

Alzheimer's Aid Society

OF NORTHERN CALIFORNIA

“THE BLUE BOOK”

2013 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*

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HEALTH CARE DIRECTIVES

William J. Walker, Esq.

There are two different Powers of Attorney available in California. One is specifically for health care decisions, and one is for financial decisions that do not include health care decisions, or end-of-life decisions. Many states follow a similar division between health care decisions and general (financial) powers of attorney. It is important to understand the distinction.

California's Advanced Health Care Directive is authorized by California Probate Code Section 4701, which confers the legislative right of an individual to give instructions regarding health care. To do so legally is a matter of whether the person is capable of communicating with medical personnel. When a person is unable to communicate, they no longer have any "say" in how decisions will be made (or disputed). Writing down the instructions, having the writing witnessed, and publishing

(presenting) the written instructions, insures that a person's wishes will be honored to the degree that is physically and humanly possible.

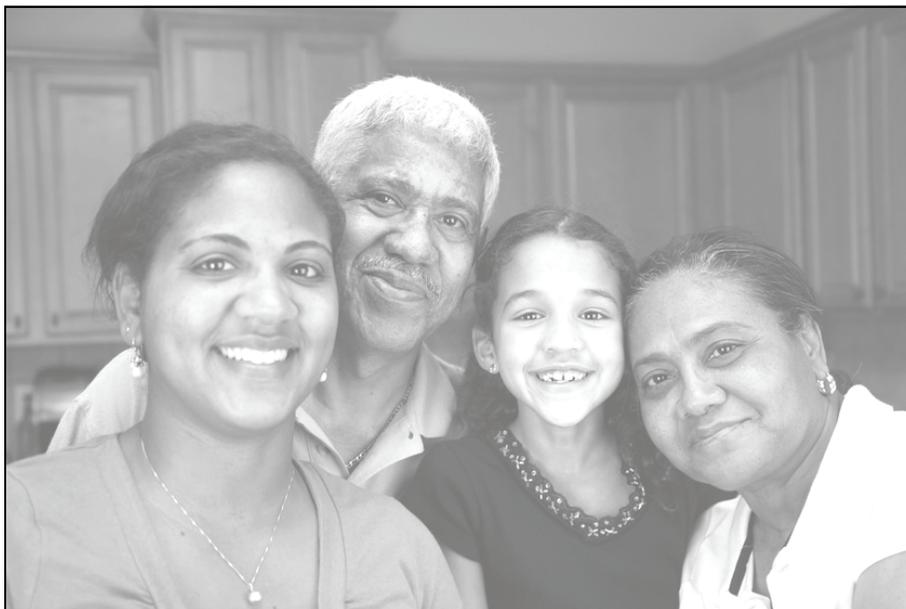
Additionally, a person can name another person (and successors if the first-named person cannot serve) to act for them to insure that the instructions are carried out. This creates the power-of-attorney, whereby someone (the agent) can act in your behalf (the principle). Agents under power-of-attorney are only authorized to carry out the stated health care decisions of the principal.

Most hospitals and health care plans have their own forms of Health Care Directives, but these may not be sufficient beyond their facilities. For example, the Veterans Administration has a form that may not be recognized or be valid in some states. The VA form does not comply with California's requirements, so it

would only be honored at a VA facility. Some VA clients simply attach their home state directives to the VA form as, "see attached." This could be done with any other health care provider, or hospital.

It is wise to include a copy of your Health Care Directive(s) with your medical file. It is also wise to have a copy available for emergency responders. People who are at risk and live at home should attach a copy to their refrigerator, because first responders are trained to look in the refrigerator for medical prescription information including a medical contact.

Your agent(s) should also know where to find a copy. Let people know who your agent is—how else will anyone find that out? Hopefully, they will find out by reading your properly executed and distributed Advanced Health Care Directive.



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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 2011) an estate worth \$100,000.00, 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.
	Medication Management	

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 2013

Veteran with Spouse_____	\$2054.00
Single Veteran_____	\$1732.00
Veteran and Veteran spouse____	\$2676.00
Surviving Spouse_____	\$1113.00
Veteran's Spouse_____	\$1360.00

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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 2013 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 \$115,920 (as of 2013) 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 \$2,898 per month (in 2013) 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 (\$7,092 as of 2013).

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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