

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Durable Power of Attorney for Health Care/Advance Directives

Planning to Manage Health Decisions in the Event of Incapacity

Incapacity means the inability to make sound decisions regarding one's financial affairs and personal care. It can befall anyone who enters a coma or suffers from a mentally debilitating illness, but it largely affects seniors coping with dementia. When not planned for in advance, incapacity can create severe consequences for seniors and their loved ones. For example, if a person who has lost capacity never appointed anyone to make health decisions on his or her behalf, then the person's medical wishes may not be known to doctors and family members. The best way to deal with incapacity is to plan for it while one is still of sound mind.

The first step in planning for incapacity is to think about the issues that may arise. How do I want my assets managed? Would I ever want to be put on life-sustaining medical equipment? Who do I trust to make decisions for me?

What Are My Options?

If the person is no longer mentally competent, however, and did not plan for incapacity earlier in life, these devices are no longer available. At this point, a caregiver may need to petition for a Conservatorship in order to be able to handle that individual's financial affairs and personal care. If a person is still mentally competent, he or she can create an Advance Health Care Directive (AHCD). An AHCD enables a competent person to indicate what type of medical treatment he or she prefers and who should speak on his or her behalf.

An AHCD allows you to appoint a healthcare agent to make healthcare decisions for you (the principal). Your agent only makes decisions for you if you have lost capacity, unless you state otherwise in the document.

You can give an agent limited or broad powers in an AHCD, from the right to access medical records to the power to make anatomical gifts. You may also specify healthcare instructions you want to be followed. To execute an AHCD, you must sign forms that can be found at hospitals and senior legal service or senior information and referral programs. You can order the California Medical Association Advance Health Care Directive Kit or download an advance directive from the California Compassionate Care Coalition web site at <http://coalitionccc.org/advance-health-planning.php>. An attorney need not be present to execute an AHCD, but most states (including California) require adult witnesses and/or a notary public.

- **Note:** If you executed a Durable Power of Attorney for Health Care (DPAHC) before 1992, it has expired. If you have executed a DPAHC before 2000, when the California Health Care Decisions Law consolidated previous directives into the AHCD, you should check to see that the forms have not expired and still reflect your wishes.

Living Trusts and Other Management Devices

Even if you get a living trust, you should still get a **DPA for finances** (see *Durable Power of Attorney for Property* fact sheet at www.canhr.org) and an AHCD, since a trustee does not have the power to make some

financial decisions, or any medical decisions, on your behalf. You can also obtain a “pour-over” will, which arranges for any assets that were not transferred into the trust during your life to be “poured over” into the trust upon your death.

For more information on planning for incapacity, contact CANHR’s **Lawyer Referral Service (LRS)**. The LRS can answer questions and make referrals to qualified attorneys for legal advice.