



Legal Aid Society of Hawai`i

Advance Health Care Directives

This brochure provides general information on Advance Health Care Directives, formerly known as Living Wills.

An Advance Health Care Directive is a new document that became effective on July 1, 1999. **This new document replaces two documents called a Living Will and a Durable Power of Attorney for Health Care.**

IMPORTANT NOTE:

If you are planning on leaving Hawai'i, you should talk to your new doctor in the state you move to and make sure that the Advance Health Care Directives follows the laws of the state. You may have to make a new Advance Health Care Directive if it does not meet state requirements.

If you have more questions or would like to create an Advance Health Care Directive, call the Legal Aid Society of Hawai'i for more assistance.



This brochure was created through the AmeriCorps Access to Justice Project.

What is an Advance Health Care Directive (AHCD)?

Effective July 1, 1999, a document called an Advance Health Care Directive (AHCD) replaces both Living Wills and Durable Powers of Attorney for Health Care.

There are significant benefits to having an AHCD, but you are not required to have one --

IT IS COMPLETELY UP TO YOU.

An AHCD is a document you can create to make sure your medical health care wishes carried through.

Hospital staff are required by federal law to ask if you have an AHCD if you are admitted to a hospital.

What does an AHCD do?

The AHCD is a document that does two important things:

- (1) allows you to give instructions about your future medical care. It tells your health care provider what kind of medical treatment you want if you become incapacitated (unable to choose or express your wishes yourself).

AND

- (2) allows you to designate a person to make your health care decisions for you when you become incapacitated. This was previously done in a Durable Power of Attorney (DPOA) for Health Care.

The most common use of an AHCD is to express your wish that you not be kept alive with life-sustaining procedures, for example, with a respirator, kidney dialysis, transplants, or tube feeding. However, it can also instruct your doctor to do everything possible to keep you alive.

Selecting An “Agent” To Make Health Care Decisions For You

Within the AHCD, you have the option to designate a person who will have the power to make decisions if you become incapacitated.

Your “agent” will be able to make decisions including: changing your doctor, moving you to another hospital or facility, refusing life sustaining procedures. You do not have to choose an “agent.” However, if you do not choose an agent, the Surrogate Law will take effect if you become incapacitated.

[See page 5 for information about “The Surrogate Law”.]

Unless you limit their authority, your agent will have the power to make all health-care decisions for you.

What’s the difference between an agent and a surrogate?

Unless you limit your agent’s power in the AHCD, your designated agent will have the power to make all health care decisions for you, including refusing life sustaining procedures.

If you do not have an agent, and a surrogate is chosen by someone other than yourself, the surrogate will be able to make most health care decisions on your behalf, but will not have the power to make decisions about life sustaining procedures. Only the doctors will be able to decide when to stop life sustaining procedures.

When Does an AHCD Come Into Effect?

Unless otherwise specified, your AHCD becomes effective only if you lose the ability to express your wishes to your doctor. However, when you make your AHCD, you can specifically create it so that the document is effective immediately upon signing. **If you do not specify that the document is effective upon signing, your primary doctor will decide if your condition is severe enough to cause your AHCD to come into effect.**

If you are in an accident and taken to an emergency room, the hospital will do everything it can to save you. If your condition stabilizes and you do not recover, your doctor will evaluate your medical condition and decide if your AHCD should kick in.

You should talk to your doctor and, your family about your AHCD now, so they know what your wishes are in advance and will be better able to carry them through.

What Do I Do With My AHCD?

1. Give a copy to:

- your primary doctor to be placed in your medical records. If you change your primary doctor, make sure to give your new doctor a copy.

AND

- the family member who is most likely to be called if you are in the hospital.

2. **Keep the original** and put it in a place where a friend or relative can find it if you become seriously ill.

Is My Living Will Still Valid?

As a general rule, you should have an AHCD created if your Living Will is over 5 years old since laws have changed so much in recent years. Although your Living Will may be legally valid, hospital staff may get confused if they are not familiar with the old format.

Here is a easy way to figure out whether or not your Living Will is valid:

☐ **If you have a Living Will that was signed before 1992,** your Living Will is valid even if it does NOT include a checklist for tube feeding. However, it is a good idea to make an AHCD because of changes in the law. **An old Living Will may seriously restrict your wishes and rights if it doesn't contain certain language.**

☐ **If you have a Living Will that was signed after 1992,** your Living Will is valid, but may not give you all the options that the new law allows. For example, if it does not include a checklist for tube feeding, you will automatically be given tube feeding. **An old Living Will may seriously restrict your wishes and rights if it doesn't contain certain language.**

- **If you have an out-of-state Living Will or AHCD,** you should ask your doctor if they'll recognize it. You may want to do a new advanced health care directive, in case your current one doesn't conform to the new Hawai'i law.

What Happens If My Doctor Doesn't Want to Carry Out My Wishes?
Hawai'i law requires your doctor to honor your wishes OR your doctor must transfer your care to another doctor. However, some doctors are not comfortable unless they do all they can to keep their patient alive. This is why it's very important to talk to your doctor about your wishes so you can change doctors if your doctor does not agree.

How Do I Revoke an AHCD?

You can revoke an AHCD by:

- written revocation signed by you expressing your intent to revoke your AHCD;
- tearing, burning, otherwise destroying the document, or having someone else destroy it in your presence;
AND/OR
- telling the supervising health care provider.

What's the Difference Between a Power of Attorney and a Durable Power of Attorney?

A Power of Attorney is a notarized legal document (not a court order) in which you can give another person the power to act on your behalf. (Example: custody and care of your children, handle your finances, and make health care decisions for you).

A regular Power of Attorney becomes invalid when you become incapacitated.

A Durable Power of Attorney, however, remains effective even if you become incapacitated. There are two types of Durable Powers of Attorney: DPOA for Health Care and DPOA for Financial Decisions.

Do I Need to Make A Durable Power of Attorney Too?

It depends. There are two types of Durable Power of Attorney.

DURABLE POWER OF ATTORNEY FOR HEALTHCARE

With the new law about AHCDs, DPOAs for Health Care are now incorporated within your AHCD. After July 1, 1999, you do not need to make a separate Durable Power of Attorney for Health Care if you designate an agent in your AHCD.

However, if you did not designate an agent, you can still create a separate DPOA for Financial Decisions and/or Health Care.

How Do I Revoke a Power of Attorney?

☞ **You can revoke a POA** by writing your agent a letter specifically revoking the POA. Keep a copy of the letter for your records. The POA is revoked when the agent gets notice.

☞ **When you die**, the power of attorney is automatically revoked as soon as your agent knows or has reason to know of your death.

DURABLE POWER OF ATTORNEY FOR FINANCIAL DECISIONS

☞ A “**durable**” power of attorney for financial decisions gives another person the legal authority to manage some or all of your financial affairs. The person you appoint will have all of the powers written into the document (e.g., write checks, sell real property, pay bills).

☞ **Advantages.** The power of attorney is an inexpensive and informal way of naming someone who you trust to take over if you become unable to handle your own affairs.

☞ **Disadvantages.** The person names in the power of attorney may misuse your funds. It is not unusual for the person who wants to get access to your money and property to get a power of attorney and persuade you to sign it. Therefore it is important to designate someone you trust as your agent.

What is the Surrogate Law?

Created by a new law on July 1, 1999, a “surrogate” is an individual who is given the power to make health care decisions about a patient.

Previous to this law, family and friends of an incapacitated person were forced to seek a guardianship in order to make health care decisions about a patient.

A surrogate may be chosen by a group of individuals (close family and friends) if you become incapacitated and if:

- you did not designate an agent in an Advance Health Care Directive; AND
- you did not designate an agent in a DPOA for Health Care; AND
- you do not have a court-appointed guardian.

You may designate or disqualify anyone to act as your surrogate if you have the capacity to do so by personally informing your health care provider that you want a particular individual to make health care decisions for you when you are unable to make them.

How is a Surrogate Chosen If I Am Incapacitated?

- When your primary physician decides that you are incapacitated and cannot make medical decisions for yourself, your physician will inform your “interested persons” that you are incapacitated. “Interested persons” include a spouse, adult children, adult grandchildren, parents, a reciprocal beneficiary, and a close friend who is familiar with your care and values.
- The interested persons must then try to reach an agreement about who will be the surrogate. If they can agree, the chosen person will become the surrogate. If they cannot agree, they must go to court and seek guardianship of an incapacitated adult.

What Happens If I Regain Capacity?

- You may make all decisions regarding your health care when you have the capacity to do so.
- If a surrogate was chosen during your incapacity that you prefer not to have, you can advise the supervising health care provider of your own selection or you can execute an AHCD to select an agent to make decisions for you and what decisions he or she may make.

How Do I Avoid Needing A Surrogate?

- You can avoid the need for a surrogate by executing an AHCD while you have the capacity to do so and designating an agent in the AHCD.

What Decisions Can A Surrogate Make?

- If you have selected your surrogate by telling your doctor, your surrogate can make all the health care decisions that you could make if you had the capacity to do so.
- If the surrogate is not chosen by you, and is chosen by your “interested persons,” your surrogate can make all the health care decisions you could make if you had the capacity to do so, but decisions regarding the provision or continuation of artificial nutrition or hydration can only be made if your primary doctor and a second independent doctor agree that such treatment is prolonging the act of dying.
- Any decisions regarding the withholding or withdrawing of life support cannot be based on a preexisting, long-term mental or physical disability, or your economic status.
- Your surrogate is to attempt to discuss any decisions with you prior to making them.



Legal Aid Society of Hawai'i
 924 Bethel Street.
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Useful Names and Numbers Legal Terms

Legal Aid Society of Hawaii (LASH)

<http://www.legalaidhawaii.org>

Legal Hotline

Open Monday to Friday
 9-11:30am & 1-3:30pm

Oahu 536-4302

Maui 242-0724

Hilo 934-0678

Kona 329-8331

Kauai 245-7580

Molokai 553-3251

Lanai 565-6089

Senior Legal Hotline

Oahu 536-0011

Neighbor Islands: 1-888-536-0011

Volunteer Legal Services (VLS)

(formerly known as Hawaii Lawyers

Care)

Oahu 528-7046

Neighbor Islands 1-800-839-5200

University of Hawai'i Elder Law Program

(UHELP) - for people 60 years and older

Oahu only: 956-6544

Kauai Senior Law Program

(for people 60 years and older)

Kauai only: 246-0573

agent person that is designated in an AHCD or DPOA to have the power to make specific decisions for an incapacitated person.

AHCD Advance Health Care Directive; a new document created by a law that became effective on 7/1/99. Takes the place of Living Wills and DPOAs for Health Care.

DPOA for Health Care a notarized document which gives another person power to make decisions about your health care if you become incapacitated. As of 7/1/99, DPOAs for Health Care can be incorporated in an AHCD.

DPOA for Financial Decisions a notarized document which gives another person power to make decisions about your financial decisions if you become incapacitated.

incapacitated unable to choose or express your wishes for yourself.

interested persons this term applies to the Surrogate law; includes close family and friends who will have the power to choose a surrogate if you become incapacitated and if you did not choose an agent or surrogate before becoming incapacitated.

revoke to cancel or take back

surrogate a person who is given the power to make health decisions for you in case you become incapacitated. Can be chosen by you or your "interested persons." Similar to an agent but is not designated in a document.