

# Avoiding Conservatorships



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Presentation developed with the input and support of the  
DCA Statewide Medical-Legal Partnership Network



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# Disclosures

- No financial COI
- Not providing legal advice; please lean on your counsel/risk/compliance offices for specific situations
- Resources and court rules/norms vary from county to county



# Objectives

- Accurately state the types of conservatorships & differences
- Correctly identify 10 alternatives to conservatorships
- Differentiate between legal & medical capacity
- Properly advise patients & family about importance of advanced planning
- Identify risks due to lack of planning

# Case Illustration

Mr. Herrera is a 76-year-old man with dementia living independently. He has had increasing difficulty remembering to pay his rent and utilities. His electricity has now been turned off, and he has received an eviction notice. He is independent with ADLs and has friends and neighbors who regularly check on him.

***Does Mr. Herrera Need to be Conserved?***



# What are Conservatorships?



# Types of Conservatorships

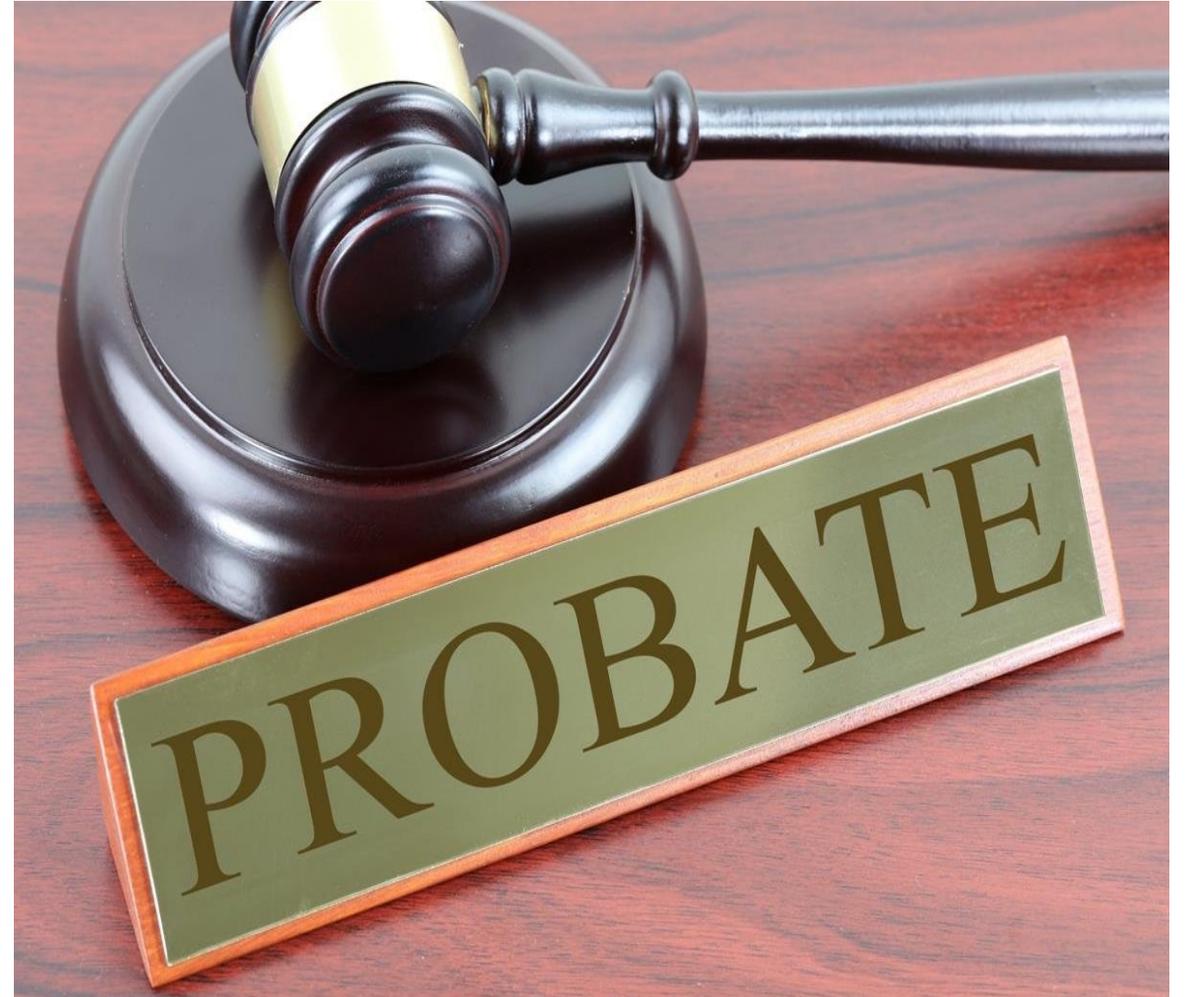
## **Probate Conservatorship** of the **PERSON and/or ESTATE**

“Unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter”

and/or

“Substantially unable to manage his or her own financial resources or resist fraud or undue influence”

**Probate Code** § 1800 et seq



# Types of Conservatorships



## LPS Conservatorship of the PERSON and/or ESTATE

Gravely disabled due to a mental illness or substance use disorder with co-occurring mental health illness

“Gravely disabled” means unable to provide for their own food, shelter, or clothing.

**Welfare & Institutions Code § 5000 et seq**

# How Does the Judge Decide?



Prove by clear and convincing evidence

**AND**

Less restrictive alternatives are unavailable or insufficient to protect patient

6. **ALTERNATIVES TO CONSERVATORSHIP** I have considered the following alternatives to conservatorship. For each alternative below, either (1) I have attempted that alternative for the length of time and in the manner described and have determined for the reasons explained below that it is unsuitable or does not meet the proposed conservatee's needs; or (2) I have not attempted that alternative and have determined for the reasons explained below that it is unsuitable or does not meet the proposed conservatee's needs and therefore should not be attempted.

a. A supported decisionmaking agreement, as defined in Welfare and Institutions Code section 21001

Continued in Attachment 6a.

b. Designation of a health care surrogate under Probate Code section 4711

Continued in Attachment 6b.

c. An advance health care directive under Probate Code section 4600 et seq.

Continued in Attachment 6c.

d. A power of attorney (general or limited, durable or nondurable) under Probate Code section 4000 et seq.

Continued in Attachment 6d.

e. A trust, as defined in Probate Code section 82

Continued in Attachment 6e.

f. Other alternatives considered or attempted

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# Dementia & Mental Illness

Psychiatric disorders are associated with increased risk of subsequent dementia



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# CARE Court:

## Consumer Assistance, Recovery, & Empowerment Act

Private individuals can petition the court to connect **eligible individuals** to various services.

Voluntary participation: personalized treatment plan; noncompliance can be used as evidence to support need for conservatorship.

Active in 8 Counties, with remaining 50 counties required to start by December 2024.





**BREAK**



# What Are Alternatives?

Non-Legal Instruments	Legal Instruments
<ul style="list-style-type: none"><li>• Family, friends, &amp; neighbors</li><li>• Automated finances/direct deposit</li><li>• Electronic medication management</li><li>• Home health care</li><li>• Meal delivery services</li><li>• GPS monitoring</li><li>• Joint accounts</li></ul>	<ul style="list-style-type: none"><li>• Power of attorney (POA)</li><li>• Advance health care directives (AHCD)</li><li>• Supported decision making agreements</li><li>• Psychiatric advance directives</li><li>• Representative payee (Social Security)</li><li>• Authorized representatives</li><li>• Trusts</li></ul>



# Power of Attorney – The Basics

**What is a POA?** A legal document that a person (the “principal”) creates to give another person (the “agent”) legal authority to act on their behalf.

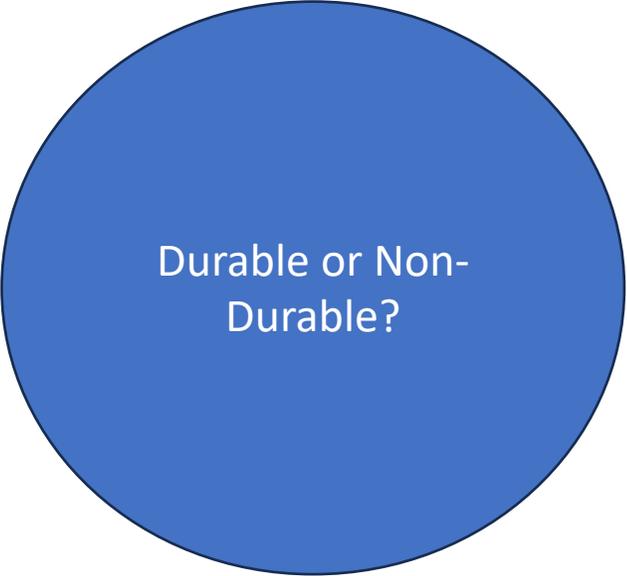
The person decides what goes into POA:

- Who they want to name as agent?
- When does an agent’s authority begin?
- What types of decisions the agent can make for the principal?
- Will the POA continue if principal becomes incapacitated?

**NOTE:** A POA can only be created or changed by someone who has legal capacity.



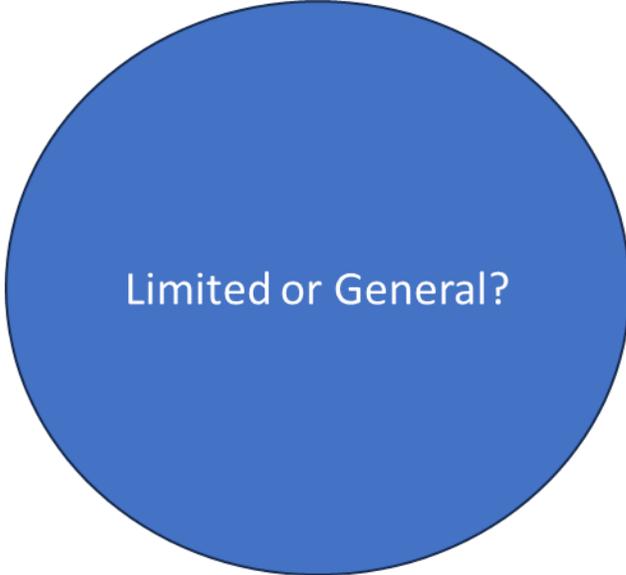
# Power of Attorney – The Basics



Durable or Non-Durable?



Immediate or Springing?



Limited or General?



# Advance Health Care Directives

An Advance Health Care Directive:

- Allows a person to name an agent to make health care decisions on their behalf.
- Explains medical treatment the person would want if they become unable to express their medical preferences in the future.
- May include requests for end-of-life decisions and preferences for how to handle body after death.



# Supported Decision-Making

Supported decision-making is a process that allows a person with a disability to receive support from trusted people (supporters) but maintains the ability to make their own decisions.

- The person chooses who supports them and what decisions are made through this process.
- Supporters agree to help the person understand, consider, and communicate decisions.

**Note:** Supported decision-making does not involve the courts but may be used as evidence against the need for a conservatorship.



# Psychiatric Advance Directive

A psychiatric advance directive (PAD) is a rights document created by a person who experiences Serious Mental Illness in preparation for a future time that they may lose their ability to make their own decisions in a time of crisis.

- Legal capacity at time of creation
- Voice!
- Relay critical life saving information to first responders/medics.
- Designate life helper during crisis period

**Goal:** PAD should help person emerge from crisis with minimal interruption to their life as possible.



# Other Legal Alternatives

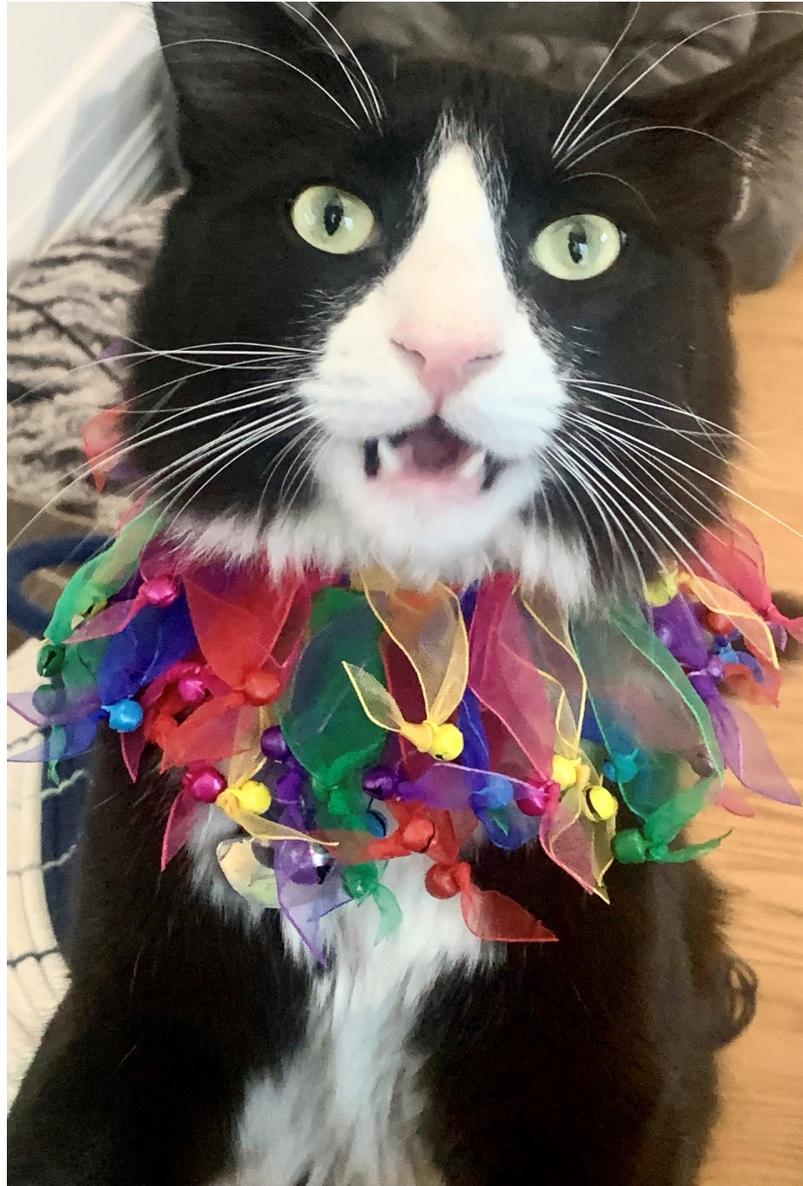
**Representative Payee**: A person can designate someone to receive income (such as Social Security benefits) and be responsible for using income to pay the person's necessary expenses and save anything left over for future needs.

**Authorized Representative (AR)**: A person can authorize someone to speak to an organization on the person's behalf, obtain account information, and work to resolve any issues. Authorization may be oral or in writing.

**Trusts (regular or special needs (SNT))**: Trusts are legal documents that hold a person's assets, which can then be managed by a third party (trustee) on a person's behalf.

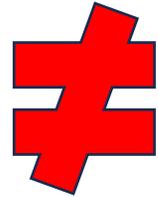
- Various stages of complexity
- Generally, very formal, sometimes irrevocable once created;
- Should be drafted by legal professional. Often costly to create and manage.

**BREAK**



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**Medical Incompetency**



**Lack of Legal Capacity**

# Key Question to Ask

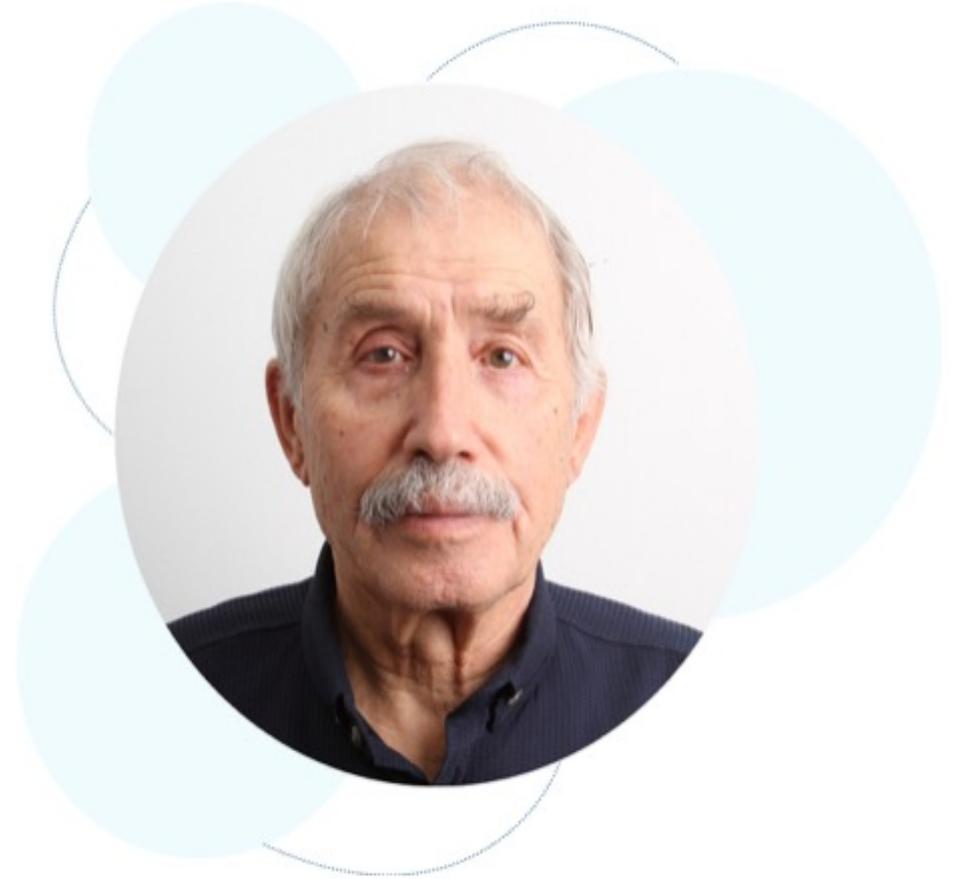


Is this a **decision-making** problem  
or a **resource** problem?

# Case Illustration

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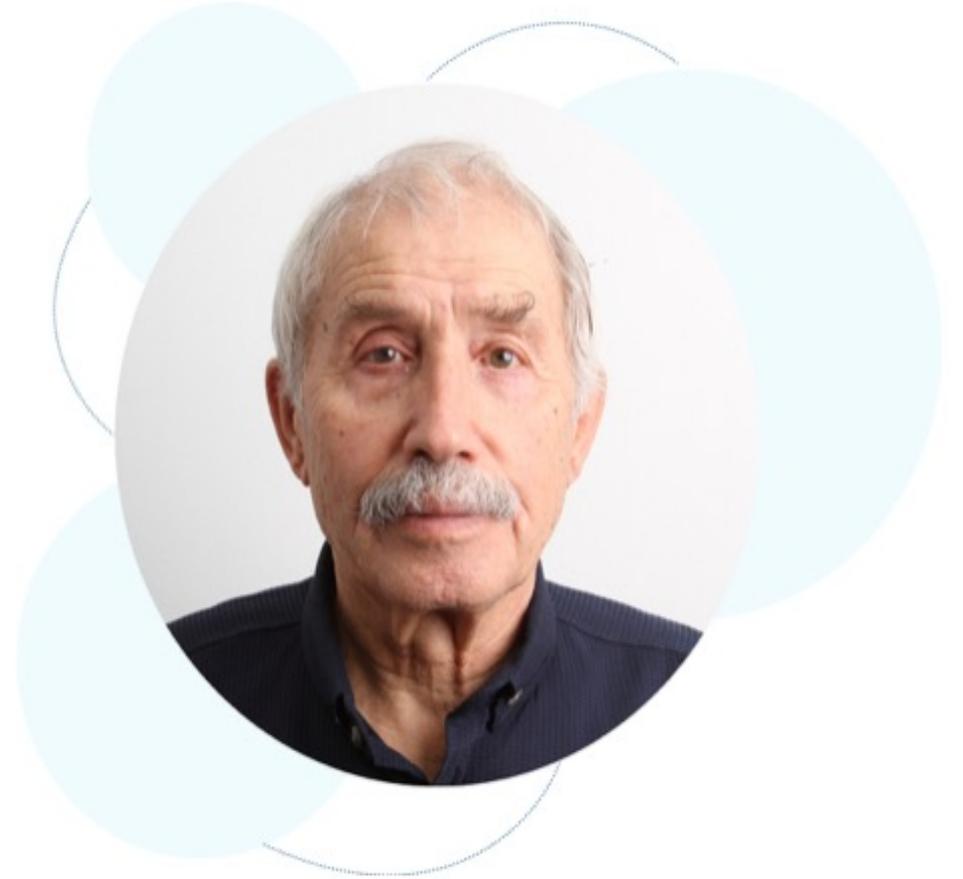
***Does Mr. Herrera Need to be Conserved?***



# Case Illustration

Mr. Herrera's Concerns:

- 1) Eviction
- 2) Help paying bills



# Case Illustration

Address resources first:

1. Eviction → [lawhelpCA.org](http://lawhelpCA.org)
2. Help paying bills

**What available legal *and non-legal* resources can assist Mr. Herrera?**



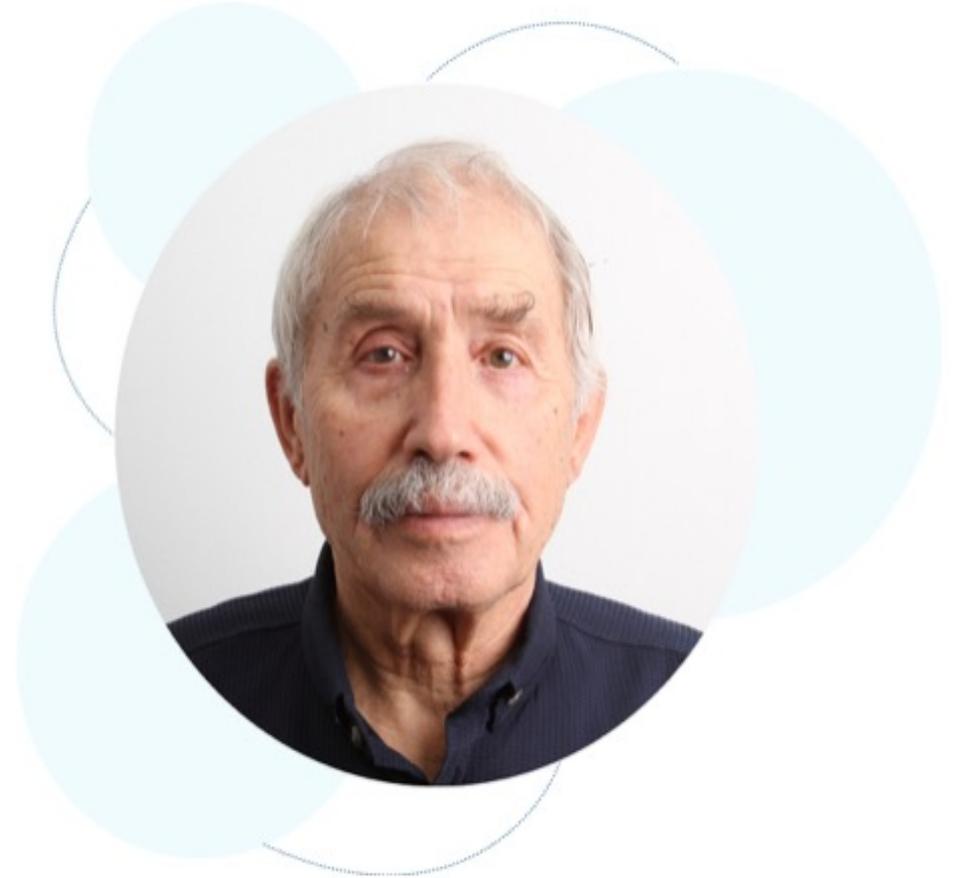
# Case Illustration

## *What if...*

Mr. Herrera also has stage 5 kidney disease.

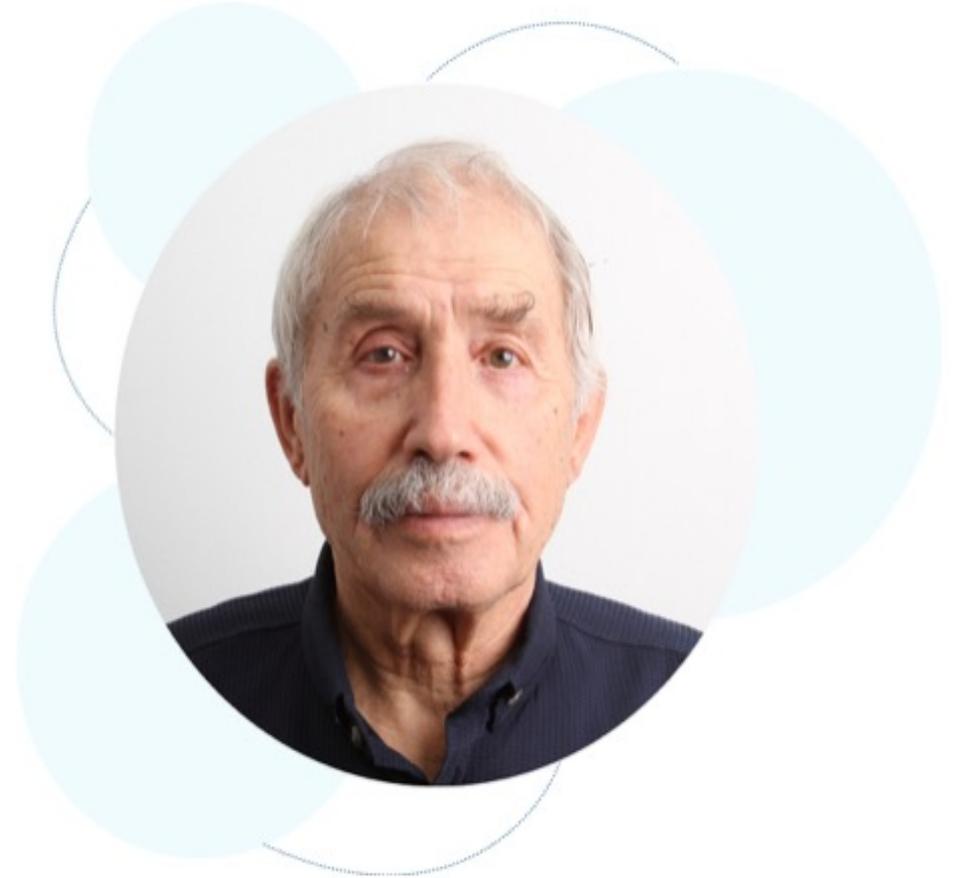
He is medication compliant but does not want dialysis and will not follow a kidney-friendly diet.

***Does Mr. Herrera Need to be Conserved?***



# Case Illustration

- Adults have right to decline medical and social services, including APS
- Further capacity assessment  
→ (See [dementiacareaware.org](http://dementiacareaware.org))

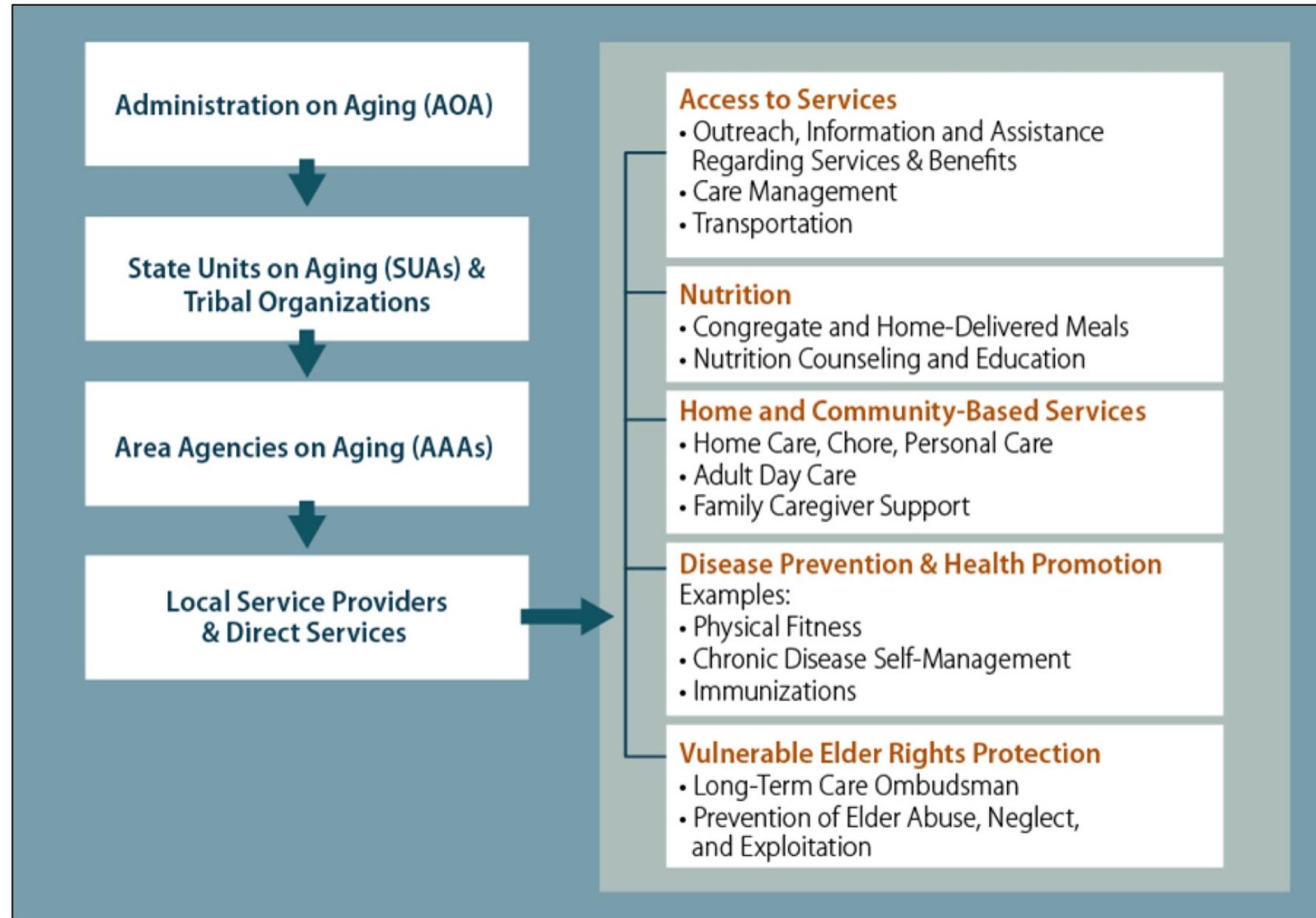


# Other Social Resources & Supports Will Be Needed

Two key contacts:

[Aging.ca.gov](http://Aging.ca.gov)

[LawhelpCA.org](http://LawhelpCA.org)



# Why Avoid Conservatorships?



- Preserve dignity & independence
- Avoid court (and expensive fees)
- Increased risk of abuse, neglect, & exploitation

# Key Take Aways

- Conservatorships cannot solve resource problems
- Capacity fluctuates; optimize decisional supports
- Early planning decreases the need for conservatorship



LawHelpCA.org



# How to Claim Continuing Medical Education (CME) Credit?

Please scan the QR code on this slide to claim credit.

- Use your phone camera to scan the QR code and tap the notification to open the link associated with the CME portal.
- Enter your first name, last name, profession, and claim **1 CE credit** for the webinar.



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# Questions?

