

Alzheimer's Aid Society

OF NORTHERN CALIFORNIA

“THE BLUE BOOK”

2016 Edition



A PRACTICAL GUIDE FOR ALZHEIMER'S CAREGIVERS

Part 3: LEGAL INFORMATION

Our Mission:

We exist to provide support, education and compassion to patients and caregivers throughout the journey of Alzheimer's Disease, to support medical research, and to promote public awareness.

*The Alzheimer's Aid Society of Northern California is a
Non-Profit, Tax-Deductible 501(c)(3) corporation*

Federal ID Number: 94-2721961

Distinguishing Between an Advance Health Care Directive (AHCD) and a Power of Attorney for Health Care (PAHC)

Ulric N. Duverney, Esq.

Often when I'm preparing or reviewing an estate plan for a client I am asked if there is any difference between a living will, advance health care directive and a power of attorney for health care. I give the usual attorney answer "it depends on what's contained in the document."

Traditionally, a living will is a quality of life/end-of-life statement. Typically the person creating the living will with indicate that if their physical condition deteriorates to the point where machines are necessary to keep them alive **they do not want to be "hooked up"** or if they are in a vegetative state, that they are not to be revived should their heart stop beating.

As people became more proactive in their health care, advance health care directives became more common. In the advance health care directive you could make an end of life/quality of life statement plus you could indicate whether or not you would agree to undergo certain types of medical treatment if the need arose.

With a power of attorney for healthcare you are authorizing someone to make your health care decisions for you when you are incapable of doing so on your own. In the health care power of attorney you can also include quality of life/end of life terms as well as state if there are certain medical procedures you would or would not be willing to undergo.

In California, there are two primary types of health care documents executed by a person when planning for future health care decisions: and advance health care directive (AHCD) and a power of attorney for health care (PAHC).

A PAHC is defined as "a written instrument designating an agent to make health care decisions for the principal." In comparison, an

AHCD means "either an individual health care instruction or a power of attorney for health care." Thus, an AHCD usually includes both designation of an agent and health care instructions, but may be only a written health care instruction that indicates a preference for a type of health care without designating an agent.

Under the Health Care Decisions Law, there are two basic types of AHCDs: a statutory form and any other writing such as attorney-drafted forms. This law authorizes an adult having capacity to make an oral or written "individual health care instruction" that provides direction for future health care decisions or for the patient to appoint an agent under a power of attorney for health care. The PAHC is durable when the principal provides that it shall not be affected by the subsequent incapacity of the principal; in other words, it "endures" incapacity.

An AHCD may grant authority to the agent to make personal care decisions for the principal. These decisions include determining where the principal will live. Thus it may be helpful to include specific provisions in the AHCD that address personal care concerns.

Under California law there is a rebuttable presumption that a patient has capacity to make a health care decision and to give or revoke an AHCD. Unless otherwise provided in an AHCD or PAHC, the authority of the agent becomes effective only on a determination that the principal lacks capacity. Capacity is defined as "a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives."

Unless the AHCD states otherwise, a determination of capacity or a determination of the authority of the agent shall be made by the primary physician. The "primary physician" is generally defined as a physician designated by the patient or the patient's agent, conservator to have primary responsibility for the patient's health care.

The agent has a duty to act consistently with the principal's desires as expressed in the PAHC or otherwise made known to the agent at any time or, If the principal's desires are not known, to act in the principal's best interest, and the law requires the agent to consider the principal's personal values when determining what would be in the principal's best interest.

When you appoint an agent under a health care power of attorney you are making that person your eyes, ears and voice with respect to your health care when you are incapable of making these decisions on your own. It is very important that you discuss with your agent your philosophy and feelings with respect to types of medical care you are willing to undergo, and your quality of life and end-of-life decisions. It is important to select an agent who is not in conflict with your philosophy and feelings on these subject matters.

One final note, after you execute your power of attorney for health care, make sure your loved ones are 1.) Aware that it exists and 2.) they know where it is. Without knowledge of your power of attorney or possession of it, it is very likely that your wishes may not be carried out.

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WILLS AND TRUSTS

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Wills and Trusts are devices which can be used to provide for the distribution of your estate upon your death. In deciding whether a Will or a Trust best fits your needs you must look to your own unique set of circumstances.

What does a Will do?

A Will is the legal document that, upon your death, allows you to distribute your property to beneficiaries of your choice. Beneficiaries can receive specific items from your estate or receive everything in your estate. You might give your two children, for example, all of your estate, to share equally, but reserve the antique coin collection as a specific bequest to your nephew, Sam.

To ensure that your wishes are carried through, you would appoint an executor of your estate. That person/entity will be in charge of your estate during the distribution of your assets, pay your bills and/or initiate probate proceedings. In California (as of 2015) an estate worth \$150,000.00, or more, will have to go through the probate process, even with a valid Will.

A Will can give the parents of minor children the opportunity to nominate a guardian. Ultimately, the court will make the final decision as to who will be the guardian for your children after your death, but the court will try to honor your nomination.

A Will can be as simple as a statement in your own handwriting (holographic will), dated and signed by you, declaring who will be executor and who will receive property upon your death.

What does a Trust do?

As stated above, a Will comes into effect only after you die. However, a trust can benefit you while you are still alive. Trusts can be revocable or irrevocable. A living trust is a revocable trust established during your lifetime. You are both, the Grantor (person creating the trust) and the Trustee (person managing the trust). You are also the beneficiary of the trust during your lifetime. Therefore, all of the assets in a revocable trust are still under your control, used for your benefit and the trust is

changeable (by amendment). Living Trusts become irrevocable (unchangeable) only upon the Grantor's death.

A Living Trust is used as a device to manage your property before and after your death. Should you become incapacitated, or disabled, the trust is in place to manage your financial affairs through a successor trustee that you have previously nominated. Upon your death the distribution of the assets of the trust are a private affair as a trust avoids the publicity of probate.

Trusts can be as simple or as complex as your estate demands. The most common trust today is the Living Trust, a revocable trust as described above. There are Marital Deduction trusts that allow a doubling of the Federal Estate Tax exemption for a husband and wife. There are irrevocable Special Needs Trusts, Medicaid Trusts and Intentionally Defective Irrevocable Grantor Trusts. These trusts offer more than just probate avoidance, they can offer tax avoidance and asset preservation as well.

In essence, a Trust should be made like a good suit, tailored to your needs and desires.



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VETERANS AFFAIRS AID AND ATTENDANCE BENEFITS

Compiled by Max Perry, JD

ELIGIBILITY CRITERIA

1. Age 65 or older or disabled
2. Have an honorable or general discharge from the military
3. Served at least 90 days active duty with at least 1 day during any of the following:
 - ◆ WWII – December 7, 1941 thru Dec 31, 1946
 - ◆ Korea – June 27, 1950 thru January 31, 1955
 - ◆ Vietnam Conflict – August 5, 1964 thru May 7, 1975
 - ◆ Persian Gulf – August 2, 1990 to a date to be determined
4. Have a medical diagnosis that requires daily assistance with at least one or two of the following ADL's:

Bathing	Personal hygiene	Feeding
Dressing	Toileting	Meal preparation
Grooming	Ambulation	The need to live in a protected environment.

5. Have limited income and net worth that does not provide adequate maintenance. Whether a veteran or a claimant has excessive net worth is determined on a case-by-case basis.

Maximum Monthly V.A. Benefits for 2016

Veteran with Spouse_____ \$2120.00
Single Veteran_____ \$1788.00
Surviving Spouse_____ \$1149.00
Veteran's Spouse_____ \$1406.00

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MEDI-CAL BENEFITS AND LONG TERM CARE FOR THE ELDERLY

Compiled by Max Perry, JD

What is Medi-Cal?

Medi-Cal is a combination of federal and California funds for public assistance recipients and other low-income persons. Unlike Medicare, an entitlement, Medi-Cal is a needs-based program. Once eligible, Medi-Cal covers medically necessary services that Medicare does not fund.

Eligibility

Eligibility is based upon the applicant's assets. In 2016 the property limit is \$2000.00. That is in addition to exempt, or non-countable assets such as the home, other real property subject to value to income standards, household goods and personal effects, one automobile, IRAs, a prepaid irrevocable burial plan, term life insurance, (whole life insurance if the value does not exceed \$1500) and other assets subject to certain limitations and conditions.

Share of Cost

The Share of Cost for a Medi-Cal recipient in a skilled nursing facility is the amount of income the recipient receives less any monthly medical premiums (such as the Medicare Part B premium) and \$35 (the Long Term Care person's maintenance need). The balance of the recipient's income will be designated as the recipient's share of cost for skilled nursing care.

The Non-institutionalized Spouse

The community spouse can retain a Community Spouse Resource Allowance of up to \$119,220 (as of 2016) as well as other exempt assets such as pensions, retirement funds and IRAs. The community spouse can also retain a minimum monthly maintenance needs allowance of up to \$2,981 per month (in 2016) allowing the community spouse the opportunity to keep some, or all, of the institutionalized spouse's income.

The amount of income to the community over the minimum monthly maintenance needs allowance will be considered as the share of cost obligation for the institutionalized spouse's care.

Spending Down

Excess property owned by the Medi-Cal recipient can be spent down until the property is reduced to the Medi-Cal resource limit of \$2000. If excess property is given away 30 months prior to an application for Medi-Cal there may be an ineligibility period established from the time of the gift. Gifting exempt property will not trigger an ineligibility period even if gifted during the 30 month look back period. Non-exempt property can be transferred without creating an ineligibility period provided that the gift does not exceed the average private pay rate for a skilled nursing facility as determined yearly by Medi-Cal (\$8,092 as of 2016).

Medi-Cal Recovery

Medi-Cal can recover its expenditures from the recipient's estate after the Medi-Cal recipient dies. The Medi-Cal recipient's home is exempt from lien while the spouse, child or sibling is living there provided the beneficiary indicated an intention to return to the home on the Medi-Cal Application. If Medi-Cal is used for long term care it is important that prudent estate planning be implemented to avoid a Medi-Cal recovery lien on estate assets.

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Thousands of these "BLUE BOOKS" are distributed annually, without charge, to new callers, support groups, health fairs, health agencies and Alzheimer's programs.

 <p>Call: 916.277.6629</p> <p>5241 J Street Sacramento, CA Corner of 53rd & J</p>	<p>A. Warren McClaskey Adult Center <i>Offering adult education to developmentally disabled adults</i></p> <p>GRAPHIC ARTS PROGRAM</p> <p>Affordable Black / White and 2-Color Printing</p> <p>Newsletters • Brochures • Flyers Business Cards • Letterhead • Envelopes Programs • Rosters</p> <p>Assembly includes: Folding, Collating, Stapling, Stuffing, Labeling Envelopes and more</p>
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The printing of the "BLUE BOOK" is done by the
A. Warren McClaskey Adult Center,
which offers job training and employment to developmentally disabled workers in the Sacramento area.
Their reasonable rates and excellent service allow us to make maximum use of donated funds.

Can You Help?

Your tax-deductible donation of **just \$10.00** will cover the cost to print and distribute three "BLUE BOOKS" to caregivers right here in your community.

Your tax-deductible donation in **any amount** will assist in maintaining and expanding services in Northern California such as support groups, peer counseling, seminars, newsletters, respite care, and more.

Please use the donation envelope in the center section of this book or mail your donation to:

Alzheimer's Aid Society of Northern California
P.O. Box 60095
Sacramento, CA. 95860



Every donation, in any amount, provides help LOCALLY!
THANK YOU!

Alzheimer's Aid Society

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Alzheimer's Disease

Alzheimer's Disease was first discovered in 1906 by a German doctor named Alois Alzheimer. It is a disorder of the brain, causing damage to brain tissue over a period of time. Alzheimer's accounts for more than half of all organically caused memory loss. Age is the greatest risk factor. Alzheimer's affects almost 50% of all persons over age 85. At present, the cause of Alzheimer's is not fully understood, and researchers strive to find a cure. The disease progresses for up to twenty-five years before death.

The disease develops very slowly with primary symptoms of short-term memory loss and mild disorientation. These symptoms worsen over time. As the disease progresses, additional cognitive problems appear and behavioral or personality changes are often present.

The Importance of Early Diagnosis

Alzheimer's is diagnosed by testing for, and excluding, other conditions that can cause similar symptoms. It is an essential process, since some of these conditions can be treated or cured. If the final diagnosis is indeed Alzheimer's, then there are important steps to be taken. Medications can give the patient valuable years of independence and improve quality of life.

Early Symptoms Of Alzheimer's Disease

Problems with Recent Memory

Forgetfulness that is interfering with day to day independence and the quality of life.

Disorientation of Time and Place

Losing sense of time passing, becoming confused in familiar settings, getting lost when driving.

Difficulty Performing Familiar Tasks

Problems in completing all the steps in a common task such as setting the table or any multi-step task. Difficulty balancing a check book or maintaining organization.

Problems With Language

Struggling to find common words, especially nouns. Losing train of thought in conversation.

Possible Changes in Mood, Personality, and Initiative

Withdrawing from social situations, inflexibility, frustration or anger, mood changes.

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