



LEGAL AID SOCIETY OF HAWAI'I



ADVANCE HEALTH CARE DIRECTIVES

This brochure provides general information on Advance Health Care Directives.

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.



This brochure was created
through the AmeriCorps
Project Lualaba at the
Legal Aid Society of Hawaii



© Copyright August 2011, Legal Aid Society of Hawai'i

All rights reserved. These materials may not be reproduced without the written permission of the Legal Aid Society of Hawai'i. Under no circumstances are persons receiving these brochures to be charged for copies without written permission of the Legal Aid Society of Hawai'i. This is meant to be an informational brochure, and is not intended to take the place of legal counsel. It is not intended to be a complete statement of law nor intended to fully describe or evaluate your options. The distribution of this brochure by the Legal Aid Society of Hawai'i does not imply that an attorney-client relationship has been formed. Revised 11/2019. F48 Advanced Health Care Directives

What Is An Advance Health Care Directive (AHCD)?

An Advance Health Care Directive (AHCD) is a document you can create to make sure your medical health care wishes are honored. The hospital staff is required by federal law to ask if you have an AHCD when you are admitted to a hospital. There are significant benefits to having an AHCD, but you are not required to have to have one – IT IS COMPLETELY UP TO YOU.

What Does An AHCD Do?

The AHCD is a document that does two important things:

- 1) AHCD 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) AHCD allows you to designate a person to make your health care decisions for you when you become incapacitated.

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

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.

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.
 - 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.

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 the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

You can revoke all or part of an AHCD (other than who is designated as agent) at any time and in any manner that communicates your intent to revoke.

If you designate your spouse as your agent and later divorce or legally separate, the designation is automatically revoked unless otherwise specified in the decree or in an AHCD.

What Is The Surrogate Law?

A “surrogate” is an individual, other than a patient’s agent or guardian, who is given the power to make health care decisions or act as a Medicaid authorized representative for 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 AHCD;
- 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 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, except that 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.

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.

Legal Aid Society of Hawai'i
924 Bethel Street
Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O'ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.

*For individuals over 60 years of age, you can also call the Senior Legal Hotline at (808) 536-0011, or toll free (888) 536-0011.
