



California Senior Legal Hotline

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SENIOR LEGAL FACT SHEET

Your health care: Who will decide if you can't?

New choices, new forms under California's new Health Care Decisions Law

Making health care decisions is a basic right of every patient. Your doctor's job is to explain what choices you have for your condition and to make recommendations based on her or his knowledge and experience. But the final decision on whether to undergo a certain treatment or procedure is yours. Your feelings, values and wishes are your own.

But what if you are so ill or injured that you can't understand your choices or make a decision? This can happen to any of us, at any age. We've all read the headlines about some of the hardest cases, where bitterly divided friends and family fought for years in the court about what to do with someone who was unconscious. Less dramatic but still sad situations occur frequently when people avoid thinking about unpleasant subjects.

In most states, laws have been written to help people express their wishes in advance regarding what kind of treatment they would want under certain conditions and who they would want to make decisions for them if they cannot. Taking advantage of these laws is an excellent way to make sure you are treated as you would want and to help your loved ones know they are following your wishes. But a hospital or doctor cannot refuse to treat you if you don't have an advance directive.

Even if you don't make written instructions, doctors and other health care providers are supposed to take into account your values and wishes, if known, and to consult with anyone who has a close, caring relationship with you – not necessarily a blood relative. Whether or not you prepare a written statement, it is an excellent idea to discuss these issues with your doctor and with the people closest to you. But putting it in writing can make it more likely that your wishes will be remembered and followed.

California's Health Care Decisions Law took effect on July 1, 2000. It replaces previous laws regarding "declarations" or "directives" to physicians – statements on what forms of treatment a person wants or does not want -- and what was commonly known as the "Durable Power of

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Attorney for Health Care” – appointment of another person to make decisions if you can’t. The new law combines these elements into a single, more logical framework, adds some new choices and allows for more open-ended expression of one’s wishes. It makes clear that a patient can also make some directives orally under certain conditions; and it emphasizes that doctors and other health care workers are supposed to pay attention and follow the instructions that a patient has made.

The new law is very flexible as to the wording of an “advance health care directive.” This means that old forms you may have completed are still valid, as long as they don’t have an expiration date and as long as they were properly signed and witnessed. The new law contains suggested wording for a form, but almost any other form that deals with the subject -- including one you write out yourself -- is acceptable, again, as long as it is properly signed and witnessed. A number of different groups have produced their own versions: some are shortened and simplified to include only what might be considered the “essentials”; others come from the health care industry.

The Senior Legal Hotline has developed its own form, carefully worded to include all the options in the new law but in language that is more easily understandable to the average person. We also took care to make it consumer-friendly, oriented toward protecting patients’ basic rights to make their own decisions. Using the form, you can do some or all of the following:

- Name someone to make health care decisions for you if you can’t, name alternates in case that person is unavailable and choose what kinds of decisions they may or may not make.
- Name people who you would not want making decisions for you under any circumstances.
- Express your values and wishes regarding how you would want to be treated under various circumstances, particularly in end-of-life situations.
- Express your wishes regarding organ donation.
- Record the name of your current primary physician and the names of other important people in your life who might be consulted regarding your ability to make decisions.
- Nominate a conservator if it becomes necessary for a court to appoint someone to manage all your affairs.

Eligible seniors who want a copy of the Senior Legal Hotline form can call or e-mail (see instructions below); we do ask that you speak with an advocate first.

(Other agencies that might want to distribute the form themselves can also contact the hotline.)

If you are over 60 in California, you can get free advice by phone from the Senior Legal Hotline regarding your questions about advance health care directives and the new forms. You can also ask about any other legal issue. Call (916) 551-2140 in Sacramento or (800) 222-1753 toll-free in California, Mon.-Fri. 9 to 12 and 1 to 4, and until 7 p.m. on Thursdays. Or submit your question by e-mail from our web site, www.seniorlegalhotline.org. The Senior Legal Hotline is a project of Legal Services of Northern California, a nonprofit public service agency, supported by the U.S. Administration on Aging, Area 4 Agency on Aging, grants and voluntary donations.