

**Legal Decision-
Making for
Persons with
Intellectual and
Developmental
Disabilities**

- **Stephen W. Dale,
Esq., LL.M**
- **Trustee, Golden
State Pooled Trust**

What We'll Explore Together



From Institutions to Inclusion

California's journey toward community-based living



Understanding Legal Capacity

Your loved one's right to make decisions



Tools to Support Decision-Making

Powers of attorney, medical directives, supported decision-making



Supported Decision-Making in Action

Helping your loved one make informed choices—without taking over



Limited Conservatorships

When they're needed and why courts must consider less restrictive options




If You Do Nothing

Who makes decisions when no legal planning is in place



**1. 🏠 From
Institutions to
Inclusion
Objective:**

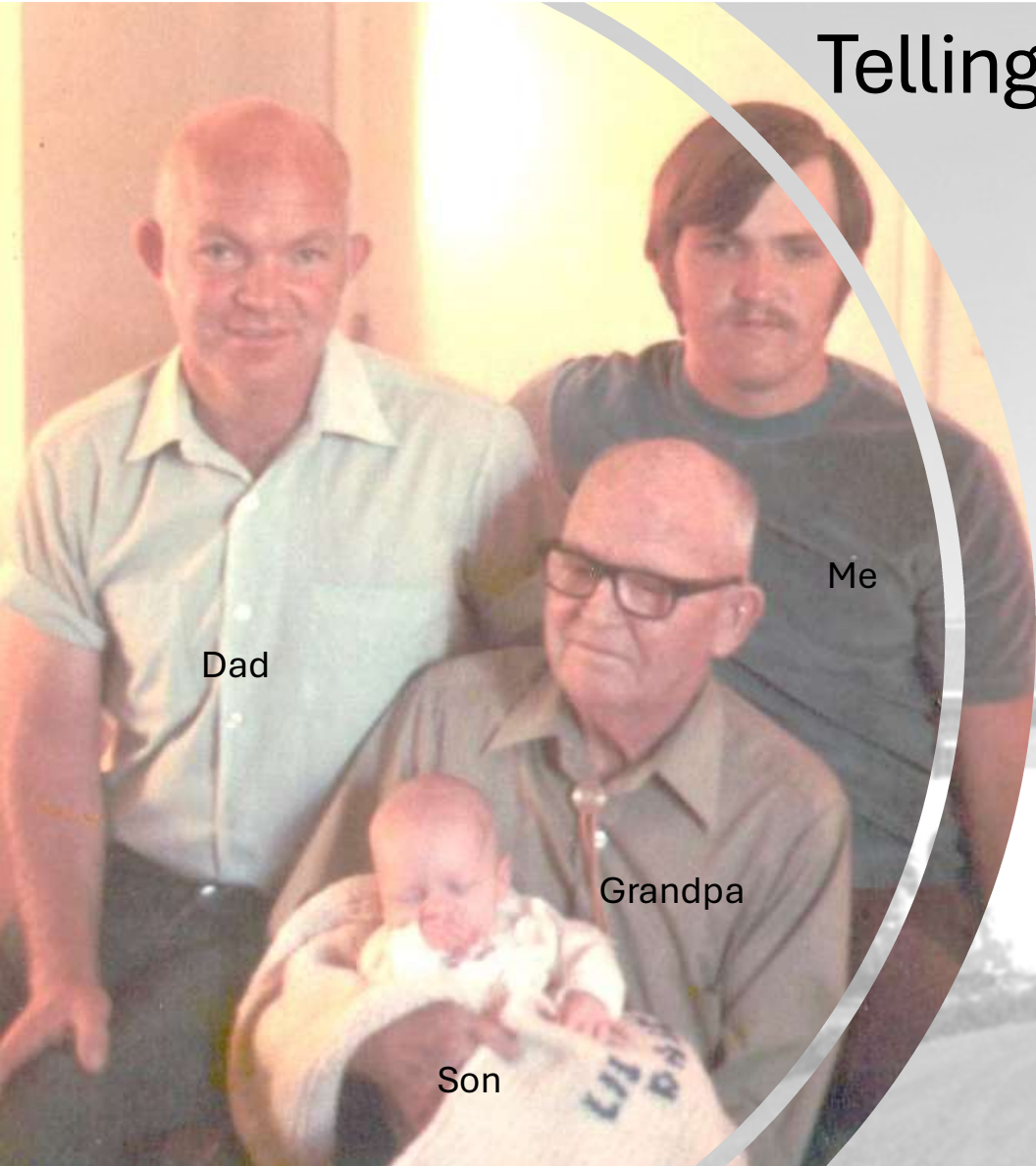
Understand California's shift from institutional
care to community-based services



How did we
get here?



Telling My Story



Agnews State Hospital

Article Comparing California, Texas and New York Supported Decision Making Laws



Supported Decision-Making: *Empowering Seniors and People with Disabilities*

TERESA ANDERSON, MPH, JD; STEPHEN DALE, JD, LL.M.;
AND PETER WALL*

Supported decision-making (SDM) has become a focus of many advocates for seniors and people with disabilities who promote reducing the use of guardianships or conservatorships in favor of allowing the senior or person with a disability to make their own decisions with assistance. The SDM process enables the senior or the person with a disability (commonly referred to as the *decider*) to select friends, family, or professionals (commonly referred to as *supporters*) to assist with gathering information to help the decider make informed decisions about their own life. SDM presents some challenges for planning practitioners, but it is prudent for all professionals—even those in states that lack an SDM statute—to be familiar with SDM principles.

CONSERVATORSHIPS AND GUARDIANSHIPS

Conservatorship and guardianship laws have been enacted in all states, and the relevant standards have evolved over the past half century. In the past, many states allowed a person to be conserved and held against their will in an institution without notice or an opportunity to contest the imposition of the conservatorship. However, the laws have changed, leading to deinstitutionalization across the country.

As civil rights groups furiously advocated for due process to occur before a court limited the civil rights of people with mental illness or a developmental disability, most states adopted a *least restrictive alternative* standard for courts to follow when contemplating a guardianship or conservatorship. In 1975, the US Supreme Court held in *O'Connor v. Donaldson* that "a State cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends."¹

It is therefore incumbent on the elder law or special needs planning practitioner to research their state's law to determine if changes have been made regarding the use of supported decision-making as a method to achieve the least restrictive alternative.

SUPPORTED DECISION-MAKING: GOALS

Putting the decider at the helm of the decision-making process is a crucial and commendable goal. Understandably, one of the primary objectives of SDM is the autonomy and empowerment of deciders to make life decisions with support when needed.

1 422 U.S. 563, 576 (1975).

What Is Community Living?

- The objective is to do more than move persons with disabilities from large institutions to small group homes in the community.
- The objective is for persons with disabilities to be part of the community.
- Institutions focus on caring for persons with disabilities usually at the expense of the person having little choice in their lives.
- Community living ideally engages persons with disabilities to have a life in the community where they are engaged in make choices for themselves, just like anyone else.

In the 1960's
California Joined
a National
Movement of
Closing State
Hospitals in favor
of Community
Programs

- For persons with Intellectual and Developmental Disabilities, a law called the Lanterman Act created a system of community-based services based on an entitlement to services.

*Association for
R*****
Citizens v.
California
Department of
Developmental
Services*

- The California Supreme Court rules that the Lanterman Act “**defines a basic right and a corresponding basic obligation . . . [T]he right which it grants to the developmentally disabled person is to be provided with services that enable him to live a more independent and productive life in the community; the obligation which it imposes on the state is to provide such services.**”
- These services are to be determined through the individual program planning process and provided as an **entitlement.**
- The court rules that this does not give regional centers the authority to overspend their budgets.
- **If regional center budgets are not sufficient, DDS must inform the state legislature which must, in turn, either increase funding or statutorily change the entitlement.**

**Cal Wel & Inst
Code
§ 4502. Rights of
developmentally
disabled persons**

- **(a)** Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.

2. Understanding Legal Capacity Objective:

Learn how the law defines and protects decision-making capacity



Capacity to Make Decisions

- A person should not be presumed incompetent merely because they have been diagnosed with a disability
- All individuals 18 years old and older are presumed to be competent



California Probate Code § 810

A person is not
presumed
incompetent
merely because
they have been
diagnosed with a
disability

- The California Probate Code § 810 establishes a **rebuttable presumption that all persons have the capacity to make decisions** and be responsible for their actions, even if they have a mental or physical disorder.
- A judicial determination of incompetence **must be based on evidence of a deficit in one or more of the person's mental functions rather than solely on a diagnosis of a mental or physical disorder**

California Probate Code § 811,

- A person is considered to lack capacity if there is a deficit in at least one of the following mental functions:
 - alertness and attention,
 - information processing,
 - thought processes, and the ability to modulate mood and affect.
- This deficit must significantly impair the person's ability to understand and appreciate the consequences of their actions with regard to the specific act or decision in question

3. 🤝 Supported Decision-Making in Action

Understand how families can support without taking over

What is Supported Decision Making? [Supported Decision- Making - ACLU](#)

- Supported decision making (SDM) is a **tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices.**
- A person using SDM selects trusted advisors, such as friends, family members, or professionals, to serve as supporters.



Section 21001
– Definitions
The following
definitions
apply for
purposes of
this division:

- **(a) "Adult with a disability"** means an adult with any disability, including an older adult with a disability or an age-related disability. Disability includes, but is not limited to, an intellectual or developmental disability, cognitive disability, communication disability, psychiatric disability, physical disability, sensory disability, learning disability, dementia, cognitive impairment, Alzheimer's disease, major neurocognitive disorder, or chronic illness or condition.
- **(b) "Life decision"** means any decision that affects the adult with a disability, including, but not limited to, a decision regarding any medical, psychological, financial, educational, living arrangement, access to home and community-based services, social, sexual, religious, or occupational matter.

Section 21001
– Definitions
The following
definitions
apply for
purposes of
this division:

- **(c) "Supported decisionmaking"** means an individualized process of supporting and accommodating an adult with a disability to enable them to make life decisions without impeding the self-determination of the adult.
- **(d) "Supported decisionmaking agreement"** means a voluntary, written agreement, written in plain language accessible to the adult with a disability and in conformance with Section 21005.
 - A supported decision-making agreement shall be signed in conformance with subdivision
 - (b) of Section 21005 and may be revoked orally or in writing at any time by either party.
 - A supported decision-making agreement may include images, be read aloud, or be video or audio recorded, in addition to the written version.
- **(e) "Supporter"** means one or more adults who meet the requirements in Section 21002 and who enter into a supported decision-making agreement to help the adult with a disability make decisions.

2022 California
Code
Welfare and
Institutions
Code - WIC
DIVISION 11.5 -
Supported
Decisionmaking
Section 21002.

- (a) A supporter is bound by all existing obligations and prohibitions otherwise applicable by law that protect adults with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment.
- **This division does not limit a supporter's civil or criminal liability for prohibited conduct against the adult with a disability,** including liability for fraud, abuse, neglect, breach of fiduciary duty, if any exists, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act

**2022 California
Code
Welfare and
Institutions
Code - WIC
DIVISION 11.5 -
Supported
Decisionmaking
Section 21002.**

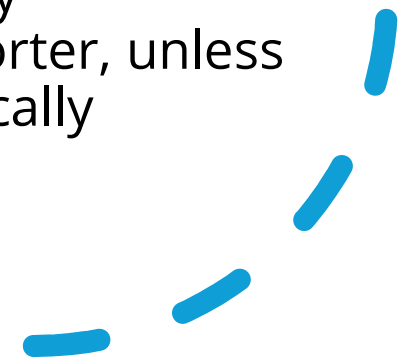
b) An individual shall not be selected as a supporter or continue as a supporter of an adult with a disability in any of the following circumstances:

- (1) The adult with a disability previously made, or makes, an allegation against the supporter under the Elder Abuse and Dependent Adult Civil Protection Act.
- (2) The adult with a disability has obtained, or obtains, an order of protection from abuse against the supporter.
- (3) The supporter is the subject of a civil or criminal order prohibiting contact with the adult with the disability, or is subject to a restraining order with respect to the adult with a disability.
- (4) The supporter has been removed as the conservator of the adult with a disability, based upon a finding that they did not act in the conservatee's best interest.
- (5) The supporter is found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud.

**2022 California
Code
Welfare and
Institutions
Code - WIC
DIVISION 11.5 -
Supported
Decisionmaking
Section 21002.**

(c) A supporter shall do all of the following:

- (1) Support and implement the direction, will, and preferences of the adult with a disability.
- (2) Respect the values, beliefs, and preferences of the adult with a disability.
- (3) Act honestly, diligently, and in good faith.
- (4) Act within the scope identified by the adult with a disability.
- (5) Maintain confidentiality of any information obtained by a supporter, unless the adult with a disability specifically authorizes its disclosure.



ACLU Supported Decision-Making Agreement

<https://www.aclu.org/documents/supported-decision-making-resource-library>

How to Make a Supported Decision-Making Agreement



A Guide for People with Disabilities
and their Families



Supported Decision-Making Agreement

Supported Decision-Making Agreement

This agreement must be read out loud or otherwise communicated to all parties to the agreement in the presence of either a notary or two witnesses. The form of communication shall be appropriate to the needs and preferences of the person with a disability.

My name is: _____.

I want to have people I trust help me make decisions. The people who will help me are called **supporters**.

My supporters are not allowed to make choices for me. I will make my own choices, with support. I am called the **decider**.

This agreement can be changed at any time. I can change it by crossing out words and writing my initials next to the changes. Or I can change it by writing new information on another piece of paper, signing that paper, and attaching it to this agreement.

Signature of Decider

I am signing this supported decision-making agreement because I want people to help me make choices. I know that I do not have to sign this agreement. I know that I can change this agreement at any time.

My printed name: _____

My address: _____

My phone number: _____

My email address: _____

Today's date is: _____

*Wait until a **notary** or **two witnesses** are there to watch you sign.*

My signature: _____

2022 California
Code
Welfare and
Institutions
Code - WIC
DIVISION 11.5 -
Supported
Decisionmaking
Section 21002.

(d) (1) A supporter **shall not coerce** an adult with a disability.

- (2) **Unless the supporter has a valid legal authorization** to do so and the action is within the scope of their authority, **a supporter shall not do either of the following:**
 - **(A) Make decisions for, or on behalf of, the adult with a disability.**
 - **(B) Sign documents on behalf of the adult with a disability.**
- (3) **A supporter shall not obtain information not reasonably related to matters with which the adult with a disability has requested assistance,** and shall not use or disclose information for any purpose other than supporting the adult with a disability.
- (4) **A supporter shall not participate in any life decision in which they have a conflict of interest. This includes, but is not limited to, any decision in which the supporter has a financial or other tangible stake in the outcome.**



Conflict of Interest

- Occurs when any person (e.g., a fiduciary) is in a position to personally benefit from their actions made in their appointed capacity
- Putting own needs/desires ahead of beneficiary
- Self-dealing
- **California:** “A supporter shall not participate in any life decision in which they have a conflict of interest. This includes, but is not limited to, any decision in which the supporter has a financial or other tangible stake in the outcome.” (CA Welf. and Inst. Code § 21002(4))



Liability

- **California:** criminal or civil liability for breach
- “This division does not limit a supporter’s civil or criminal liability for prohibited conduct against the adult with a disability, including liability for fraud, abuse, neglect, breach of fiduciary duty, if any exists, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act.” (CA Welf. and Inst. Code § 21002(a))
- See **Appendix D** for more information on Reporting Abuse, Coercion, Undue Influence or Financial Abuse

Multidisciplinary Issues

California: “A third party may only refuse the presence of one of more adults, including supporters, if the third party reasonably believes that there is fraud, coercion, abuse, or other action by the individuals requested to be included that the third party is required to report pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9).” [emphasis added] (CA Welf. and Inst. Code § 21004(c))

Privilege:

- many states recognize an exception to the presumption that a third-party presence invalidates the attorney-client privilege when a third person is present
- attorney-client privilege continues to apply if that third person is there in order to assist the client in the legal process and furthers a defendant's legal representation
- in determining if the presence of the Supporter compromises the attorney-client privilege, courts generally consider whether the defendant intended the communications to remain secret and the role of the third party

Liability

In California, a supporter in a supported decision-making agreement has specific obligations and potential liabilities under the law. A supporter is bound by existing legal obligations and prohibitions designed to protect adults with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. This includes civil or criminal liability for prohibited conduct such as fraud, abuse, neglect, breach of fiduciary duty, coercion, or mistreatment. Additionally, liability may arise under the Elder Abuse and Dependent Adult Civil Protection Act, including [Cal Wel & Inst Code § 15656](#) and [Cal Wel & Inst Code § 21002](#), [Cal Wel & Inst Code § 15657](#).

A supporter must act honestly, diligently, and in good faith, respecting the values, beliefs, and preferences of the adult with a disability. They are required to maintain confidentiality unless specifically authorized to disclose information and must act within the scope of authority identified by the adult with a disability. Importantly, a supporter is prohibited from coercing the adult with a disability, making decisions on their behalf, signing documents for them without proper legal authorization, or participating in decisions where they have a conflict of interest. They are also restricted from obtaining or using information unrelated to the matters for which the adult has requested assistance [Cal Wel & Inst Code § 21002](#).

These provisions ensure that while a supporter provides assistance, they do not overstep their role or infringe upon the autonomy and rights of the adult with a disability. The law emphasizes the voluntary and supportive nature of the agreement, safeguarding the adult's decision-making authority [Cal Wel & Inst Code § 21002](#), [Cal Wel & Inst Code § 21001](#).

if third parties are present when their involvement is reasonably necessary to accomplish the purpose of the consultation. This principle is codified in Cal. Evid. Code § 752 and has be

Attorney Client Privileged

The presence of a supporter in a supported decision-making agreement does not inherently affect attorney-client privilege in California, provided that the supporter's involvement is **reasonably necessary to further the purpose of the legal consultation.**

Under California law, the attorney-client privilege protects confidential communications between a client and their attorney, and this privilege is not waived if third parties are present when their involvement is reasonably necessary to accomplish the purpose of the consultation.

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Attorney Client Privilege

This principle is codified in [Cal Evid Code § 952](#) and has been upheld in case law, such as [Insurance Co. of North America v. Superior Court, 108 Cal. App. 3d 758](#), which states that the involvement of third parties does not destroy confidentiality if their presence is reasonably necessary to further the purpose of the legal consultation [Insurance Co. of North America v. Superior Court, 108 Cal. App. 3d 758](#), [Zurich American Ins. Co. v. Superior Court, 155 Cal. App. 4th 1485](#).

3. Tools to Support Decision-Making Objective:

Explore legal tools that empower families and individuals





Durable Power of Attorney

- A Power of Attorney (POA) is a written instrument where a person (the principal) designates someone else (the agent) to take action and make decisions for the principal.
- The powers granted to an agent may be extremely broad or for a specific transaction.



Durable Power of Attorney

- A DPA does not prevent the principal from making their own decisions
- A DPA can be revoked by the principal
- DPAs are common and readily accepted in the community

Advance Health Care Directives

- An Advance Health Care Directive (AHCD) appoints an agent to make health care decisions for the principal.
- Enables the principal to express his or her wishes about life-sustaining treatment, anatomical gifts, and other health care issues.
- An AHCD can be revoked at anytime by the principal.

CMMA
California Medical Association

ADVANCE HEALTH CARE DIRECTIVE
Including Power of Attorney for Health Care Decisions
California Probate Code Sections 6600-66400

MY HEALTH CARE WISHES

This form lets you give instructions about your future health care. It also lets you name someone to make decisions for you if you can't make your own decisions. It's best if you fill out the whole form, but, as long as it is signed, dated and witnessed or notarized properly, you may choose only to appoint an agent (Section 7) or provide health care instructions (Section 5). If there is anything on this form you do not understand, read the booklet that comes with this form and the booklet instructions on the form, or ask your physician, other health care professional or an attorney for help. You may also visit additional information and instructions concerning advance health care directives on the California Medical Association's website, www.cmanet.org. Internet access is available at your local public library.

1. APPOINTMENT OF HEALTH CARE AGENT

Option 1. I, _____, wish to appoint a health care agent.
(Print your full name and date of birth)

Fill in below the name and contact information of the person(s) I am appointing as my agent and alternate agent (if you wish to make health care decisions for you if you are unable to make them for yourself). You may appoint alternate agents in case your first appointed agent is not willing, able or reasonably available to make these decisions when asked to do so. Your agent may not be:

- A. Your primary treating health care provider.
- B. An operator of a community care or residential care facility where you receive care.
- C. An employee of the health care institution or community or residential care facility where you receive care unless your agent is related to you or is one of your co-workers.

If you choose to name an agent, you should discuss your wishes with that person and give that person a copy of this form. You should make sure that the person understands your wishes and this responsibility and is willing to accept it.

OR

Option 2. I, _____, do not wish to appoint an agent at this time.
(Print your full name and date of birth)

If you choose not to name an agent, initial the box above, give your name on the line in the space provided, draw a line through the rest of this page, then continue to Section 5.

I hereby appoint as my agent to make health care decisions for me:

Name _____ (agent's name)
Address _____ (agent's address, city, state, zip code)
Home Phone (_____) _____ Work Phone (_____) _____
Cell phone/Pager (_____) _____ Fax (_____) _____ e-mail _____

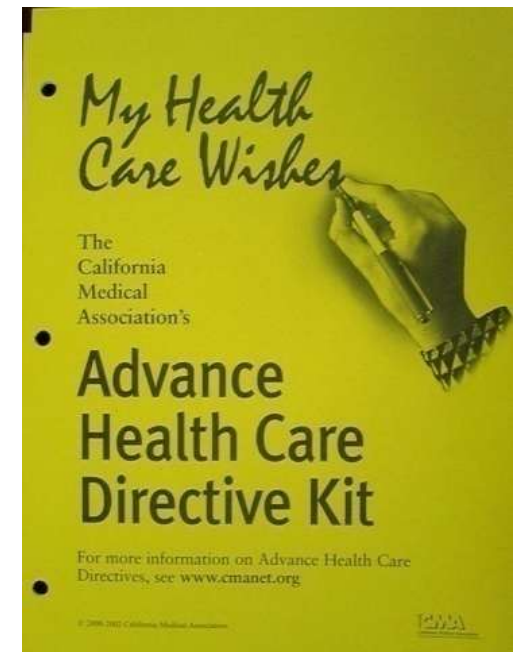
I understand this appointment will continue unless I revoke it as explained in Section 5.

If I revoke my agent's authority or if my agent is not reasonably available, able or willing to make health care decisions for me, I appoint the following person(s) to do so, listed in the order they should be asked:

OPTIONAL: 1st alternate agent: Name _____ e-mail _____
Address _____ Home phone (_____) _____
Work Phone (_____) _____ Cell phone/Pager (_____) _____ Fax (_____) _____

OPTIONAL: 2nd alternate agent: Name _____ e-mail _____
Address _____ Home phone (_____) _____
Work Phone (_____) _____ Cell phone/Pager (_____) _____ Fax (_____) _____

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Advance Health Care Directives

- **California law does not allow an agent to authorize:**
 - Commitment to or placement in a mental health treatment facility.
 - Convulsive treatment
 - Psychosurgery
 - Reproductive Decisions
 - Assisted-Suicide

CMMA ADVANCE HEALTH CARE DIRECTIVE
Including Power of Attorney for Health Care Decisions
California Probate Code Sections 4600-4696

MY HEALTH CARE WISHES

This form lets you give instructions about your future health care. It also lets you name someone to make decisions for you if you can't make your own decisions. It's best if you fill out the whole form, but, as long as it is signed, dated and witnessed or notarized properly, you may choose only to appoint an agent (Section 7) or provide health care instructions (Section 5). If there is anything on this form you do not understand, read the booklet that comes with this form and the attached instructions on the form, or ask your physician, other health care professional or an attorney for help. You may also visit additional information and instructions concerning advance health care directives on the California Medical Association's website, www.cmanet.org. Internet access is available at your local public library.

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Name _____ (agent's name)
Address _____ (agent's address, city, state, zip code)
Home Phone (_____) _____ Work Phone (_____) _____
Cell phone/Pager (_____) _____ Fax (_____) _____ e-mail _____

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Work Phone (_____) _____ Cell phone/Pager (_____) _____ Fax (_____) _____

OPTIONAL: 2nd alternate agent: Name _____ e-mail _____
Address _____ Home phone (_____) _____
Work Phone (_____) _____ Cell phone/Pager (_____) _____ Fax (_____) _____

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• *My Health Care Wishes*

The California Medical Association's

• **Advance Health Care Directive Kit**

• For more information on Advance Health Care Directives, see www.cmanet.org

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Regional Center
Director's
Authority to
Authorize
Medical
Treatment under
the Lanterman
Act

- The director of a regional center or the director's designee may give consent to medical, dental, and surgical treatment of a regional center client and provide for such treatment if the developmentally disabled person has no parent, guardian, or conservator legally authorized to consent .



IPP Participation

- On occasion, a parent will initiate a conservatorship of the person because they are being excluded from the regional center process.
- This in most cases is just plain wrong and violates the Lanterman Act



5. Limited Conservatorships

Objective: Learn when conservatorships are appropriate and how they work



Section 1800.3(c) of the Calif Probate Code

Least Restrictive Alternative

- Section 1800.3(c) of the California Probate Code was amended to state:
- “In determining whether a conservatorship is the least restrictive alternative available, and whether to grant or deny a conservatorship petition, the court shall consider the person’s abilities and capacities with current and possible supports, including, but not limited to, supported decisionmaking agreements, as defined in Section 21001 of the Welfare and Institutions Code, powers of attorney, designation of a health care surrogate as set forth in Section 4711, and advance health care directives.”

What is a Limited Conservatorship?

- **A limited Conservatorship is a protective judicial proceeding for persons whose developmental disability substantially impairs their ability to care for themselves or their property.**



What is a Limited Conservatorship?



- Is used only as necessary to promote and protect the well-being of the limited conservatee and shall be ordered only to the extent necessitated by an individual's proven mental and adaptive limitations.

What is a Limited Conservatorship?



- **The limited conservatee**
 - is not presumed to be incompetent
 - Retain all legal and civil rights except those the court specifically grants to the limited conservator.
- **The limited conservator oversees the care, custody, and control of the limited conservatee, subject to certain limitations ordered by a court.**

California Probate Code § 1800.3(b), Least Restrictive Alternative

- Requires the court to make an express finding that the conservatorship is the least restrictive alternative needed for the conservatee's protection
- In determining whether a conservatorship is the least restrictive alternative, the court must consider the individual's abilities and capacities along with current and possible supports.
- These supports can include
 - supported decision-making agreements,
 - powers of attorney,
 - designation of a health care surrogate, and
 - advance health care directives

Duties of a Limited Conservator?

- Responsible in assisting the limited conservatee to be self-reliant and independent by securing
 - appropriate habilitation or treatment,
 - training and education,
 - medical and psychological services,
 - social and vocational opportunities
 - increasing the limited conservatee's functional abilities in the least restrictive manner



What is a Developmental Disability?

- Originates before age 18,
- Can be expected to continue indefinitely,
- Constitutes a substantial handicap,
- Includes mental retardation, cerebral palsy, epilepsy, and autism,
- Can be any handicapping conditions found to be closely related to mental retardation,
- Is not solely physical in nature.

How Is A Conservatorship Established?

- Requires a Petition to the Court, and a hearing, usually 60-90 days later
- Conservatee must attend unless a doctor certifies he or she cannot attend for medical reasons
- Can be filed shortly before the 18th birthday, or any time afterwards

GC-310

ATTORNEY OR S OR PARTY'S NAME (January 9 date)	FOR US CE CLU
SUPERIOR COURT OF JFCALIFORNIA STATE COURTCOUR	CASE NUMBER:
SUPERIOR COURT JURISDICTION	
PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR <input type="checkbox"/> PERSON <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> PERSON <input type="checkbox"/> Limited Conservatship	

1 *Petitioner (name)* _____ requests that:

(A) _____ (Telephone): _____
(Name and address)

be appointed

be appointed conservator limited conservator of the PERSON of the proposed conservatee and Letters issue _____
 (Telephone): _____

be appointed conservator limited conservator of the ESTATE of the proposed conservatee and Letters issue

(1) not required
 (be assured proposed conservator a sentence of *q. conderated hauciary* or an government agency.
 (1 attemptise ()
 for the reasons inceded na as setenn shall to be piamidatidics an outnot) also of (liclacten or chequearmed amounts.
 (Specify specify trouthe an amvnt dndnd howe duldids of Probate Code section 2352. Specify paccods.)

be appointed dependent except by the Probate Code section 1573 or be granted, or

(2) allow *personative diogape of ausor unspccemena* to actun under Contact Agioreach section 1733 or 180 1.

(3) allow sasi to be garnished from the estate
 allow the residence (5) cal (side county of assets under Probate Code section 2352

(4) deprive of personal rights or enforcement of duties as persons candered by santer Probate Code section 435. (Specify pachtins.)
 consent to intemation on *exceant setff al) paid* to save, under Probate Code section 2355,

(5) grant powers under Probate Code sections 2550 to 2553, and *ed Attachment Requesting, Special Requesting, Specy Ordess Regarding*

(6) specify in Attachment 15 Referral in Attachment 11 (*speciifier specification*)

(7) specify a notification (if reduced protected provider for *Specific Orders Regarding, Orders Regarding* _____

PETITION FOR APPOINTMENT OF
PROBATE CONSERVATOR

Page 1 of 2

Form Adopted By Mendocino, Uo. National Conservatorship Form
 Judicial District of Siskiyou County, Oregon Case Central O Order Cal. Civ. Code 1/91/2007
 Powers Concurrently

How Is A Conservatorship Established?

- Court investigator is appointed and will interview proposed conservatee
- Attorney is appointed for the proposed limited conservatee
- Regional Center report is required
- Proposed conservatee's opinion is sought

GC-310

ATTORNEY OR PARTY'S NAME (January 9 date)	FOR US CE CLU
SUPERIOR COURT OF CALIFORNIA, STATE COURTS	CASE NUMBER:
SUPERIOR COURT JURISDICTION	
PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> PERSON <input type="checkbox"/> Limited Conservatorship	

1. *Petitioner (name)* _____ requests that:

(A) *(Name and address)* _____ *(Telephone):* _____

be appointed

be appointed conservator limited conservator of the PERSON of the proposed conservatee and Letters issue *(Telephone):* _____

be appointed conservator limited conservator of the ESTATE of the proposed conservatee and Letters issue

(1) not required
 (be assured proposed conservator a sentence of *in loco parentis* or an agency government agency.
 for the reasons stated in this petition shall be permitted to act in loco parentis or chequered amounts.
 (Specify specify the amount of *in loco parentis* of Probate Code section 2352. Specify *orders*.)

be appointed dependent except by the Probate Code section 1573 or be granted, or

(2) allow *personative discharge of assets* to act in loco parentis under Contact Act section 1733 or 180.1.

(3) allow asset to be garnished from the estate
 allow the residence (5) of the county of assets under Probate Code section 2352

(4) deprive of personal rights or enforcement of duties as persons ordered by another Probate Code section 435. (Specify *orders*.)

consent to intervention on *cessant settlement* to save, under Probate Code section 2355,

(5) grant powers under Probate Code sections 2550 to 2553, and *ed Attachment Requesting, Special Requesting, Specific Orders Regarding*

(6) specify in Attachment 15 Referral in Attachment 11 (*specify specification*)

(7) specify a notification (if reduced protected provider for *Specific Orders Regarding, Orders Regarding*)

PETITION FOR APPOINTMENT OF
PROBATE CONSERVATOR

Page 1 of 2

Form Adopted By Mendocino County Superior Court
 Judicial District of California CC 210
 Powers Concurrent with

Probate Conservatorship Form
 Powers Central O Order 10
 Cal. Judicial District
 1/91 2007

The Role of the Regional Center

- Within 30 days after the filing of a petition, a proposed limited conservatee shall be assessed at a regional center
- The regional center submits a written report of its findings and recommendations
- Provides the court with guidance about the appropriateness of the conservatorship and the suitability of the proposed conservator, if not a natural parent of the proposed conservatee
- Regional Center recommendations are not binding on the court

Powers a Limited Conservator of the Person can Petition for?

- Select the residence of the limited conservatee
- Have access to confidential records and papers
- To consent or withhold consent for marriage
- The right of the limited conservatee to contract
- To give or withhold medical consent
- To control social and sexual contacts
- Decisions concerning the education of the limited conservatee

GC-310

ATTORNEY OR S OR PARTY'S NAME (January 9 date)

SUPERIOR COURT OF CALIFORNIA STATE COURTS

SUPERIOR COURT JURISDICTION

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR

PERSON PERSON ESTATE
 PERSON Limited Conservatorship

CASE NUMBER:

1. Petitioner (name) _____ requests that:

(A) _____ (Name and address) _____ (Telephone): _____

be appointed

be appointed conservator limited conservator of the PERSON of the proposed conservatee and Letters issue (Telephone): _____

be appointed conservator limited conservator of the ESTATE of the proposed conservatee and Letters issue

(1) not required
 (beasure proposed conservator a sentence of *q. conderated haucary* or an government agency.
(1 attemptise ()
 for the resends incted na as setenn shall to be piamda rifics an outof) aso of lictacten or chequelermed amounts
(Specify specify trouthe an amvnt d'ofina howe duldres of Probate Code section 2352. Specify pacords.)

be appointed dependent except by the Probate Code section 1573 or be granted, or

(2) allow *personative diogape of ausor unspceemeha* to actun under Conteact Agioreach section 1733 or 180 1.

(3) allow sasit to be garnished from the estate
 allow the residence (5) cal iside county of assets under Probate Code section 2352

(4) deprive of personal rights or enforcement of duties as persons candered by santer Probate Code section 435 (Specify *pacbinsa*.)

consent to interation on *ceasant setff al) paid* to save, under Probate Code section 2355,

(5) grant powers under Probate Code sections 2550 to 2553, and ed Attachment Requesting, Special Requesting, Specy Orders Regarding

(6) specify in Attachment 15 Referral in Attachment 11 (speciifier specification)

(7) specify a sotification (if eredured protected provider for-Specific Orders Regarding, Orders Regarding

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR Page 1 of 2

Form Adopted By Mendocino, Co. Judicial Branch of Justice CC 210 Powers Conservatorship

Probate Conservatorship Form Case Central O Other 5 cc Cal. Civ. Code § 6301 (b) 1/9/13

Key Powers

- Have access to confidential records and papers
- To give or withhold medical consent

GC-310

ATTORNEY OR S OR PARTY'S NAME (January 9 date)	FOR US CE CLU
SUPERIOR COURT OF JFCALIFORNIA STATE COURTCOUR	
SUPERIOR COURT JURISDICTION	
PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR <input type="checkbox"/> PERSON <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> PERSON <input type="checkbox"/> Limited Conservatorship	CASE NUMBER:

1 *Petitioner (name)* _____ requests that:

(A) _____ (Telephone): _____
(Name and address)

be appointed

be appointed conservator limited conservator of the PERSON of the proposed conservate and Letters issue
(Telephone): _____

be appointed conservator limited conservator of the ESTATE of the proposed conservate and Letters issue

(1) not required
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(4) deprive of personal rights or enforcement of duties as persons candered by santer Probate Code section 435 (Specify pachtinsa.

consent to intermation on *reccasant setff al) paid* to save, under Probate Code section 2355,

(5) grant powers under Probate Code sections 2550 to 2553, and ed Attachment Requesting, Special Requesting, Specialty Orders Regarding

(6) specify in Attachment 15 Referral in Attachment 11 (speciifier specification)

(7) specify a notification (if eredured protected provider for-Specific Orders Regarding, Orders Regarding

PETITION FOR APPOINTMENT OF
PROBATE CONSERVATOR

Page 1 of 2

Form Adopted By Mendocino, Co. Judicial Branch of California CC 210 Powers Conservatorship
Paternal Conservatorship Form
Paternal Central O Order 100 Cal. Judicial District
Jury 2007.

Highly Personal Powers

- To consent or withhold consent for marriage
- To control social and sexual contacts

GC-310

ATTORNEY OR S OR PARTY'S NAME (January 9 date)

SUPERIOR COURT OF CALIFORNIA, STATE COURTS

SUPERIOR COURT JURISDICTION

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR

PERSON ESTATE Limited Conservatorship

CASE NUMBER:

1. Petitioner (name) _____ requests that:

(A) _____ (Name and address) _____ (Telephone): _____

be appointed

be appointed conservator limited conservator of the PERSON of the proposed conservatee and Letters issue _____ (Telephone): _____

be appointed conservator limited conservator of the ESTATE of the proposed conservatee and Letters issue

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PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR Page 1 of 2

Form Adopted By Mendocino, Uo. Judicial District of California CC 210 Powers Conservatorship

Probate Conservatorship Form Judicial District of California CC 210 Powers Conservatorship

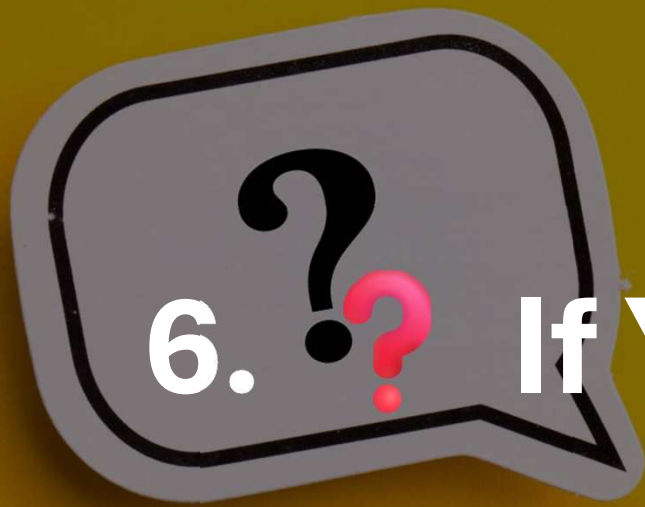


Powers that are Restricted

- No commitment to locked psychiatric facility, without an LPS Conservatorship
- No treatment with experimental drugs
- No electroshock treatment
- No sterilization without special court permission

Court Review and Hearing Self Help Clinics

- Each county has a specific process, and one must carefully research
 - **Stanislaus**
 - <https://www.stanislaus.courts.ca.gov/system/files/forms-and-filings/conservatorship-packet.pdf>
 - Self-Help Center: <https://www.stanislaus.courts.ca.gov/self-help/self-help-center-info>
 - **San Joaquin:**
 - <https://www.sjcourts.org/divisions/probate/conservatorship/>
 - Self Help clinics: <https://www.sjcourts.org/self-help/self-help-pro-per-clinic/>



6.

If You Do Nothing



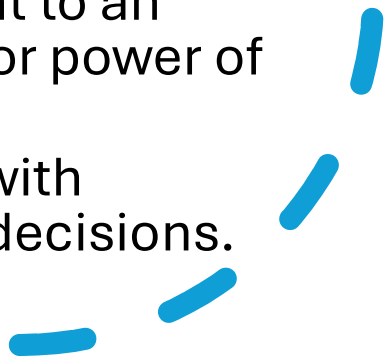
Objective: Know what happens when no legal planning is in place



What if you
do nothing at
all?

Cal Prob

Code § 4712

- California's healthcare decision-making framework establishes a clear hierarchy of authorized decision-makers for incapacitated patients.
 - When a patient lacks capacity to make healthcare decisions, legally recognized healthcare decision-makers may act on the patient's behalf in the following descending order of priority:
 - (1) the patient's surrogate selected pursuant to Section 4711,
 - (2) the patient's agent pursuant to an advance healthcare directive or power of attorney for healthcare, and
 - (3) a conservator or guardian with authority to make healthcare decisions.
- 

What if you
do nothing at
all?

Cal Prob

Code § 4712

- **(b)** Except as set forth in Section 4715, if a patient lacks the capacity to make a health care decision, but does not have a legally recognized health care decisionmaker pursuant to subdivision (a), a health care provider or a designee of the health care facility caring for the patient may choose a surrogate to make health care decisions on the patient's behalf, as appropriate in the given situation. The patient's surrogate shall be an adult who has demonstrated special care and concern for the patient, is familiar with the patient's personal values and beliefs to the extent known, and is reasonably available and willing to serve. A surrogate may be chosen from any of the following persons:
 - **(1)** The spouse or domestic partner of the patient.
 - **(2)** An adult child of the patient.
 - **(3)** A parent of the patient.
 - **(4)** An adult sibling of the patient.
 - **(5)** An adult grandchild of the patient.
 - **(6)** An adult relative or close personal friend.

Cal Wel &
Inst Code §
4655.

- If a developmentally disabled person has no parent, guardian, or conservator legally authorized to consent to medical, dental, or surgical treatment, the director of the regional center or their designee may consent to such treatment on behalf of the person.
- Additionally, the director or their designee may initiate proceedings for the appointment of a guardian or conservator legally authorized to consent to such services