Do I have to have an Advance Directive?

No, it is entirely up to you whether you want to prepare any documents. But if questions arise about the kind of medical treatment that you want or do not want, advance directives may help to solve these important issues. Your doctor or any health care provider cannot require you to have an advance directive in order to receive care; nor can they prohibit you from having an advance directive. Moreover, under California law, no health care provider or insurer can charge different fees or rates depending on whether or not you have executed an advance directive.

What will happen if I do not make an Advance Directive?

You will receive medical care even if you do not have any advance directives. However, there is a greater chance that you will receive more treatment or more procedures than you may want.
If you cannot speak for yourself and have not made an advance directive, your doctor or other health care providers will generally look to your family or friends for decisions about your care. But if your doctor or your health care facility is unsure or if your family members cannot agree, they may have to ask the court to appoint a person (called a conservator) to make those decisions for you.

How do I know what treatment I want?

Your doctor must inform you about your medical condition and what different treatments can do for you. Many treatments have serious side effects. Your doctor must give you information, in language that you can understand, about serious problems that medical treatment is likely to cause. Often, more than one treatment might help you and different people might have different ideas on which is best.Your doctor can tell you the treatments that are available to you, but he cannot choose for you. That choice depends on what is important to you.

Whom should I talk to about Advance Directives?

Before writing down your instructions, you should talk to those people closest to you and who are concerned about your care and feelings. Discuss them with your family, your doctor, friends, and other appropriate people, such as a member of your clergy or your lawyer. These are the people who will be involved with your health care if you are unable to make your own decisions.

When do Advance Directives go into effect?

It is important to remember that these directives only take effect when you can no longer make your own health care decisions. As long as you are able to give "inform consent" your health care providers will rely on YOU and NOT on your advance directives.

What is "Informed Consent"?

Informed consent means that you are able to understand the nature, extent and probable consequences of proposed medical treatments and you are able to make rational evaluations of the risks and benefits of those treatments as compared with the risks and benefits of alternate procedures AND you are able to communicate that understanding in any way.

How will health care providers know if I have any Advance Directives?

All hospitals, nursing homes, home health agencies, HMOs and all other health care facilities that accept federal funds must ask if you have an advance directive, and if so, they must see that it is made part of your medical records.

Will my Advance Directives be followed?

Generally, yes, if they comply with California law. Federal law requires your health care providers to give you their written policies concerning advance directives. A summary statement of those policies is provided for you at the back of this book. It may happen that your doctor or other health care provider cannot or will not follow your advance directives for moral, religious or professional reasons, even though they comply with California law. If this happens, they must immediately tell you. Then they must help you transfer to another doctor or facility that will do what you want.

Can I change my mind after I write an Advance Directive?

Yes, at any time, you can cancel or change any advance directive that you have written. To cancel your directive, simply destroy the original document and tell your family, friends, doctor and anyone else who has copies that you have cancelled them. To change your advance directives, simply write and date a new one. Again, give copies of your revised document to all the appropriate parties, including your doctor.

Do I need a lawyer to help me make an Advance Directive?

A lawyer may be helpful and you might choose to discuss these matters with him, but there is no legal requirement in California to do so. You may use the form that is provided in this booklet to execute your advance directives.

Will my California Advance Directive be honored in another state?

The laws on advance directives differ from state to state, so it is unclear whether a California advance directive will be valid in another state. Because an advance directive is a clear expression of your wishes about medical care, it will influence that care no matter where you are admitted. However, if you plan to spend a great deal of time in another state, you might want to consider executing an advance directive that meets all the legal requirements of that state.

Will an Advance Directive from another state be honored in California?

Yes. An advance directive executed in compliance with another state's laws will be honored in California to the extent permitted by California law.

What should I do with my Advance Directives?

You should keep them in a safe place where your family members can get to them. Do NOT keep the original copies in your safe deposit box. Give copies of these documents to as many of the following people as you are comfortable with: your spouse and other family members; your doctor; your lawyer; your clergyperson; and any local hospital or nursing home where you may be residing. Another idea is to keep a small wallet card in your purse or wallet which states that you have an advance directive and who should be contacted. Wallet cards are provided for you at the back of this booklet for that purpose.

How do California Advance Directives differ from other states?

There are several differences:

1) Most states use 2 or more documents in order for a person to give advance instructions about his/her future health care. The California legislature, by adopting a version of the Uniform Health Care Decisions Act, has created one simplified document that covers all the elements of an advance directive.

2) California is one of the very few states that allows you to make organ donation

part of your advance directive document.
3) California is one of the very few states that allows you to appoint your primary physician and your conservator in your advance directive document.

INSTRUCTIONS FOR HEALTH CARE (LIVING WILL)

What is a "Living Will"?

A living will (officially called "Instructions for Health Care" in California) is a document which tells your doctor or other health care providers whether or not you want life-sustaining treatments or procedures administered to you if you are in a terminal condition or a permanent unconscious state. It is called a "living will" because it takes effect while you are still living.

Is a "Living Will" the same as a "Will" or "Living Trust"?

No. Wills and living trusts are financial documents which allow you to plan for the distribution of your financial assets and property after your death. A living will only deals with medical issues while you are still living. Wills and living trusts are complex legal documents and you usually need legal advice to execute them. You do not need a lawyer to complete your California living will.

When does a California Living Will go into effect?

A California living will goes into effect when: 1) your doctor has a copy of it, and 2) your doctor has concluded that you are no longer able to make your own health care decisions, and 3) your doctor has also determined that you are in a terminal condition or a permanent unconscious state.

What are "life-sustaining" treatments?

These are treatments or procedures that are not expected to cure your terminal condition or make you better. They only prolong dying. Examples are mechanical respirators which help you breathe, kidney dialysis which clears your body of wastes, and cardiopulmonary resuscitation (CPR) which restores your heartbeat.

What is a "terminal" condition?

A terminal condition is defined as an incurable condition for which administration of medical treatment will only prolong the dying process and without administration of these treatments or procedures, death will occur in a relatively short period of time.

What is a "permanent unconscious state"?.

A permanent unconscious state means that a patient is in a permanent coma caused by illness, injury or disease. The patient is totally unaware of himself, his surroundings and environment and to a reasonable degree of medical certainty, there can be no recovery.

Is a Living Will the same as a "Do Not Resuscitate (DNR)" order?

No. A California living will covers almost all types of life-sustaining treatments and procedures. A "Do Not Resuscitate" order covers two types of life-threatening situations. A DNR order is a document prepared by your doctor at your direction and placed in your medical records. It states that if you suffer cardiac arrest (your heart stops beating) or respiratory arrest (you stop breathing), your health care providers are not to try to revive you by any means.

Will I receive medication for pain?

Unless you state otherwise in the living will, medication for pain will be provided where appropriate to make you comfortable and will not be discontinued.

Does a California Living Will affect insurance?

No. The making of a living will, in accordance with California law, will not affect the sale or issuance of any life insurance policy, nor shall it invalidate or change the terms of any insurance policy. In addition, the removal of life-support systems according to California law, shall not, for any purpose, constitute suicide, homicide or euthanasia, nor shall it be deemed the cause of death for the purposes of your insurance coverage.

What is a Power of Attorney for Health Care (PAHC)?

A PAHC is a legal document which allows you (the "principal") to appoint another person (the "attorney-in-fact" or "agent") to make medical decisions for you if you should become temporarily or permanently unable to make those decisions yourself. The person you choose as your attorney-in-fact does not have to be a lawyer.

Who can I select to be my Agent?

You can appoint almost any adult to be your agent. You should select a person(s) knowledgeable about your wishes, values, religious beliefs, in whom you have trust and confidence and who knows how you feel about health care-You should discuss the matter with the person(s) you have chosen and make sure that they understand and agree to accept the responsibility. You can select a member of your family, such as your spouse, child, brother or sister, or a close friend. If you select your spouse and then become divorced, the appointment of your spouse as your agent is revoked. The following people CANNOT be appointed as your agent:
1) Your supervising health care provider; 2) An employee of any health care institution where you are receiving care; 3) An operator or employee of a community care facility or a residential care facility for the elderly where you are receiving care.

However, the employees listed above may be appointed as your agent if he/she is either;
1) Related to you by blood, marriage or adoption; or 2) Employed by the same health care institution, community care facility, or residential care facility for the elderly that employs YOU.

When does the PAHC take effect?

The PAHC only becomes effective when you are temporarily or permanently unable to make your own health care decisions and your agent consents to start making those decisions- Your agent will begin making decisions after your doctors have decided that you are no longer able to make them. Remember, as long as you are able to make treatment decisions, you have the right to do so.

What decisions can my Agent make?

Unless you limit his/her authority in the PAHC, your agent will be able to make almost every treatment decision in accordance with accepted medical practice that you could make, if you were able to do so. If your wishes are not known or cannot be determined, your agent has the duty to act in your best interest in the performance of his/her duties. These decisions can include authorizing, refusing or withdrawing treatment, even if it means that you will die. As you can see, the appointment of an agent is a very serious decision on your part.

Are there any decisions my Agent cannot make?

Yes, California law prohibits your agent from:
1) Committing You to a mental health treatment facility; 2) Authorizing convulsive treatment therapy; 3) Authorizing psychosurgery; 4) Authorizing sterilization; or 5) Authorizing abortion.

What happens if I regain the capacity to make my own decisions?

It your doctor determines that you have regained the capacity to make or to communicate health care decisions, then two things will happen:
1) Your agent's authority will end; and 2) Your consent will be required for treatment.

If your doctor later determines that you no longer have the capacity to make or to communicate health care decisions, then your agent's authority will be restored.

Can there be more than one Agent?

Yes. While you are not required to do so, you may designate alternates who may also act for you if your primary agent is unavailable, unable or unwilling to act. Your alternates have the same decision-making powers as the primary agent. It is generally a good idea to select at least one alternate agent.

Can my Agent resign?

Yes.Your agent and your alternates can resign at any time by giving written notice to you, your doctor or the hospital or nursing home where you are receiving care.

Can my Agent be legally liable for decisions made on my behalf?

No. Your health care agent or your alternate agents cannot be held liable for treatment decisions made in good faith on your behalf. Also, he/she cannot be held liable for costs incurred for your care, just because he or she is your agent.

Does an Advance Health Care Directive have to be signed and witnessed?

Yes, you must sign (or have someone sign the directive in your presence and at your direction, if you are unable to sign) and date it. Then it must be witnessed by2 qualified adults or notarized.

The only people who CANNOT witness your signature of the directive are:
1) Your treating health care provider or an employee of your treating health care provider; 2) The person(s) you appointed as your agent or alternate agent; 3) An operator or an employee of a community care facility; or 4) An operator or an employee of a residential care facility for the elderly.

In addition, at least one of the witnesses must not be related to you by blood, marriage or adoption, or be entitled to any part of your estate upon your death. Also, if you are a resident of a skilled nursing facility, at least one of the witnesses must be a patient advocate or ombudsman designated by the State Department of Aging.

Can I register my Advance Health Care Directive with the California state government?

Yes. California law now allows you to register, amend or revoke the information in your Advance Health Care Directive with the California Secretary of State. This information can then be obtained by your health care providers, public guardians and other authorized individuals from the Secretary of State's office.

You may phone or write the Special Filings Unit, California Secretary of State, PO. Box 944225, Sacramento, CA 94244-2250 (916-653-4984) to obtain the form or any information. The current fee for filing is $15.00 and $7.00 to amend the information. There is no fee to revoke the information. You do NOT have to register the information with the Secretary of State for your Advance Health Care Directive to be valid.