

Advance Health Care Directives



**EMERGENCY MEDICAL
SERVICES AGENCY**
LOS ANGELES COUNTY

OBJECTIVES

At the completion of this lecture the participant will be able to:

1. Define an Advance Health Care Directive (AHCD)
2. Identify the five key elements in an AHCD
3. Introduce the main provisions of the Health Care Decisions Law.
4. Identify two reasons for not honoring an AHCD
5. Discuss two common problems with Advance Health Care Directives

Topics Covered

- The AHCD and its key elements
- Role and authority of the agent or “attorney-in-fact”
- Role of EMS personnel
- Refusal of patient or agent requests

The Advance Health Care Directive

- The Advance Health Care Directive is a document that allows a person to do either or both of the following:
 - Appoint a power of attorney for health care **(a health care agent)**.
 - State instructions for future health care decisions.

Types of Health Care Instructions

- Quality of life considerations
- Preferences for particular types of treatment
- Management of the dying process, place of death
- Preference for primary physician
- Nomination of conservator
- Instructions for organ donation
- Limitations on authority of agent

Minimal Requirements for a Valid AHCD

- Must be completed by a person > 18 years old.
- The directive must have the person's signature and the date it was executed.

Minimal Requirements for a Valid AHCD

- The signature must be witnessed by two qualified individuals:
 - Witnesses may not be the appointed agent, the principal's health care provider or an employee of the health care provider, or an owner, operator or employee of a nursing or residential care facility.
 - At least one witness may not be related to the principal or entitled to any part of the estate.
- Or, the AHCD may be notarized.

Minimal Requirements for a Valid AHCD

Additional Requirement For a Nursing Home Patient:

- One of the two witnesses must be a patient advocate or ombudsman.
- Ombudsman - an advocate, especially in nursing homes or hospitals. Ombudsman verifies complaints and advocates patient rights.

Minimal Requirements for a Valid AHCD

1. The AHCD is **assumed valid** unless there is substantial evidence to the contrary.
2. The document becomes effective **only** if the person becomes incapable of making health care decisions for any reason.
3. Copies of an AHCD have the **same authority** as the original.
4. A person **cannot be required** to complete an AHCD as a precondition for admission to a hospital, nursing facility, or for provision of health care.

Key Elements of an AHCD

1. Appointment of Health Care Agent
 - Agent = “Attorney-in-Fact”
 - Usually found on the first page of the AHCD
 - Look for the agent’s name ask for identification
 - Proof of identification is not required, but prudent
2. Authority of Agent
 - Accept or refuse medical treatments
 - Arrange for disposition of remains after death

Key Elements of an AHCD

3. Health Care Instructions

- The section where patients state their medical care preferences
- This section usually has two choices:
 - Withhold life prolonging treatments or
 - Prolong life within the limits of accepted health care standards
- Patients have the option of listing additional wishes

Key Elements of an AHCD

4. Signature of Patient

- The AHCD must be signed and dated

5. Signatures of Witnesses

- Witnessed by two qualified individuals or
- Notarized

What about previous or out-of-state health care directives?

- If a completed advance directive was previously valid, it remains so unless rescinded by the person. Completing a new AHCD automatically revokes all previous directives.
- Most states recognize out-of-state advance directives.
- Even if AHCD fails to meet CA State law, health providers still should use the directive as evidence of the patient's wishes.

What is an “Agent”?

- A surrogate decision-maker designated by a written advance directive.
- The agent has the same authority to make decisions and be involved in decisions as the patient would be, if the patient retained decision-making capacity.

Role of the Agent

- All agents are to make decisions consistent with the instructions or wishes of the patient to the extent they are known.
- The agent appointed in the AHCD takes precedence over all others, even family.

Authority of the Agent

- Select or discharge health care providers and institutions.
- Accept or refuse medical treatments including artificial nutrition, hydration, and resuscitation.
- Receive information on the patient's condition, view the medical record, and authorize release of the medical record when needed.
- Consent to tissue and organ donation, authorize an autopsy, and arrange for disposition of the remains after death.

Authority of the Agent

- The authority of the agent does not die with the person.
 - The agent is responsible for decisions about organ donation, autopsy, and disposition of the body. Unless the person has made previous arrangements.
 - If the person has made previous written arrangements for any of these matters, those directions prevail.

Protections for Agents and Health Care Providers

- A person acting as an agent is not subject to civil or criminal liability or discipline for decisions made in good faith.
- Health care providers are immune from civil or criminal liability or disciplinary action for acting in good faith in following an advance directive and/or the instructions of an agent.

Common Problems with AHCDs

- Wishes or concerns were not discussed with family or significant others.
- The document is not easily accessible to EMS personnel.

Refusal of Patient's AHCD or Agent Requests

- The provider or institution may decline to comply with an individual health care instruction or decision...
 - for reasons of conscience.
 - if the decision requires medically ineffective health care or health care contrary to generally accepted standards.
- “The form is too long or too complicated”
 - is **NOT** a valid reason for not honoring an AHCD

If Refusing Patient's AHCD or Agent's Request

- A health care provider or institution refusal to honor the AHCD is not absolute.
- A provider or institution that declines to follow a request must:
 1. Promptly inform the patient or agent.
 2. Assist with all reasonable efforts to immediately transfer the patient to a provider or institution willing to comply with the request.
 3. Provide continuing care until transfer.

Duty of the Health Care Provider

- Comply with the instructions of the patient or agent (with limited exceptions).
- Respect the patient's right of self-determination, including the refusal of medical care.

IT IS THE LAW

Duty of the Health Care Provider

- As health care professionals, it is our responsibility to honor our patient's wishes.
- Patients took the time and effort to complete these AHCDs, the least we can do is take the time and read them.

Resources

- **Los Angeles County Reference # 818**
- **Text of law:**
 - AB891, Probate Code 4600-4805
www.leginfo.ca.gov
- **Analysis of law:**
 - CHA Consent Manual 2000
 - CMA ON-Call, www.cmanet.org or
 - fax service (800) 592-4CMA

Resources

General Information on making end-of-life medical decisions:

- *Finding Your Way*, 13-page guide for consumers.
Order form on www.finalchoices.calhealth.org
- **California Coalition for Compassionate Care**
 - www.finalchoices.calhealth.org or
 - (916) 552-7573

Resources

Advance Health Care Directive Forms:

- o CHA Consent Manual 2000
- o CMA AHCD Toolkit
- o (800) 882-1CMA