, the best form in the world may not be helpful!

What should I do with the form after I complete it?

Make copies for all those who are close to you. Take one to your doctor to discuss and ask that it be included in your medical record. Photocopied forms are just as valid as the original. Be sure to keep a copy for yourself in a visible, easy-to-find location – not locked in a file cabinet or safe deposit box!

What if I change my mind?

You can revoke your form or your oral instructions at any time. Also, it's a good idea to review and update your AHCD every few years, especially if there's a change in your family, your choice for healthcare agent, or your health.

Can doctors or hospitals require a patient to have an AHCD?

No, they cannot require you to complete one. But doctors and hospitals should have information available to you and your family about the form and your right to make healthcare decisions.

Resources

- The CCCC offers a selection of AHCD forms at **Coalitionccc.org**. Click on Resources/Advance Care Planning Resources.
- Forms are often available at no charge from your local hospital – call the Social Services or Patient Education department or ask your doctor.
- The California Medical Association has an Advance Healthcare Directive Kit available in English or Spanish that includes a form, wallet card, and answers to commonly asked questions about advance directives. To order single copies, visit <https://www.cmadocs.org/store>.
- Caring Connections has state-specific forms that can be downloaded at <https://www.caringinfo.org/planning/advance-directives/by-state/>.
- Prepare for Your Care has easy-to-read forms for each state in multiple languages that can be downloaded at <https://prepareforyourcare.org/en/advance-directive>.
- ***Finding Your Way: Medical Decisions When They Count Most***. This 14-page, easy-to-read booklet helps those who are starting the advance care planning process. Also available in Spanish.