STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATION SUBMISSION

RESUBMITTAL

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2014-0210-05	2015-0223-01SR	

For use by Office of Administrative Law (OAL) only

2015 FEB 23 PM 12:23

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
In the office of the Secretary of State of the State of California

APR 07 2015

2:25 PM

AGENCY WITH RULEMAKING AUTHORITY: California Department of Social Services

AGENCY FILE NUMBER (If any): ORD # 0713-07

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER: 2014, 82

PUBLICATION DATE: 2/21/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Hospice Terminally Ill, Residential Care Facility for the Elderly

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2014-1002-03S

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: per agency request SJE, 04-07-15

AMEND: 87102, 87455, 87465, 87469, 87615, 87616, 87632, 87633

TITLE(S): 22 per agency request SJE, 04-07-15

REPEAL

3. TYPE OF FILING

- [x] Regular Rulemaking (Gov. Code §11346)
- [x] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [ ] Emergency (Gov. Code, §11346.1(b))
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- [ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] File & Print
- [ ] Other (Specify) _____
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
January 30, 2015 to February 13, 2015 per agency request SJE, 04-07-15

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
- [x] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- [ ] Effective on filing with Secretary of State
- [ ] §100 Changes Without Regulatory Effect
- [ ] Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
- [ ] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Sylvia Sotelo	(916) 651-2586	(916) 653-7395	sylvia.sotelo@dss.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Fran Mueller

DATE: 2/20/2015

TYPED NAME AND TITLE OF SIGNATORY: Fran Mueller, Deputy Director, Administration Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 07 2015

Office of Administrative Law

Amend Section 87102 to read:

87102 Descriptions of Forms. 87102

The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 8 (Residential Care Facilities for the Elderly).

(a) (Continued)

(d) PUB 325 (~~3/99~~ 3/12) - Your Right To Make Decisions About Medical Treatment.

(e) (Continued)

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Section 1569.616, Health and Safety Code.

Amend Section 87455 to read:

87455 Acceptance and Retention Limitations. 87455

(a) (Continued)

(b) The following persons may be accepted or retained in the facility: (Continued)

(8) Persons who have been diagnosed as terminally ill and who have obtained the services of hospice, certified in accordance with federal medicare conditions of participation and licensure, provided the licensee has obtained a facility hospice care waiver in accordance with the provisions of Section 87632, Hospice Care Waiver, and hospice care is being provided in accordance with the provisions of Section 87633, Hospice Care for Terminally Ill Residents.

(c) (Continued)

(d) (Continued)

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.73(a) provides in relevant part:

"(a) Notwithstanding Section 1569.72 or any other provision of law, a residential care facility for the elderly may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician and surgeon to remain in the facility, or allowing a person who has been diagnosed as terminally ill by his or her physician and surgeon to become a resident of the facility if that person is already receiving hospice services and would continue to receive hospice services without disruption if he or she became a resident, when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident, or accept as a resident the terminally ill person, and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident or terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter..."

HANDBOOK ENDS HERE

Authority cited: Sections 1569.30 and 1569.698, Health and Safety Code.

Reference: Sections 1250, 1569.1, 1569.2, 1569.31, 1569.312, 1569.54, 1569.699, ~~and~~ 1569.72 and 1569.73, Health and Safety Code.

Amend Section 87465 to read:

87465 Incidental Medical and Dental Care Services. **87465**
(Continued)

(f) (Continued)

(g) The licensee shall immediately telephone 9-1-1 if an injury or other circumstance has resulted in an imminent threat to a resident's health including, but not limited to, an apparent life-threatening medical crisis except as specified in Sections 87469(c)(2), ~~or~~ (c)(3), or (c)(4).

(h) (Continued)

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312 and 1569.73, Health and Safety Code.

Amend Section 87469 to read:

87469 ~~Advanced Health Care Directives, Requests to Forego Resuscitative Measures, and Do-Not-Resuscitate Forms~~
Advance Directives and Requests Regarding Resuscitative Measures.

(a) Upon admission, a facility shall provide each resident, and representative or responsible person of each resident, with written information about the right to make decisions concerning medical care. This information shall include, but not be limited to, the ~~d~~Department's approved brochure entitled "Your Right To Make Decisions About Medical Treatment," PUB 325, (~~3/99~~ 3/12) and a copy of Sections 87469(b), ~~and~~ (c) and (d) of the regulations.

(b) (Continued)

(c) If a resident who has ~~a Request to Forego Resuscitative Measures, and/or an Advance Health Care Directive and/or a DNR~~ an advance directive and/or request regarding resuscitative measures form on file experiences a medical emergency, facility staff shall do one of the following:

(1) Immediately telephone 9-1-1, present the ~~Request to Forego Resuscitative Measures, Advance Health Care Directive and/or DNR~~ advance directive and/or request regarding resuscitative measures form to the responding emergency medical personnel and identify the resident as the person to whom the order refers.

(2) Immediately give the ~~Request to Forego Resuscitative Measures, and/or Advance Health Care Directive and/or DNR~~ advance directive and/or request regarding resuscitative measures form to a physician, registered nurse or licensed vocational nurse if the physician or nurse is in the resident's presence at the time of the emergency and assumes responsibility.

(3) Specifically for a terminally ill resident that is receiving hospice services and has completed an advance directive and/or request regarding resuscitative measures form pursuant to Health and Safety Code section 1569.73(c), and is experiencing a life-threatening emergency as displayed by symptoms of impending death that is directly related to the expected course of the resident's terminal illness, the facility may immediately notify the resident's hospice agency in lieu of calling emergency response (9-1-1). For emergencies not directly related to the expected course of the resident's terminal illness, the facility staff shall immediately telephone emergency response (9-1-1).

(~~3~~4) Facilities that employ health care providers, other than Home Health Agencies or Hospice Agencies, may comply with Health and Safety Code Section 1569.74.

(d) After following the procedure in Section 87469(c)(1), (2), ~~or~~ (3), or (4), facility staff shall notify the resident's hospice agency and ~~health care surrogate decision maker~~ Health

Care Surrogate Decision Maker, if applicable.

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.73(c) provides in relevant part:

"(c) A facility that has obtained a hospice waiver from the department pursuant to this section need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:

(1) The resident is receiving hospice services from a licensed hospice agency.

(2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.

(3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death."

Health and Safety Code section 1569.74 provides in relevant part:

"(a) Licensed residential care facilities for the elderly that employ health care providers may establish policies to honor a request to forego resuscitative measures as defined in ~~subdivision (b) of~~ Section ~~4753~~ 4780 of the Probate Code.

(b) (Continued)

(c) Any action by a facility that has established policies pursuant to subdivision (a), to honor a resident's request to forego resuscitative measures as provided for in subdivision (a) may only be taken ~~by a licensed health care provider who is employed by the facility and on the premises at the time of the life threatening emergency."~~ in either of the following ways:

(1) By a licensed health care provider who is employed by the facility and on the premises at the time of the life threatening emergency.

(2) By notifying, under those conditions specified in subdivision (c) of Section 1569.73, the hospice agency that is caring for a resident receiving hospice services.

(d) Licensed residential care facilities for the elderly that have not established policies pursuant to subdivision (a) may keep an executed request to forego resuscitative measures form in the resident's file and present it to an emergency medical technician or paramedic when authorized to do so in writing by the resident or his or her legally recognized surrogate decisionmaker. The request may be honored by an emergency medical technician or by any health care provider as defined in Section 4621 of the Probate Code, who, in the course of professional or volunteer duties, responds to emergencies."

Probate Code section 4780 provides in relevant part:

(a) As used in this part:

(1) "Request regarding resuscitative measures" means a written document, signed by (A) an individual with capacity, or a legally recognized health care decisionmaker, and (B) the individual's physician, that directs a health care provider regarding resuscitative measures. A request regarding resuscitative measures is not an advance health care directive.

(2) "Request regarding resuscitative measures" includes one, or both of, the following:

(A) A prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form.

(B) A Physician Orders for Life Sustaining Treatment form, as approved by the Emergency Medical Services Authority.

(3) "Physician Orders for Life Sustaining Treatment form" means a request regarding resuscitative measures that directs a health care provider regarding resuscitative and life-sustaining measures.

HANDBOOK ENDS HERE

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.73, 1569.74, and 1569.156, Health and Safety Code; and Sections 4621 ~~4753~~ and ~~4670~~ 4780, Probate Code.

Amend Section 87615 to read:

87615 Prohibited Health Conditions. **87615**

(a) ~~In addition to Section 87455(c), the following~~ ~~p~~Persons who require health services for or have a health condition including, but not limited to, those specified below shall not be admitted or retained in a residential care facility for the elderly:

(1) Stage 3 and 4 pressure sores (dermal ulcers).
(2) Gastrostomy care.
(3) Naso-gastric tubes.
(4) Staph infection or other serious infection.
(5) Residents who depend on others to perform all activities of daily living for them as set forth in Section 87459, Functional Capabilities.
(6) Tracheostomies.

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.2, 1569.312 and 1569.72, Health and Safety Code.

Amend Section 87616 to read:

87616 Exceptions for Health Conditions. **87616**

(a) (Continued)

(b) (Continued)

(c) Facilities that have satisfied the requirements of Section 87632, Hospice Care Waiver, are not required to submit written exception requests under this section for residents or prospective residents with restricted health conditions under Section 87612 and/or prohibited health conditions under Section 87615 provided those residents have been diagnosed as terminally ill and are receiving hospice services in accordance with a hospice care plan as required under Section 87633, Hospice Care for Terminally Ill Residents, and the treatment of such restricted and/or prohibited health conditions is specifically addressed in the hospice care plan.

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.73(a) provides in relevant part:

"(a)(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident or terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter."

HANDBOOK ENDS HERE

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1250, 1569.2(a), (e) and (j), 1569.31, ~~and~~ 1569.312, 1569.72(a) and (a)(1) and 1569.73, Health and Safety Code.

Amend Section 87632 to read:

87632 Hospice Care Waiver. **87632**

(a) In order to accept or retain terminally ill residents and permit ~~then~~ them to receive care from a hospice agency, the licensee shall have obtained a facility hospice care waiver from the Department. To obtain this waiver the licensee shall submit a written request for a waiver to the Department on behalf of any ~~future~~ residents who may request retention, and any future residents who may request acceptance, along with the provision of ~~and~~ hospice services in the facility. The request shall include, ~~bur~~ but not be limited to the following:

(1) (Continued)

(2) (Continued)

(3) (Continued)

~~(4) A written statement from the licensee that hospice services will only be provided to individuals who are residents of the facility, prior to the initiation of hospice services.~~

(4) A statement by the licensee that an agreement with the hospice agency will be entered into regarding the care plan for the terminally ill resident to be accepted and/or retained in the facility. The agreement with hospice shall design and provide for the care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the licensee.

(b) (Continued)

(c) (Continued)

(d) If the Department grants a hospice care waiver it shall stipulate terms and conditions of the waiver as necessary to ensure the well-being of terminally ill residents and of all other facility residents, which shall include, but not be limited to, the following requirements:

(1) A written request shall be signed by each terminally ill resident or prospective resident upon admission, or by the resident's or prospective resident's health care surrogate decision maker to allow for his or her acceptance or retention in the facility while receiving hospice services.

(A) (continued)

(2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services ~~in the facility~~ for any terminally ill resident in the facility or within five working days of admitting a resident already receiving hospice care services. The notice shall include the resident's name and date of admission to the facility and the name and address of the hospice.

(e) Within 30 days of receipt of an acceptable request for a hospice care waiver, the D~~d~~epartment shall notify the applicant or licensee, in writing of one of the following:

(1) The request ~~with substantiating evidence~~ has been ~~received and accepted for consideration~~ approved or denied.

(2) (Continued)

(A) (Continued)

~~(3) Within 30 days of receipt of an acceptable request for a waiver, the licensing agency shall notify the applicant or licensee, in writing, whether the request has been approved or denied.~~

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.73 provided in relevant part:

"(a)(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident or terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter…

(d) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly as defined in this act, nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident or allow a terminally ill person to become a resident of the facility as authorized by this section.

(e) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter…

(g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice..."

HANDBOOK ENDS HERE

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.10, 1569.11, 1569.15, 1569.31, 1569.312, 1569.54 and 1569.73, Health and Safety Code.

Amend Section 87633 to read:

87633 Hospice Care for Terminally Ill Residents. 87633

(a) The licensee shall be permitted to accept or retain ~~terminally ill~~ residents who have been diagnosed as terminally ill by his or her physician and surgeon and who may or may not have restrictive and/or prohibited health conditions, to reside in the facility and receive hospice services from a hospice agency in the facility, ~~if~~ when all of the following conditions are met:

(1) (Continued)

(2) (Continued)

(3) Hospice agency services are contracted for by each terminally ill resident or prospective resident individually, or the resident's or prospective resident's Health Care Surrogate Decision Maker if the resident or prospective resident is incapacitated, not by the licensee on behalf of a resident or prospective resident. These hospice agency services must be provided by a hospice agency both licensed by the state and certified by the federal Medicare program.

(4) A written hospice care plan which specifies the care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility is developed for each terminally ill resident or prospective resident by that resident's hospice agency and agreed to by the licensee and the resident, or prospective resident, or the resident's or prospective resident's Health Care Surrogate Decision Maker, if any, prior to the initiation of hospice services in the facility for that resident, and all hospice care plans are fully implemented by the licensee and by the hospice(s).

(5) The acceptance or retention of any terminally ill resident or prospective resident in the facility does not represent a threat to the health and safety of any facility resident, or result in a violation of the personal rights of any facility resident.

(6) The hospice agency and the resident or prospective resident agree to provide the licensee with all information necessary to allow the licensee to comply with all regulations and to assure that the resident's or prospective resident's needs ~~are~~ will be met. (Continued)

(h) For each terminally ill resident receiving hospice services in the facility, the licensee shall maintain the following in the resident's record:

(1) A written request for acceptance or admittance to or ~~The resident's or the resident's Health Care Surrogate Decision Maker's written request for~~ retention ~~and hospice services~~ in the facility while receiving hospice services, along with any ~~Advance~~

~~Health Care Directive, Request to Forego Resuscitative Measures, and/or Do Not Resuscitate Form~~ advance directive and/or request regarding resuscitative measures form executed by the resident or (in certain instances) the resident's Health Care Surrogate Decision Maker. (Continued)

(5) A statement signed by the resident's roommate, if any, or any resident who will share a room with a person who is terminally ill to be accepted or retained as a resident, indicating his or her acknowledgment that the resident intends to receive hospice care in the facility for the remainder of the resident's life, and the roommate's voluntary agreement to grant access to the shared living space to hospice caregivers, and the resident's support network of family members, friends, clergy, and others.

(A) (Continued)

(i) (Continued)

(j) A written health condition exception request and a~~A~~pproval from the Department in accordance with Section 87616, is not needed for any ~~of the~~ restricted health conditions listed in Section 87612, Restricted Health Conditions, or for any prohibited health conditions listed in Section 87615, Prohibited Health Conditions, provided the resident or prospective resident has been diagnosed as terminally ill and is currently receiving hospice care~~,~~ in compliance with Section 87633, Hospice Care for Terminally Ill Residents, and the treatment of the restricted and/or prohibited health conditions is addressed in the hospice care plan.

(1) (Continued)

(k) (Continued)

(l) Residents receiving hospice care or prospective residents already receiving hospice care when accepted as residents who are bedridden, may reside in the facility provided the facility meets the requirements of Section 87606, Care of Bedridden Residents.

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.73(h) provides in summary:

"Nothing in this section [which deals with terminally ill residents and hospice care] shall be construed to relieve a licensed residential care facility for the elderly of its responsibility to notify the appropriate fire authority of the presence of a bedridden resident in the facility as required under subdivision (f) of Section 1569.72 and to obtain and maintain a fire clearance as required under Section 1569.149."

HANDBOOK ENDS HERE

(m) (Continued)

Authority cited: Section 1569.30, Health and Safety Code.

Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.54, 1569.72 and 1569.73, Health and Safety Code.

WHAT IF I CHANGE MY MIND?

You can change or cancel your advance directive at any time as long as you can communicate your wishes. To change the person you want to make your healthcare decisions, you must sign a statement or tell the doctor in charge of your care.

WHAT HAPPENS WHEN SOMEONE ELSE MAKES DECISIONS ABOUT MY TREATMENT?

The same rules apply to anyone who makes healthcare decisions on your behalf – a healthcare agent, a surrogate whose name you gave to your doctor, or a person appointed by a court to make decisions for you. All are required to follow your **Health Care Instructions** or, if none, your general wishes about treatment, including stopping treatment. If your treatment wishes are not known, the surrogate must try to determine what is in your best interest. The people providing your health care must follow the decisions of your agent or surrogate unless a requested treatment would be bad medical practice or ineffective in helping you. If this causes disagreement that cannot be worked out, the provider must make a reasonable effort to find another healthcare provider to take over your treatment.

WILL I STILL BE TREATED IF I DON'T MAKE AN ADVANCE DIRECTIVE?

Absolutely. You will still get medical treatment. We just want you to know that if you become too sick to make decisions, someone else will have to make them for you. Remember that:

- A POWER OF ATTORNEY FOR HEALTH CARE lets you name an agent to make decisions for you. Your agent can make most medical decisions – not just those about life sustaining treatment – when you can't speak for yourself. You can also let your agent make decisions earlier, if you wish.
- YOU CAN CREATE AN INDIVIDUAL HEALTHCARE INSTRUCTION by writing down your wishes about health care or by talking with your doctor and asking the doctor to record your wishes in your medical file. If you know when you would or would not want certain types of treatment, an **Instruction** provides a good way to make your wishes clear to your doctor and to anyone else who may be involved in deciding about treatment on your behalf.
- THESE TWO TYPES OF ADVANCE HEALTHCARE DIRECTIVES may be used together or separately.

To implement Public Law 101-508, the California Consortium on Patient Self-Determination prepared this brochure in 1991; it was revised in 2000 by the California Department of Health Services, with input from members of the consortium and other interested parties, to reflect changes in state law.

HOW CAN I GET MORE INFORMATION ABOUT MAKING AN ADVANCE DIRECTIVE?

Ask your doctor, nurse, social worker, or healthcare provider to get more information for you. You can have a lawyer write an advance directive for you, or you can complete an advance directive by filling in the blanks on a form.

PUB 325 (3/12)

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY

DEPARTMENT OF SOCIAL SERVICES

Flex your POWER℠

© 2001 State of California

Your Right To Make Decisions About Medical Treatment

This brochure explains your right to make healthcare decisions and how you can plan now for your medical care if you are unable to speak for yourself in the future.

A federal law requires us to give you this information. We hope this information will help increase your control over your medical treatment.

WHO DECIDES ABOUT MY TREATMENT?

Your doctors will give you information and advice about treatment. You have the right to choose. You can say "Yes" to treatments you want. You can say "No" to any treatment that you don't want – even if the treatment might keep you alive longer.

HOW DO I KNOW WHAT I WANT?

Your doctor must tell you about your medical condition and about what different treatments and pain management alternatives can do for you. Many treatments have "side effects." Your doctor must offer you information about problems that medical treatment is likely to cause you.

Often, more than one treatment might help you – and people have different ideas about which is best. Your doctor can tell you which treatments are available to you, but your doctor can't choose for you. That choice is yours to make and depends on what is important to you.

CAN OTHER PEOPLE HELP WITH MY DECISIONS?

Yes. Patients often turn to their relatives and close friends for help in making medical decisions. These people can help you think about the choices you face. You can ask the doctors and nurses to talk with your relatives and friends. They can ask the doctors and nurses questions for you.

CAN I CHOOSE A RELATIVE OR FRIEND TO MAKE HEALTHCARE DECISIONS FOR ME?

Yes. You may tell your doctor that you want someone else to make healthcare decisions for you. Ask the doctor to list that person as your healthcare"surrogate" in your medical record. The surrogate's control over your medical decisions is effective only during treatment for your current illness or injury or, if you are in a medical facility, until you leave the facility.

WHAT IF I BECOME TOO SICK TO MAKE MY OWN HEALTHCARE DECISIONS?

If you haven't named a surrogate, your doctor will ask your closest available relative or friend to help decide what is best for you. Most of the time that works. But sometimes everyone doesn't agree about what to do. That's why it is helpful if you can say in advance what you want to happen if you can't speak for yourself.

DO I HAVE TO WAIT UNTIL I AM SICK TO EXPRESS MY WISHES ABOUT HEALTH CARE?

No. In fact, it is better to choose before you get very sick or have to go into a hospital, nursing home, or other healthcare facility. You can use an **Advance Health Care Directive** to say *who* you want to speak for you and *what* kind of treatments you want. These documents are called "advance" because you prepare one before healthcare decisions need to be made. They are called "directives" because they state who will speak on your behalf and what should be done.

In California, the part of an advance directive you can use to appoint an agent to make healthcare decisions is called a **Power of Attorney For Health Care**. The part where you can express what you want done is called an **Individual Health Care Instruction**.

WHO CAN MAKE AN ADVANCE DIRECTIVE?

You can if you are 18 years or older and are capable of making your own medical decisions. You do not need a lawyer.

WHO CAN I NAME AS MY AGENT?

You can choose an adult relative or any other person you trust to speak for you when medical decisions must be made.

WHEN DOES MY AGENT BEGIN MAKING MY MEDICAL DECISIONS?

Usually, a healthcare agent will make decisions only after you lose the ability to make them yourself. But, if you wish, you can state in the **Power of Attorney for Health Care** that you want the agent to begin making decisions immediately.

HOW DOES MY AGENT KNOW WHAT I WOULD WANT?

After you choose your agent, talk to that person about what you want. Sometimes treatment decisions are hard to make, and it truly helps if your agent knows what you want. You can also write your wishes down in your advance directive.

WHAT IF I DON'T WANT TO NAME AN AGENT?

You can still write out your wishes in your advance directive, without naming an agent. You can say that you want to have your life continued as long as possible. Or you can say that you would not want treatment to continue your life. Also, you can express your wishes about the use of pain relief or any other type of medical treatment.

Even if you have not filled out a written **Individual Health Care Instruction**, you can discuss your wishes with your doctor, and ask your doctor to list those wishes in your medical record. Or you can discuss your wishes with your family members or friends. But it will probably be easier to follow your wishes if you write them down.

Do I have to fill out one of these forms?

No, you don't have to fill out any of these forms if you don't want to. You can just talk with your doctors and ask them to write down what you've said in your medical chart. And you can talk with your family. But people will be more clear about your treatment wishes if you write them down. And your wishes are more likely to be followed if you write them down.

Will I still be treated if I don't fill out these forms?

Absolutely. You will still get medical treatment. We just want you to know that, if you become too sick to make decisions, someone else will have to make them for you. Remember that:

✓ **A DURABLE POWER OF ATTORNEY FOR HEALTH CARE lets you name someone to make treatment decisions for you. That person can make most medical decisions—not just those about life-sustaining treatment—when you can't speak for yourself. Besides naming an agent, you can also use the form to say when you would and wouldn't want particular kinds of treatment.**

✓ **If you don't have someone you want to name to make decisions when you can't, you can sign a NATURAL DEATH ACT DECLARATION. This DECLARATION says that you do not want life prolonging treatment if you are terminally ill or permanently unconscious.**

The California Consortium on Patient Self-Determination prepared the preceeding text, which has been adopted by the California Department of Health Services and the California Department of Social Services to implement Public Law 101-508.

How can I get more information about advance directives?

Ask your doctor, nurse, or social worker to get more information for you.

STATE OF CALIFORNIA
Gray Davis, Governor

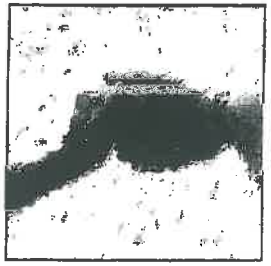
HEALTH AND HUMAN SERVICES AGENCY
Grantland Johnson, Secretary

DEPARTMENT OF SOCIAL SERVICES

PUB 325 (3/99)
OSP 99 23352

Reprinted per agency request JT, 04-07-15

Your Right To Make Decisions About Medical Treatment

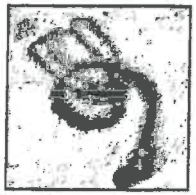


This brochure explains your rights to make health care decisions and how you can plan what should be done when you can't speak for yourself.

A federal law requires us to give you this information. We hope this information will help increase your control over your medical treatment.

Who decides about my treatment?

Your doctors will give you information and advice about treatment. You have the right to choose. You can say "Yes" to treatments you want. You can say "No" to any treatment you don't want—even if the treatment might keep you alive longer.



How do I know what I want?

Your doctor must tell you about your medical condition and about what different treatments can do for you. Many treatments have "side effects." Your doctor must offer you information about serious problems that medical treatment is likely to cause you.

Often, more than one treatment might help you—and people have different ideas about which is best. Your doctor can tell you which treatments are available to you, but your doctor can't choose for you. That choice depends on what is important to you.

What if I'm too sick to decide?

If you can't make treatment decisions, your doctor will ask your closest available relative or friend to help decide what is best for you. Most of the time, that works. But sometimes everyone doesn't agree about what to do. That's why it is helpful if you say in advance what you want to happen if you can't speak for yourself. There are several kinds of "advance directives" that you can use to say *what* you want and *who* you want to speak for you.

One kind of advance directive under California law lets you name someone to make health care decisions when you can't.

This form is called a DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

Who can fill out this form?

You can if you are 18 years or older and of sound mind. You do not need a lawyer to fill it out.

Who can I name to make medical treatment decisions when I'm unable to do so?

You can choose an adult relative or friend you trust as your "agent" to speak for you when you're too sick to make your own decisions.

How does this person know what I would want?

After you choose someone, talk to that person about what you want. You can also write down in the DURABLE POWER OF ATTORNEY FOR HEALTH CARE when you would or wouldn't want medical treatment. Talk to your doctor about what you want and give your doctor a copy of the form. Give another copy to the person named as your agent. And take a copy with you when you go into a hospital or other treatment facility.

Sometimes treatment decisions are hard to make and it truly helps your family and your doctors if they know what you want. THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE also gives them legal protection when they follow your wishes.

What if I don't have anybody to make decisions for me?

You can use another kind of advance directive to write down your wishes about treatment. This is often called a "living will" because it takes effect while you are still alive but have become unable to speak for yourself. The California Natural Death Act lets you sign a living will called a DECLARATION. Anyone 18 years or older and of sound mind can sign one.

When you sign a DECLARATION it tells your doctors that you don't want any treatment that would only prolong your dying. All life-sustaining treatment would be stopped if you were terminally ill and your death was expected soon, or if you were permanently unconscious. You would still receive treatment to keep you comfortable, however.

The doctors must follow your wishes about limiting treatment or turn your care over to another doctor who will. Your doctors are also legally protected when they follow your wishes.

Repealed

per agency request

SJE, 04-07-15

Are there other living wills I can use?

Instead of using the DECLARATION in the Natural Death Act, you can use any of the available living will forms. You can use a DURABLE POWER OF ATTORNEY FOR HEALTH CARE form without naming an agent. Or you can just write down your wishes on a piece of paper. Your doctors and family can use what you write in deciding about your treatment. But living wills that don't meet the requirements of the Natural Death Act don't give as much legal protection for your doctors if a disagreement arises about following your wishes.

What if I change my mind?

You can change or revoke any of these documents at any time as long as you can communicate your wishes.