

Senate Bill No. 1148

CHAPTER 417

An act to amend Sections 4652, 4701, and 4702 of the Probate Code, relating to durable powers of attorney for health care.

[Approved by Governor August 10, 1995. Filed with
Secretary of State August 11, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1148, Watson. Durable powers of attorney for health care.

Existing law sets forth various provisions governing durable powers of attorney for health care, as specified.

This bill would revise the law governing durable powers of attorney for health care, (1) to limit any general legal authorization to make health care decisions on behalf of another or to provide health care treatment in an emergency if a durable power of attorney for health care exists, to only those situations in which the attorney-in-fact and his or her successor are unavailable, unwilling, or unable to make health care decisions; and (2) to revise the provisions governing witnesses to durable powers of attorney, as specified; and (3) to revise the provisions limiting who may exercise authority to make health care decisions under a durable power of attorney for health care, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 4652 of the Probate Code is amended to read:

4652. (a) Subject to Sections 4720 and 4946, nothing in this part affects any right a person may have to make health care decisions on behalf of another if the attorney-in-fact and any successor attorney-in-fact are unavailable, unwilling, or unable to make health care decisions on behalf of the principal.

(b) This part does not affect the law governing health care treatment in an emergency.

SEC. 2. Section 4701 of the Probate Code is amended to read:

4701. If the durable power of attorney for health care is signed by witnesses, as provided in Section 4121, in addition to the requirements applicable to witnesses under Section 4122, the following requirements shall be satisfied:

(a) None of the following persons may act as a witness:

(1) The principal's health care provider or an employee of the principal's health care provider.

(2) The operator or an employee of a community care facility.



(3) The operator or an employee of a residential care facility for the elderly.

(b) Each witness shall make the following declaration in substance:

“I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me to be the principal, or that the identity of the principal was proved to me by convincing evidence, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not the principal’s health care provider, an employee of the principal’s health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.”

(c) At least one of the witnesses shall be a person who is not one of the following:

(1) A relative of the principal by blood, marriage, or adoption.

(2) A person who would be entitled to any portion of the principal’s estate upon the principal’s death under a will existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

(d) The witness satisfying the requirement of subdivision (c) shall also sign the following declaration in substance:

“I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the principal’s estate upon the principal’s death under a will now existing or by operation of law.”

(e) If the principal is a patient in a skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, at the time the durable power of attorney for health care is executed, the power of attorney is not effective unless a patient advocate or ombudsman as may be designated by the Department of Aging for this purpose pursuant to any other applicable provision of law signs the instrument as a witness, either as one of two witnesses or in addition to notarization pursuant to subdivision (c) of Section 4121. The patient advocate or ombudsman shall declare that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by



virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing a durable power of attorney for health care.

SEC. 3. Section 4702 of the Probate Code is amended to read:

4702. (a) Except as provided in subdivision (b), the following persons may not exercise authority to make health care decisions under a durable power of attorney:

(1) The treating health care provider or an employee of the treating health care provider.

(2) An operator or employee of a community care facility.

(3) An operator or employee of a residential care facility for the elderly.

(b) An employee of the treating health care provider or an employee of an operator of a community care facility or an employee of a residential care facility for the elderly may be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care if both of the following requirements are met:

(1) The employee is a relative of the principal by blood, marriage, or adoption, or the employee is employed by the same treating health care provider, community care facility, or residential care facility for the elderly that employs the principal.

(2) The other requirements of this chapter are satisfied.

(c) Except as provided in subdivision (b), if a health care provider becomes the principal's treating health care provider, the health care provider or an employee of the health care provider may not exercise authority to make health care decisions under a durable power of attorney.

(d) A conservator may not be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), unless all of the following are satisfied:

(1) The power of attorney is otherwise valid.

(2) The conservatee is represented by legal counsel.

(3) The lawyer representing the conservatee signs a certificate stating in substance:

“I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so



advised, has executed this power of attorney.”

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