

Los Angeles Health Care Guide

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What happens if you become incapacitated and need medical care?

- In California, if you become incapacitated so that you cannot make health care decisions, there are a few avenues for decision-making depending on the nature of the emergency or non-emergency service.
- If you have an emergency and no designated health care decision-maker, you can still get emergency services what save your life. The default is to take all actions that save your life. Example, the ambulance services provide the service and get you to a hospital.

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What If You Do Not Have Any Health Care Decision Documents

What if the person does not have an Advance Health Care Directive? If a person lacks the capacity to make decisions, the physician and health care team will usually turn to the most appropriate decision-maker from close family or friends of the person. The most appropriate decision-maker is that person who has a close, caring relationship with the person, is aware of the person's values and beliefs, and is willing and able to make the needed decisions. While most hospitals ask for the next-of-kin, **this person may or may not be the person's next-of-kin**. Make the decision yourself and create an Advance Health Care Directive.

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Health Care Documents

- Power of Attorney for Health Care: The statutory Advance Health Care Directive below includes a Health Care Power of Attorney for the purpose of selecting an agent.
 - *Consider making it immediate and durable so it remains in effect after you are incapacitated. An attorney. Can draft a more detailed document for you and create a Declaration to Physician.
- Advance Health Care Directive: https://www.americanbar.org/content/dam/aba/administrative/law_aging/state-health-care-power-of-attorney-statutes.authcheckdam.pdf
- POLST (addition to above): https://capolst.org/wp-content/uploads/2020/10/POLST_2017_wCover.pdf

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Is my Advance Health Care Directive Revocable?

- Yes, so long as you are competent, you can revoke or change your Advance Health Care Directive.

Probate Section 4695. (a) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider. (b) 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.

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What happens to your Advance Health Care Directive if you get divorced?

- California law automatically revokes your Advance Health Care Directive which you signed before you got divorced. (that's so she/he can't kills you!)
- Probate Section 4697. (a) If after executing a power of attorney for health care the principal's marriage to the agent is dissolved or annulled, the principal's designation of the former spouse as an agent to make health care decisions for the principal is revoked. (b) If the agent's authority is revoked solely by subdivision (a), it is revived by the principal's remarriage to the agent.

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Can a medical provider refuse to accept the Advance Health Care Directive?

- Yes, in California a health care provider can refuse to accept it if your judgment is poor or if the decision of the agent is against accepted standards of care.
- Probate Code Section 4735. A health care provider or health care institution may decline to comply with an individual health care instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

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What can't be done with an Advance Health Care Directive

- Your agent can't do the following per Probate Code 4652:
 - (a) Commitment to or placement in a mental health treatment facility against the patient's wishes.
 - (b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).
 - (c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).
 - (d) Sterilization.
 - (e) Abortion.

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No Assisted Suicide

- Section 4653. Nothing in this division shall be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia. This division 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, by a surrogate, or as otherwise provided, so as to permit the natural process of dying.

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A Copy is Sufficient

- A copy of the Advance Health Care Directive can be used as an original and has the same effect:
- Probate Code Section 4660. A copy of a written advance health care directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

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Health Care Power of Attorney or Advance Health Care Directive?

- A Durable Power of Attorney for Health Care (DPAHC) can be broader than the Advance Health Care Directive.
- A DPAHC can include powers such as health care decisions and other personal care authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

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You can nominate a conservator of person or estate in a DPA HC

- Section 4672. (a) A written advance health care directive may include the individual's 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. (b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the most recent writing executed in accordance with Section 1810, whether or not the writing is a written advance health care directive.

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Documents indicating your choices and wishes

- Advance Health Care Directive OR
- Durable Power of Attorney for Health Care.
- Declaration to Physician
- Add a POLST to and Advance Health Care Directive or Durable Power of attorney. (does not replace those). A POLST does not create a decision-maker. It is an order to a physician or nurse practitioner.

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Decisions to Think About

- 1. Who will make medical decisions for you, if you can't do it yourself.**
- 2. Do you want to opt out of the default California rule of all life support given?**
- 3. Who do you prefer as your conservator of your person, if one becomes necessary for you?**
- 4. Are there alternate health care decision makers?**
- 5. What about anatomical gifts?**

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How long does it take to make a document indicating your wishes?

- It only takes 15 minutes to complete the document.
- You need to give it to your agent.
- You can either get two witnesses OR a notary to see you sign it.
- You can change it anytime you want, so long as you are competent.

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What if there is not enough money to pay my long term care health care?

If you are single and have \$2000 to your name and certain other exempt assets, you may be able to qualify for long term care Medi-Cal. If you are married, the cash amount is \$3000. There are some ways to increase the cash sum going to a well-spouse and more sophisticated ways to qualify people for Medi-Cal.

There are a list of exempt assets here that do not count:

http://www.canhr.org/factsheets/medi-cal_fs/html/fs_medcal_overview.htm

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What happens if you leave more than one health care decision document?

- If the decedent left more than one health care decision, generally, there is a presumption that the last one governs, unless:
- You one can there was fraud, duress, mistake, undue influence, or lack of capacity at the time of execution of the will.
- In that case, there will be a conservatorship and the Court can decide who the best suitable person is to make personal or health care decisions for you.

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Why health care decision makers can sometimes be gold-diggers in disguise?

- A gold-digger decision-maker can medicate you and get you to sign things you would normally not sign.
- We see lots of people who claim they just want to help with healthcare and later turn out to be gold-diggers.
- Your best friend can become your best enemy if you don't choose properly.
- Preventing undue influence can be effectuated by:
 - Naming a Professional Fiduciary as Successor Trustee
 - Setting up an automatic changes to a professional, once you or your spouse reach a particular age
 - Creating an Exclusive Method of Changes to Health Care decisions to have another professional look out for your best interest.

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About Mina Sirkin, Los Angeles Probate Lawyer

- Mina N. Sirkin has been practicing probate law, trusts and conservatorship in Los Angeles County since 1992.
- Ms. Sirkin is a Board Certified Specialist in Probate, Estate Planning, and Trust Law in California.
- Frequent Media Expert on Estate and Conservatorship Cases in Los Angeles
- Appeared on CNN, CNBC, Inside Edition, RollingStone.com, KCET, NPR News

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