

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 891

Introduced by Assembly Member Alquist

February 25, 1999

An act to amend Section 8205 of the Government Code, to amend Sections 1569.156, 1584, 1599.73, 7100, 7151, and 24179.5 of, and to repeal Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code, to amend Sections 1302, 2105, 2355, 2356, 3200, 3201, 3203, 3204, 3206, 3207, 3208, 3210, 3211, 3722, 4050, 4100, 4121, 4122, 4123, 4128, 4203, 4206, 4260, and 4265 of, to amend the heading of Part 7 (commencing with Section 3200) of Division 4 of, to add Sections 1302.5, 3208.5, and 3212 to, to add Part 4 (commencing with Section 4500) to Division 4.5 of, and to add Division 4.7 (commencing with Section 4600) to, and to repeal Part 4 (commencing with Section 4600) and Part 5 (commencing with Section 4900) of Division 4.5 of, the Probate Code, and to amend Section 14110.8 of the Welfare and Institutions Code, relating to health care decisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 891, as amended, Alquist. Health care decisions.

Existing law, the Power of Attorney Law, among other things, governs and regulates durable powers of attorney for health care, as specified. Existing law also establishes the

Natural Death Act, providing that an adult person has a right to make a written declaration instructing his or her physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition if that person is unable to make those decisions for him or herself, among other provisions.

This bill, operative July 1, 2000, would repeal the provisions regarding durable powers of attorney for health care under the Power of Attorney Law, repeal the Natural Death Act, and revise and recast these provisions as part of a new act, the Health Care Decisions Law. This law would provide for the creation, form, and revocation of advance health care directives, and for the manner of making health care decisions for patients without surrogates. The bill would also make various related and conforming changes.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 8205 of the Government Code is
2 amended to read:

3 8205. (a) It is the duty of a notary public, when
4 requested:

5 (1) To demand acceptance and payment of foreign
6 and inland bills of exchange, or promissory notes, to
7 protest them for nonacceptance and nonpayment, and,
8 with regard only to the nonacceptance or nonpayment of
9 bills and notes, to exercise any other powers and duties
10 that by the law of nations and according to commercial
11 usages, or by the laws of any other state, government, or
12 country, may be performed by notaries.



1 (2) To take the acknowledgment or proof of advance
2 health care directives, powers of attorney, mortgages,
3 deeds, grants, transfers, and other instruments of writing
4 executed by any person, and to give a certificate of that
5 proof or acknowledgment, endorsed on or attached to the
6 instrument. The certificate shall be signed by the notary
7 public in the notary public's own handwriting. A notary
8 public may not accept any acknowledgment or proof of
9 any instrument that is incomplete.

10 (3) To take depositions and affidavits, and administer
11 oaths and affirmations, in all matters incident to the
12 duties of the office, or to be used before any court, judge,
13 officer, or board. Any deposition, affidavit, oath, or
14 affirmation shall be signed by the notary public in the
15 notary public's own handwriting.

16 (4) To certify copies of powers of attorney under
17 Section 4307 of the Probate Code. The certification shall
18 be signed by the notary public in the notary public's own
19 handwriting.

20 (b) It shall further be the duty of a notary public, upon
21 written request:

22 (1) To furnish to the Secretary of State certified copies
23 of the notary's journal.

24 (2) To respond within 30 days of receiving written
25 requests sent by certified mail from the Secretary of
26 State's office for information relating to official acts
27 performed by the notary.

28 SEC. 2. Section 1569.156 of the Health and Safety
29 Code is amended to read:

30 1569.156. (a) A residential care facility for the elderly
31 shall do all of the following:

32 (1) Not condition the provision of care or otherwise
33 discriminate based on whether or not an individual has
34 executed an advance directive, consistent with
35 applicable laws and regulations.

36 (2) Provide education to staff on issues concerning
37 advance directives.

38 (3) Provide written information, upon admission,
39 about the right to make decisions concerning medical
40 care, including the right to accept or refuse medical or

1 surgical treatment and the right, under state law, to
2 formulate advance directives.

3 (4) Provide written information about policies of the
4 facility regarding the implementation of the rights
5 described in paragraph (3).

6 (b) For purposes of this section, “advance directive”
7 means an “advance health care directive,” as defined in
8 Section 4605 of the Probate Code, or some other form of
9 instruction recognized under state law specifically
10 addressing the provision of health care.

11 SEC. 3. Section 1584 of the Health and Safety Code is
12 amended to read:

13 1584. (a) An adult day health care center that
14 provides care for adults with Alzheimer’s disease and
15 other dementias may install for the safety and security of
16 those persons secured perimeter fences or egress control
17 devices of the time-delay type on exit doors.

18 (b) As used in this section, “egress control device”
19 means a device that precludes the use of exits for a
20 predetermined period of time. These devices shall not
21 delay any participant’s departure from the center for
22 longer than 30 seconds. Center staff may attempt to
23 redirect a participant who attempts to leave the center.

24 (c) Adult day health care centers installing security
25 devices pursuant to this section shall meet all of the
26 following requirements:

27 (1) The center shall be subject to all fire and building
28 codes, regulations, and standards applicable to adult day
29 health care centers using egress control devices or
30 secured perimeter fences and shall receive a fire
31 clearance from the fire authority having jurisdiction for
32 the egress control devices or secured perimeter fences.

33 (2) The center shall maintain documentation of
34 diagnosis by a physician of a participant’s Alzheimer’s
35 disease or other dementia.

36 (3) The center shall provide staff training regarding
37 the use and operation of the egress control devices
38 utilized by the center, the protection of participants’
39 personal rights, wandering behavior and acceptable

1 methods of redirection, and emergency evacuation
2 procedures for persons with dementia.

3 (4) All admissions to the center shall continue to be
4 voluntary on the part of the participant or with consent
5 of the participant's conservator, an agent of the
6 participant under a power of attorney health care, or
7 other person who has the authority to act on behalf of the
8 participant. Persons who have the authority to act on
9 behalf of the participant include the participant's spouse
10 or closest available relative.

11 (5) The center shall inform all participants,
12 conservators, agents, and persons who have the authority
13 to act on behalf of participants of the use of security
14 devices. The center shall maintain a signed participation
15 agreement indicating the use of the devices and the
16 consent of the participant, conservator, agent, or person
17 who has the authority to act on behalf of the participant.
18 The center shall retain the original statement in the
19 participant's files at the center.

20 (6) The use of egress control devices or secured
21 perimeter fences shall not substitute for adequate staff.
22 Staffing ratios shall at all times meet the requirements of
23 applicable regulations.

24 (7) Emergency fire and earthquake drills shall be
25 conducted at least once every three months, or more
26 frequently as required by a county or city fire department
27 or local fire prevention district. The drills shall include all
28 center staff and volunteers providing participant care
29 and supervision. This requirement does not preclude
30 drills with participants as required by regulations.

31 (8) The center shall develop a plan of operation
32 approved by the department that includes a description
33 of how the center is to be equipped with egress control
34 devices or secured perimeter fences that are consistent
35 with regulations adopted by the State Fire Marshal
36 pursuant to Section 13143. The plan shall include, but not
37 be limited to, the following:

38 (A) A description of how the center will provide
39 training for staff regarding the use and operation of the
40 egress control device utilized by the center.

1 (B) A description of how the center will ensure the
2 protection of the participant's personal rights consistent
3 with applicable regulations.

4 (C) A description of the center's emergency
5 evacuation procedures for persons with Alzheimer's
6 disease and other dementias.

7 (d) This section does not require an adult day health
8 care center to use security devices in providing care for
9 persons with Alzheimer's disease and other dementias.

10 SEC. 4. Section 1599.73 of the Health and Safety Code
11 is amended to read:

12 1599.73. (a) Every contract of admission shall state
13 that residents have a right to confidential treatment of
14 medical information.

15 (b) The contract shall provide a means by which the
16 resident may authorize the disclosure of information to
17 specific persons, by attachment of a separate sheet that
18 conforms to the specifications of Section 56 of the Civil
19 Code. After admission, the facility shall encourage
20 residents having capacity to make health care decisions
21 to execute an advance health care directive in the event
22 that he or she becomes unable to give consent for
23 disclosure. The facility shall make available upon request
24 to the long-term care ombudsman a list of newly admitted
25 patients.

26 SEC. 5. Section 7100 of the Health and Safety Code is
27 amended to read:

28 7100. (a) The right to control the disposition of the
29 remains of a deceased person, the location and conditions
30 of interment, and arrangements for funeral goods and
31 services to be provided, unless other directions have been
32 given by the decedent pursuant to Section 7100.1, vests in,
33 and the duty of disposition and the liability for the
34 reasonable cost of disposition of the remains devolves
35 upon, the following in the order named:

36 (1) An agent under a power of attorney for health care
37 governed by Division 4.7 (commencing with Section
38 4600) of the Probate Code.

39 (2) The surviving spouse.

1 (3) The sole surviving adult child of the decedent, or
2 if there is more than one adult child of the decedent,
3 one-half or more of the surviving adult children.
4 However, less than one-half of the surviving adult
5 children shall be vested with the rights and duties of this
6 section if they have used reasonable efforts to notify all
7 other surviving adult children of their instructions and
8 are not aware of any opposition to those instructions on
9 the part of more than one-half of all surviving adult
10 children. For purposes of this section, “adult child” means
11 a competent natural or adopted child of the decedent
12 who has attained 18 years of age.

13 (4) The surviving parent or parents of the decedent.
14 If one of the surviving parents is absent, the remaining
15 parent shall be vested with the rights and duties of this
16 section after reasonable efforts have been unsuccessful in
17 locating the absent surviving parent.

18 (5) The surviving competent adult person or persons
19 respectively in the next degrees of kindred. If there is
20 more than one surviving person of the same degree of
21 kindred, the majority of those persons. Less than the
22 majority of surviving persons of the same degree of
23 kindred shall be vested with the rights and duties of this
24 section if those persons have used reasonable efforts to
25 notify all other surviving persons of the same degree of
26 kindred of their instructions and are not aware of any
27 opposition to those instructions on the part of one-half or
28 more of all surviving persons of the same degree of
29 kindred.

30 (6) The public administrator when the deceased has
31 sufficient assets.

32 (b) (1) If any person to whom the right of control has
33 vested pursuant to subdivision (a) has been charged with
34 first or second degree murder or voluntary manslaughter
35 in connection with the decedent’s death and those
36 charges are known to the funeral director or cemetery
37 authority, the right of control is relinquished and passed
38 on to the next of kin in accordance with subdivision (a).

1 (2) If the charges against the person are dropped, or
2 if the person is acquitted of the charges, the right of
3 control is returned to the person.

4 (3) Notwithstanding this subdivision, no person who
5 has been charged with first or second degree murder or
6 voluntary manslaughter in connection with the
7 decedent's death to whom the right of control has not
8 been returned pursuant to paragraph (2) shall have any
9 right to control disposition pursuant to subdivision (a)
10 which shall be applied, to the extent the funeral director
11 or cemetery authority know about the charges, as if that
12 person did not exist.

13 (c) A funeral director or cemetery authority shall have
14 complete authority to control the disposition of the
15 remains, and to proceed under this chapter to recover
16 usual and customary charges for the disposition, when
17 both of the following apply:

18 (1) Either of the following applies:

19 (A) The funeral director or cemetery authority has
20 knowledge that none of the persons described in
21 paragraphs (1) to (6), inclusive, of subdivision (a) exists.

22 (B) None of the persons described in paragraphs (1)
23 to (6), inclusive, of subdivision (a) can be found after
24 reasonable inquiry, or contacted by reasonable means.

25 (2) The public administrator fails to assume
26 responsibility for disposition of the remains within seven
27 days after having been given written notice of the facts.
28 Written notice may be delivered by hand, U.S. mail,
29 facsimile transmission, or telegraph.

30 (d) The liability for the reasonable cost of final
31 disposition devolves jointly and severally upon all kin of
32 the decedent in the same degree of kindred and upon the
33 estate of the decedent. However, if a person accepts the
34 gift of an entire body under subdivision (a) of Section
35 7155.5, that person, subject to the terms of the gift, shall
36 be liable for the reasonable cost of final disposition of the
37 decedent.

38 (e) This section shall be administered and construed to
39 the end that the expressed instructions of the decedent

1 or the person entitled to control the disposition shall be
2 faithfully and promptly performed.

3 (f) A funeral director or cemetery authority shall not
4 be liable to any person or persons for carrying out the
5 instructions of the decedent or the person entitled to
6 control the disposition.

7 (g) For purposes of paragraph (5) of subdivision (a),
8 “competent adult” means an adult who has not been
9 declared incompetent by a court of law or who has been
10 declared competent by a court of law following a
11 declaration of incompetence.

12 SEC. 6. Section 7151 of the Health and Safety Code is
13 amended to read:

14 7151. (a) Except as provided in Section 7152, any
15 member of the following classes of persons, in the order
16 of priority listed, may make an anatomical gift of all or
17 part of the decedent’s body or a pacemaker for an
18 authorized purpose, unless the decedent, at the time of
19 death, has made an unrevoked refusal to make that
20 anatomical gift:

21 (1) The agent under a power of attorney for health
22 care that expressly authorizes or does not limit the
23 authority of the agent to make an anatomical gift of all or
24 part of the principal’s body or a pacemaker.

25 (2) The spouse of the decedent.

26 (3) An adult son or daughter of the decedent.

27 (4) Either parent of the decedent.

28 (5) An adult brother or sister of the decedent.

29 (6) A grandparent of the decedent.

30 (7) A guardian or conservator of the person of the
31 decedent at the time of death.

32 (b) An anatomical gift may not be made by a person
33 listed in subdivision (a) if any of the following occur:

34 (1) A person in a prior class is available at the time of
35 death to make an anatomical gift.

36 (2) The person proposing to make an anatomical gift
37 knows of a refusal or contrary indications by the
38 decedent.

1 (3) The person proposing to make an anatomical gift
2 knows of an objection to making an anatomical gift by a
3 member of the person's class or a prior class.

4 (c) An anatomical gift by a person authorized under
5 subdivision (a) shall be made by a document of gift signed
6 by the person or the person's telegraphic, recorded
7 telephonic, or other recorded message, or other form of
8 communication from the person that is
9 contemporaneously reduced to writing and signed by the
10 recipient.

11 (d) An anatomical gift by a person authorized under
12 subdivision (a) may be revoked by any member of the
13 same or a prior class if, before procedures have begun for
14 the removal of a part from the body of the decedent, the
15 physician, surgeon, technician, or enucleator removing
16 the part knows of the revocation.

17 (e) A failure to make an anatomical gift under
18 subdivision (a) is not an objection to the making of an
19 anatomical gift.

20 SEC. 7. Chapter 3.9 (commencing with Section 7185)
21 of Part 1 of Division 7 of the Health and Safety Code is
22 repealed.

23 SEC. 8. Section 24179.5 of the Health and Safety Code
24 is amended to read:

25 24179.5. Notwithstanding any other provision of this
26 chapter, this chapter does not apply to an adult in a
27 terminal condition who executes a directive directing the
28 withholding or withdrawal of life-sustaining procedures
29 pursuant to Section 7188. To the extent of any conflict,
30 Division 4.7 (commencing with Section 4600) of the
31 Probate Code prevails over the provisions of this chapter.

32 SEC. 9. Section 1302 of the Probate Code is amended
33 to read:

34 1302. With respect to a power of attorney governed
35 by the Power of Attorney Law (Division 4.5
36 (commencing with Section 4000)), an appeal may be
37 taken from any of the following:

38 (a) Any final order under Section 4541, except an
39 order pursuant to subdivision (c) of Section 4541.



(b) An order dismissing the petition or denying a motion to dismiss under Section 4543.

SEC. 10. Section 1302.5 is added to the Probate Code, to read:

1302.5. With respect to an advance health care directive governed by the Health Care Decisions Law (Division 4.7 (commencing with Section 4600)), an appeal may be taken from any of the following:

(a) Any final order under Section 4766.

(b) An order dismissing the petition or denying a motion to dismiss under Section 4768.

SEC. 11. Section 2105 of the Probate Code is amended to read:

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

(1) Two or more joint guardians or conservators of the person.

(2) Two or more joint guardians or conservators of the estate.

(3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed, each shall qualify in the same manner as a sole guardian or conservator.

(c) Subject to subdivisions (d) and (e):

(1) Where there are two guardians or conservators, both must concur to exercise a power.

(2) Where there are more than two guardians or conservators, a majority must concur to exercise a power.

(d) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(e) Where joint guardians or conservators have been appointed and one or more are (1) absent from the state and unable to act, (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

1 (f) If a custodial parent has been diagnosed as having
2 a terminal condition, as evidenced by a declaration
3 executed by a licensed physician, the court, in its
4 discretion, may appoint the custodial parent and a person
5 nominated by the custodial parent as joint guardians of
6 the person of the minor. However, this appointment shall
7 not be made over the objection of a noncustodial parent
8 without a finding that the noncustodial parent's custody
9 would be detrimental to the minor, as provided in Section
10 3041 of the Family Code. It is the intent of the Legislature
11 in enacting the amendments to this subdivision adopted
12 during the 1995–96 Regular Session for a parent with a
13 terminal condition to be able to make arrangements for
14 the joint care, custody, and control of his or her minor
15 children so as to minimize the emotional stress of, and
16 disruption for, the minor children whenever the parent
17 is incapacitated or upon the parent's death, and to avoid
18 the need to provide a temporary guardian or place the
19 minor children in foster care, pending appointment of a
20 guardian, as might otherwise be required.

21 “Terminal condition,” for purposes of this subdivision,
22 means an incurable and irreversible condition that,
23 without the administration of life-sustaining treatment,
24 will, within reasonable medical judgment, result in death.

25 SEC. 12. Section 2355 of the Probate Code is amended
26 to read:

27 2355. (a) If the conservatee has been adjudicated to
28 lack the capacity to make health care decisions, the
29 conservator has the exclusive authority to make health
30 care decisions for the conservatee that the conservator in
31 good faith based on medical advice determines to be
32 necessary. The conservator shall make health care
33 decisions for the conservatee in accordance with the
34 conservatee's individual health care instructions, if any,
35 and other wishes to the extent known to the conservator.
36 Otherwise, the conservator shall make the decision in
37 accordance with the conservator's determination of the
38 conservatee's best interest. In determining the
39 conservatee's best interest, the conservator shall consider
40 the conservatee's personal values to the extent known to

1 the conservator. The conservator may require the
2 conservatee to receive the health care, whether or not
3 the conservatee objects. In this case, the health care
4 decision of the conservator alone is sufficient and no
5 person is liable because the health care is administered to
6 the conservatee without the conservatee's consent. For
7 the purposes of this subdivision, "health care" and "health
8 care decision" have the meanings provided in Sections
9 4615 and 4617, respectively.

10 (b) If prior to the establishment of the conservatorship
11 the conservatee was an adherent of a religion whose
12 tenets and practices call for reliance on prayer alone for
13 healing, the treatment required by the conservator under
14 the provisions of this section shall be by an accredited
15 practitioner of that religion.

16 SEC. 13. Section 2356 of the Probate Code is amended
17 to read:

18 2356. (a) No ward or conservatee may be placed in
19 a mental health treatment facility under this division
20 against the will of the ward or conservatee. Involuntary
21 civil placement of a ward or conservatee in a mental
22 health treatment facility may be obtained only pursuant
23 to Chapter 2 (commencing with Section 5150) or Chapter
24 3 (commencing with Section 5350) of Part 1 of Division
25 5 of the Welfare and Institutions Code. Nothing in this
26 subdivision precludes the placing of a ward in a state
27 hospital under Section 6000 of the Welfare and
28 Institutions Code upon application of the guardian as
29 provided in that section. The Director of Mental Health
30 shall adopt and issue regulations defining "mental health
31 treatment facility" for the purposes of this subdivision.

32 (b) No experimental drug as defined in Section 111515
33 of the Health and Safety Code may be prescribed for or
34 administered to a ward or conservatee under this
35 division. Such an experimental drug may be prescribed
36 for or administered to a ward or conservatee only as
37 provided in Article 4 (commencing with Section 111515)
38 of Chapter 6 of Part 5 of Division 104 of the Health and
39 Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division.

(e) This chapter is subject to a valid and effective advance health care directive under the Health Care Decisions Law (Division 4.7 (commencing with Section 4600)).

SEC. 14. The heading of Part 7 (commencing with Section 3200) of Division 4 of the Probate Code is amended to read:

PART 7. CAPACITY DETERMINATIONS AND
HEALTH CARE DECISIONS FOR ADULT
WITHOUT CONSERVATOR

SEC. 15. Section 3200 of the Probate Code is amended to read:

3200. As used in this part:

(a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition.

(b) "Health care decision" means a decision regarding the patient's health care, including the following:

(1) Selection and discharge of health care providers and institutions.

(2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication.

(3) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

(c) "Health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(d) “Patient” means an adult who does not have a conservator of the person and for whom a health care decision needs to be made.

SEC. 16. Section 3201 of the Probate Code is amended to read:

3201. (a) A petition may be filed to determine that a patient has the capacity to make a health care decision concerning an existing or continuing condition.

(b) A petition may be filed to determine that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient.

(c) One proceeding may be brought under this part under both subdivisions (a) and (b).

SEC. 17. Section 3203 of the Probate Code is amended to read:

3203. A petition may be filed by any of the following:

(a) The patient.

(b) The patient’s spouse.

(c) A relative or friend of the patient, or other interested person, including the patient’s agent under a power of attorney for health care.

(d) The patient’s physician.

(e) A person acting on behalf of the health care institution in which the patient is located if the patient is in a health care institution.

(f) The public guardian or other county officer designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

SEC. 18. Section 3204 of the Probate Code is amended to read:

3204. The petition shall state, or set forth by a medical declaration attached to the petition, all of the following known to the petitioner at the time the petition is filed:

(a) The condition of the patient’s health that requires treatment.

1 (b) The recommended health care that is considered
2 to be medically appropriate.

3 (c) The threat to the patient's condition if
4 authorization for the recommended health care is
5 delayed or denied by the court.

6 (d) The predictable or probable outcome of the
7 recommended health care.

8 (e) The medically available alternatives, if any, to the
9 recommended health care.

10 (f) The efforts made to obtain consent from the
11 patient.

12 (g) If the petition is filed by a person on behalf of a
13 health care institution, the name of the person to be
14 designated to give consent to the recommended health
15 care on behalf of the patient.

16 (h) The deficit or deficits in the patient's mental
17 functions listed in subdivision (a) of Section 811 that are
18 impaired, and an identification of a link between the
19 deficit or deficits and the patient's inability to respond
20 knowingly and intelligently to queries about the
21 recommended health care or inability to participate in a
22 decision about the recommended health care by means
23 of a rational thought process.

24 (i) The names and addresses, so far as they are known
25 to the petitioner, of the persons specified in subdivision
26 (b) of Section 1821.

27 SEC. 19. Section 3206 of the Probate Code is amended
28 to read:

29 3206. (a) Not less than 15 days before the hearing,
30 notice of the time and place of the hearing and a copy of
31 the petition shall be personally served on the patient, the
32 patient's attorney, and the agent under the patient's
33 power of attorney for health care, if any.

34 (b) Not less than 15 days before the hearing, notice of
35 the time and place of the hearing and a copy of the
36 petition shall be mailed to the following persons:

37 (1) The patient's spouse, if any, at the address stated in
38 the petition.

39 (2) The patient's relatives named in the petition at
40 their addresses stated in the petition.

(c) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical declaration attached to the petition or in a medical declaration presented to the court.

(2) The desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

SEC. 20. Section 3207 of the Probate Code is amended to read:

3207. Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical declarations if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

SEC. 21. Section 3208 of the Probate Code is amended to read:

3208. (a) Except as provided in subdivision (b), the court may make an order authorizing the recommended health care for the patient and designating a person to give consent to the recommended health care on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing condition of the patient's health requires the recommended health care.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to consent to the recommended health care.

(b) In determining whether the patient's mental functioning is so severely impaired that the patient lacks the capacity to make any health care decision, the court

1 may take into consideration the frequency, severity, and
2 duration of periods of impairment.

3 (c) The court may make an order authorizing
4 withholding or withdrawing artificial nutrition and
5 hydration and all other forms of health care and
6 designating a person to give or withhold consent to the
7 recommended health care on behalf of the patient if the
8 court determines from the evidence all of the following:

9 (1) The recommended health care is in accordance
10 with the patient's best interest, taking into consideration
11 the patient's personal values to the extent known to the
12 petitioner.

13 (2) The patient is unable to consent to the
14 recommended health care.

15 SEC. 22. Section 3208.5 is added to the Probate Code,
16 to read:

17 3208.5. In a proceeding under this part:

18 (a) Where the patient has the capacity to consent to
19 the recommended health care, the court shall so find in
20 its order.

21 (b) Where the court has determined that the patient
22 has the capacity to consent to the recommended health
23 care, the court shall, if requested, determine whether the
24 patient has accepted or refused the recommended health
25 care, and whether the patient's consent to the
26 recommended health care is an informed consent.

27 (c) Where the court finds that the patient has the
28 capacity to consent to the recommended health care, but
29 that the patient refuses consent, the court shall not make
30 an order authorizing the recommended health care or
31 designating a person to give consent to the recommended
32 health care. If an order has been made authorizing the
33 recommended health care and designating a person to
34 give consent to the recommended health care, the order
35 shall be revoked if the court determines that the patient
36 has recovered the capacity to consent to the
37 recommended health care. Until revoked or modified,
38 the order is effective authorization for the recommended
39 health care.



1 SEC. 23. Section 3210 of the Probate Code is amended
2 to read:

3 3210. (a) This part is supplemental and alternative to
4 other procedures or methods for obtaining consent to
5 health care or making health care decisions, and is
6 permissive and cumulative for the relief to which it
7 applies.

8 (b) Nothing in this part limits the providing of health
9 care in an emergency case in which the health care is
10 required because (1) the health care is required for the
11 alleviation of severe pain or (2) the patient has a medical
12 condition that, if not immediately diagnosed and treated,
13 will lead to serious disability or death.

14 (c) Nothing in this part supersedes the right that any
15 person may have under existing law to make health care
16 decisions on behalf of a patient, or affects the
17 decisionmaking process of a health care institution.

18 SEC. 24. Section 3211 of the Probate Code is amended
19 to read:

20 3211. (a) No person may be placed in a mental health
21 treatment facility under the provisions of this part.

22 (b) No experimental drug as defined in Section 111515
23 of the Health and Safety Code may be prescribed for or
24 administered to any person under this part.

25 (c) No convulsive treatment as defined in Section 5325
26 of the Welfare and Institutions Code may be performed
27 on any person under this part.

28 (d) No person may be sterilized under this part.

29 (e) The provisions of this part are subject to a valid
30 advance health care directive under the Health Care
31 Decisions Law, Division 4.7 (commencing with Section
32 4600).

33 SEC. 25. Section 3212 is added to the Probate Code,
34 to read:

35 3212. Nothing in this part shall be construed to
36 supersede or impair the right of any individual to choose
37 treatment by spiritual means in lieu of medical
38 treatment, nor shall any individual choosing treatment by
39 spiritual means, in accordance with the tenets and
40 practices of that individual's established religious

1 tradition, be required to submit to medical testing of any
2 kind pursuant to a determination of capacity.

3 SEC. 26. Section 3722 of the Probate Code is amended
4 to read:

5 3722. If after the absentee executes a power of
6 attorney, the principal's spouse who is the
7 attorney-in-fact commences a proceeding for dissolution,
8 annulment, or legal separation, or a legal separation is
9 ordered, the attorney-in-fact's authority is revoked. This
10 section is in addition to the provisions of Sections 4154 and
11 4697.

12 SEC. 27. Section 4050 of the Probate Code is amended
13 to read:

14 4050. (a) This division applies to the following:

15 (1) Durable powers of attorney, other than powers of
16 attorney for health care governed by Division 4.7
17 (commencing with Section 4600).

18 (2) Statutory form powers of attorney under Part 3
19 (commencing with Section 4400).

20 (3) Any other power of attorney that incorporates or
21 refers to this division or the provisions of this division.

22 (b) This division does not apply to the following:

23 (1) A power of attorney to the extent that the
24 authority of the attorney-in-fact is coupled with an
25 interest in the subject of the power of attorney.

26 (2) Reciprocal or interinsurance exchanges and their
27 contracts, subscribers, attorneys-in-fact, agents, and
28 representatives.

29 (3) A proxy given by an attorney-in-fact to another
30 person to exercise voting rights.

31 (c) This division is not intended to affect the validity
32 of any instrument or arrangement that is not described in
33 subdivision (a).

34 SEC. 28. Section 4100 of the Probate Code is amended
35 to read:

36 4100. This part applies to all powers of attorney under
37 this division, subject to any special rules applicable to
38 statutory form powers of attorney under Part 3
39 (commencing with Section 4400).



1 SEC. 29. Section 4121 of the Probate Code is amended
2 to read:

3 4121. A power of attorney is legally sufficient if all of
4 the following requirements are satisfied:

5 (a) The power of attorney contains the date of its
6 execution.

7 (b) The power of attorney is signed either (1) by the
8 principal or (2) in the principal's name by another adult
9 in the principal's presence and at the principal's
10 direction.

11 (c) The power of attorney is either (1) acknowledged
12 before a notary public or (2) signed by at least two
13 witnesses who satisfy the requirements of Section 4122.

14 SEC. 30. Section 4122 of the Probate Code is amended
15 to read:

16 4122. If the power of attorney is signed by witnesses,
17 as provided in Section 4121, the following requirements
18 shall be satisfied:

19 (a) The witnesses shall be adults.

20 (b) The attorney-in-fact may not act as a witness.

21 (c) Each witness signing the power of attorney shall
22 witness either the signing of the instrument by the
23 principal or the principal's acknowledgment of the
24 signature or the power of attorney.

25 SEC. 31. Section 4123 of the Probate Code is amended
26 to read:

27 4123. (a) In a power of attorney, a principal may
28 grant authority to an attorney-in-fact to act on the
29 principal's behalf with respect to all lawful subjects and
30 purposes or with respect to one or more express subjects
31 or purposes. The attorney-in-fact may be granted
32 authority with regard to the principal's property,
33 personal care, health care, or any other matter.

34 (b) With regard to property matters, a power of
35 attorney may grant authority to make decisions
36 concerning all or part of the principal's real and personal
37 property, whether owned by the principal at the time of
38 the execution of the power of attorney or thereafter
39 acquired or whether located in this state or elsewhere,

1 without the need for a description of each item or parcel
2 of property.

3 (c) With regard to personal care, a power of attorney
4 may grant authority to make decisions relating to the
5 personal care of the principal, including, but not limited
6 to, determining where the principal will live, providing
7 meals, hiring household employees, providing
8 transportation, handling mail, and arranging recreation
9 and entertainment.

10 SEC. 32. Section 4128 of the Probate Code is amended
11 to read:

12 4128. (a) Subject to subdivision (b), a printed form of
13 a durable power of attorney that is sold or otherwise
14 distributed in this state for use by a person who does not
15 have the advice of legal counsel shall contain, in not less
16 than 10-point boldface type or a reasonable equivalent
17 thereof, the following warning statement:

18

19 Notice to Person Executing Durable Power of Attorney

20

21 A durable power of attorney is an important legal
22 document. By signing the durable power of attorney, you
23 are authorizing another person to act for you, the
24 principal. Before you sign this durable power of attorney,
25 you should know these important facts:

26 Your agent (attorney-in-fact) has no duty to act unless
27 you and your agent agree otherwise in writing.

28 This document gives your agent the powers to manage,
29 dispose of, sell, and convey your real and personal
30 property, and to use your property as security if your
31 agent borrows money on your behalf.

32 Your agent will have the right to receive reasonable
33 payment for services provided under this durable power
34 of attorney unless you provide otherwise in this power of
35 attorney.

36 The powers you give your agent will continue to exist
37 for your entire lifetime, unless you state that the durable
38 power of attorney will last for a shorter period of time or
39 unless you otherwise terminate the durable power of
40 attorney. The powers you give your agent in this durable



1 power of attorney will continue to exist even if you can
2 no longer make your own decisions respecting the
3 management of your property.

4 You can amend or change this durable power of
5 attorney only by executing a new durable power of
6 attorney or by executing an amendment through the
7 same formalities as an original. You have the right to
8 revoke or terminate this durable power of attorney at any
9 time, so long as you are competent.

10 This durable power of attorney must be dated and must
11 be acknowledged before a notary public or signed by two
12 witnesses. If it is signed by two witnesses, they must
13 witness either (1) the signing of the power of attorney or
14 (2) the principal's signing or acknowledgment of his or
15 her signature. A durable power of attorney that may
16 affect real property should be acknowledged before a
17 notary public so that it may easily be recorded.

18 You should read this durable power of attorney
19 carefully. When effective, this durable power of attorney
20 will give your agent the right to deal with property that
21 you now have or might acquire in the future. The durable
22 power of attorney is important to you. If you do not
23 understand the durable power of attorney, or any
24 provision of it, then you should obtain the assistance of an
25 attorney or other qualified person.

26
27 (b) Nothing in subdivision (a) invalidates any
28 transaction in which a third person relied in good faith on
29 the authority created by the durable power of attorney.

30 (c) This section does not apply to a statutory form
31 power of attorney under Part 3 (commencing with
32 Section 4400).

33 SEC. 33. Section 4203 of the Probate Code is amended
34 to read:

35 4203. (a) A principal may designate one or more
36 successor attorneys-in-fact to act if the authority of a
37 predecessor attorney-in-fact terminates.

38 (b) The principal may grant authority to another
39 person, designated by name, by office, or by function,
40 including the initial and any successor attorneys-in-fact,

1 to designate at any time one or more successor
2 attorneys-in-fact.

3 (c) A successor attorney-in-fact is not liable for the
4 actions of the predecessor attorney-in-fact.

5 SEC. 34. Section 4206 of the Probate Code is amended
6 to read:

7 4206. (a) If, following execution of a durable power
8 of attorney, a court of the principal's domicile appoints a
9 conservator of the estate, guardian of the estate, or other
10 fiduciary charged with the management of all of the
11 principal's property or all of the principal's property
12 except specified exclusions, the attorney-in-fact is
13 accountable to the fiduciary as well as to the principal.
14 Except as provided in subdivision (b), the fiduciary has
15 the same power to revoke or amend the durable power
16 of attorney that the principal would have had if not
17 incapacitated, subject to any required court approval.

18 (b) If a conservator of the estate is appointed by a
19 court of this state, the conservator can revoke or amend
20 the durable power of attorney only if the court in which
21 the conservatorship proceeding is pending has first made
22 an order authorizing or requiring the fiduciary to modify
23 or revoke the durable power of attorney and the
24 modification or revocation is in accord with the order.

25 (c) This section is not subject to limitation in the
26 power of attorney.

27 SEC. 35. Section 4260 of the Probate Code is amended
28 to read:

29 4260. This article does not apply to statutory form
30 powers of attorney under Part 3 (commencing with
31 Section 4400).

32 SEC. 36. Section 4265 of the Probate Code is amended
33 to read:

34 4265. A power of attorney may not authorize an
35 attorney-in-fact to make, publish, declare, amend, or
36 revoke the principal's will.

37 SEC. 37. Part 4 (commencing with Section 4500) is
38 added to Division 4.5 of the Probate Code, to read:

39

PART 4. JUDICIAL PROCEEDINGS CONCERNING
POWERS OF ATTORNEY

CHAPTER 1. GENERAL PROVISIONS

4500. A power of attorney is exercisable free of judicial intervention, subject to this part.

4501. The remedies provided in this part are cumulative and not exclusive of any other remedies provided by law.

4502. Except as provided in Section 4503, this part is not subject to limitation in the power of attorney.

4503. (a) Subject to subdivision (b), a power of attorney may expressly eliminate the authority of a person listed in Section 4540 to petition the court for any one or more of the purposes enumerated in Section 4541 if both of the following requirements are satisfied:

(1) The power of attorney is executed by the principal at a time when the principal has the advice of a lawyer authorized to practice law in the state where the power of attorney is executed.

(2) The principal's lawyer 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."

(b) A power of attorney may not limit the authority of the attorney-in-fact, the principal, the conservator of the person or estate of the principal, or the public guardian to petition under this part.

4504. There is no right to a jury trial in proceedings under this division.

1 4505. Except as otherwise provided in this division,
2 the general provisions in Division 3 (commencing with
3 Section 1000) apply to proceedings under this division.

4
5 CHAPTER 2. JURISDICTION AND VENUE
6

7 4520. (a) The superior court has jurisdiction in
8 proceedings under this division.

9 (b) The court in proceedings under this division is a
10 court of general jurisdiction and the court, or a judge of
11 the court, has the same power and authority with respect
12 to the proceedings as otherwise provided by law for a
13 superior court, or a judge of the superior court, including,
14 but not limited to, the matters authorized by Section 128
15 of the Code of Civil Procedure.

16 4521. The court may exercise jurisdiction in
17 proceedings under this division on any basis permitted by
18 Section 410.10 of the Code of Civil Procedure.

19 4522. Without limiting Section 4521, a person who acts
20 as an attorney-in-fact under a power of attorney
21 governed by this division is subject to personal
22 jurisdiction in this state with respect to matters relating
23 to acts and transactions of the attorney-in-fact performed
24 in this state or affecting property or a principal in this
25 state.

26 4523. The proper county for commencement of a
27 proceeding under this division shall be determined in the
28 following order of priority:

29 (a) The county in which the principal resides.

30 (b) The county in which the attorney-in-fact resides.

31 (c) A county in which property subject to the power
32 of attorney is located.

33 (d) Any other county that is in the principal's best
34 interest.

35
36 CHAPTER 3. PETITIONS, ORDERS, APPEALS
37

38 4540. Subject to Section 4503, a petition may be filed
39 under this part by any of the following persons:

40 (a) The attorney-in-fact.

1 (b) The principal.

2 (c) The spouse of the principal.

3 (d) A relative of the principal.

4 (e) The conservator of the person or estate of the
5 principal.

6 (f) The court investigator, described in Section 1454,
7 of the county where the power of attorney was executed
8 or where the principal resides.

9 (g) The public guardian of the county where the
10 power of attorney was executed or where the principal
11 resides.

12 (h) The personal representative or trustee of the
13 principal's estate.

14 (i) The principal's successor in interest.

15 (j) A person who is requested in writing by an
16 attorney-in-fact to take action.

17 (k) Any other interested person or friend of the
18 principal.

19 4541. A petition may be filed under this part for any
20 one or more of the following purposes:

21 (a) Determining whether the power of attorney is in
22 effect or has terminated.

23 (b) Passing on the acts or proposed acts of the
24 attorney-in-fact, including approval of authority to
25 disobey the principal's instructions pursuant to
26 subdivision (b) of Section 4234.

27 (c) Compelling the attorney-in-fact to submit the
28 attorney-in-fact's accounts or report the attorney-in-fact's
29 acts as attorney-in-fact to the principal, the spouse of the
30 principal, the conservator of the person or the estate of
31 the principal, or to any other person required by the court
32 in its discretion, if the attorney-in-fact has failed to submit
33 an accounting or report within 60 days after written
34 request from the person filing the petition.

35 (d) Declaring that the authority of the attorney-in-fact
36 is revoked on a determination by the court of all of the
37 following:

38 (1) The attorney-in-fact has violated or is unfit to
39 perform the fiduciary duties under the power of attorney.

(2) At the time of the determination by the court, the principal lacks the capacity to give or to revoke a power of attorney.

(3) The revocation of the attorney-in-fact's authority is in the best interest of the principal or the principal's estate.

(e) Approving the resignation of the attorney-in-fact:

(1) If the attorney-in-fact is subject to a duty to act under Section 4230, the court may approve the resignation, subject to any orders the court determines are necessary to protect the principal's interests.

(2) If the attorney-in-fact is not subject to a duty to act under Section 4230, the court shall approve the resignation, subject to the court's discretion to require the attorney-in-fact to give notice to other interested persons.

(f) Compelling a third person to honor the authority of an attorney-in-fact.

4542. A proceeding under this part is commenced by filing a petition stating facts showing that the petition is authorized under this part, the grounds of the petition, and, if known to the petitioner, the terms of the power of attorney.

4543. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the principal or the principal's estate and shall stay or dismiss the proceeding in whole or in part when required by Section 410.30 of the Code of Civil Procedure.

4544. (a) Subject to subdivision (b), at least 15 days before the time set for hearing, the petitioner shall serve notice of the time and place of the hearing, together with a copy of the petition, on the following:

(1) The attorney-in-fact if not the petitioner.

(2) The principal if not the petitioner.

(b) In the case of a petition to compel a third person to honor the authority of an attorney-in-fact, notice of the time and place of the hearing, together with a copy of the petition, shall be served on the third person in the manner provided in Chapter 4 (commencing with

1 Section 413.10) of Title 5 of Part 2 of the Code of Civil
2 Procedure.

3 4545. In a proceeding under this part commenced by
4 the filing of a petition by a person other than the
5 attorney-in-fact, the court may in its discretion award
6 reasonable attorney's fees to one of the following:

7 (a) The attorney-in-fact, if the court determines that
8 the proceeding was commenced without any reasonable
9 cause.

10 (b) The person commencing the proceeding, if the
11 court determines that the attorney-in-fact has clearly
12 violated the fiduciary duties under the power of attorney
13 or has failed without any reasonable cause or justification
14 to submit accounts or report acts to the principal or
15 conservator of the estate or of the person, as the case may
16 be, after written request from the principal or
17 conservator.

18 SEC. 38. Part 4 (commencing with Section 4600) of
19 Division 4.5 of the Probate Code is repealed.

20 SEC. 39. Division 4.7 (commencing with Section
21 4600) is added to the Probate Code, to read:

22
23 DIVISION 4.7. HEALTH CARE DECISIONS

24
25 PART 1. DEFINITIONS AND GENERAL

26
27 CHAPTER 1. SHORT TITLE AND DEFINITIONS

28
29 4600. This division may be cited as the Health Care
30 Decisions Law.

31 4603. Unless the provision or context otherwise
32 requires, the definitions in this chapter govern the
33 construction of this division.

34 4605. "Advance health care directive" or "advance
35 directive" means either an individual health care
36 instruction or a power of attorney for health care.

37 4607. (a) "Agent" means an individual designated in
38 a power of attorney for health care to make a health care
39 decision for the principal, regardless of whether the

1 person is known as an agent or attorney-in-fact, or by
2 some other term.

3 (b) “Agent” includes a successor or alternate agent.

4 4609. “Capacity” means a patient’s ability to
5 understand the nature and consequences of proposed
6 health care, including its significant benefits, risks, and
7 alternatives, and to make and communicate a health care
8 decision.

9 4611. “Community care facility” means a
10 “community care facility” as defined in Section 1502 of
11 the Health and Safety Code.

12 4613. “Conservator” means a court-appointed
13 conservator having authority to make a health care
14 decision for a patient.

15 4615. “Health care” means any care, treatment,
16 service, or procedure to maintain, diagnose, or otherwise
17 affect a patient’s physical or mental condition.

18 4617. “Health care decision” means a decision made
19 by a patient or the patient’s agent, conservator, or
20 surrogate, regarding the patient’s health care, including
21 the following:

22 (a) Selection and discharge of health care providers
23 and institutions.

24 (b) Approval or disapproval of diagnostic tests,
25 surgical procedures, and programs of medication.

26 (c) Directions to provide, withhold, or withdraw
27 artificial nutrition and hydration and all other forms of
28 health care, including cardiopulmonary resuscitation.

29 4619. “Health care institution” means an institution,
30 facility, or agency licensed, certified, or otherwise
31 authorized or permitted by law to provide health care in
32 the ordinary course of business.

33 4621. “Health care provider” means an individual
34 licensed, certified, or otherwise authorized or permitted
35 by the law of this state to provide health care in the
36 ordinary course of business or practice of a profession.

37 4623. “Individual health care instruction” or
38 “individual instruction” means a patient’s written or oral
39 direction concerning a health care decision for the
40 patient.



1 4625. "Patient" means an adult whose health care is
2 under consideration, and includes a principal under a
3 power of attorney for health care and an adult who has
4 given an individual health care instruction or designated
5 a surrogate.

6 4627. "Physician" means a physician and surgeon
7 licensed by the Medical Board of California or the
8 Osteopathic Medical Board of California.

9 4629. "Power of attorney for health care" means a
10 written instrument designating an agent to make health
11 care decisions for the principal.

12 4631. "Primary physician" means a physician
13 designated by a patient or the patient's agent,
14 conservator, or surrogate, to have primary responsibility
15 for the patient's health care or, in the absence of a
16 designation or if the designated physician is not
17 reasonably available or declines to act as primary
18 physician, a physician who undertakes the responsibility.

19 4633. "Principal" means an adult who executes a
20 power of attorney for health care.

21 4635. "Reasonably available" means readily able to be
22 contacted without undue effort and willing and able to
23 act in a timely manner considering the urgency of the
24 patient's health care needs.

25 4637. "Residential care facility for the elderly" means
26 a "residential care facility for the elderly" as defined in
27 Section 1569.2 of the Health and Safety Code.

28 4639. "Skilled nursing facility" means a "skilled
29 nursing facility" as defined in Section 1250 of the Health
30 and Safety Code.

31 4641. "Supervising health care provider" means the
32 primary physician or, if there is no primary physician or
33 the primary physician is not reasonably available, the
34 health care provider who has undertaken primary
35 responsibility for a patient's health care.

36 4643. "Surrogate" means an adult, other than a
37 patient's agent or conservator, authorized under this
38 division to make a health care decision for the patient.

39



CHAPTER 2. GENERAL PROVISIONS

4650. The Legislature finds the following:

(a) In recognition of the dignity and privacy a person has a right to expect, the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.

(b) Modern medical technology has made possible the artificial prolongation of human life beyond natural limits. In the interest of protecting individual autonomy, this prolongation of the process of dying for a person for whom continued health care does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.

(c) In the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life-sustaining treatment.

4651. (a) Except as otherwise provided, this division applies to health care decisions for adults who lack capacity to make health care decisions for themselves.

(b) This division does not affect any of the following:

(1) The right of an individual to make health care decisions while having the capacity to do so.

(2) The law governing health care in an emergency.

(3) The law governing health care for unemancipated minors.

4652. This division does not authorize consent to any of the following on behalf of a patient:

(a) Commitment to or placement in a mental health treatment facility.

(b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).

(c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).

(d) Sterilization.

(e) Abortion.

1 4653. Nothing in this division shall be construed to
2 condone, authorize, or approve mercy killing, assisted
3 suicide, or euthanasia. This division is not intended to
4 permit any affirmative or deliberate act or omission to
5 end life other than withholding or withdrawing health
6 care pursuant to an advance health care directive, by a
7 surrogate, or as otherwise provided, so as to permit the
8 natural process of dying.

9 4654. This division does not authorize or require a
10 health care provider or health care institution to provide
11 health care contrary to generally accepted health care
12 standards applicable to the health care provider or health
13 care institution.

14 4655. (a) This division does not create a presumption
15 concerning the intention of a patient who has not made
16 or who has revoked an advance health care directive.

17 (b) In making health care decisions under this
18 division, a patient's attempted suicide shall not be
19 construed to indicate a desire of the patient that health
20 care be restricted or inhibited.

21 4656. Death resulting from withholding or
22 withdrawing health care in accordance with this division
23 does not for any purpose constitute a suicide or homicide
24 or legally impair or invalidate a policy of insurance or an
25 annuity providing a death benefit, notwithstanding any
26 term of the policy or annuity to the contrary.

27 4657. A patient is presumed to have the capacity to
28 make a health care decision, to give or revoke an advance
29 health care directive, and to designate or disqualify a
30 surrogate. This presumption is a presumption affecting
31 the burden of proof.

32 4658. Unless otherwise specified in a written advance
33 health care directive, for the purposes of this division, a
34 determination that a patient lacks or has recovered
35 capacity, or that another condition exists that affects an
36 individual health care instruction or the authority of an
37 agent or surrogate, shall be made by the primary
38 physician.

39 4659. (a) Except as provided in subdivision (b), none
40 of the following persons may make health care decisions

1 as an agent under a power of attorney for health care or
2 a surrogate under this division:

3 (1) The supervising health care provider or an
4 employee of the health care institution where the patient
5 is receiving care.

6 (2) An operator or employee of a community care
7 facility or residential care facility where the patient is
8 receiving care.

9 (b) The prohibition in subdivision (a) does not apply
10 to the following persons:

11 (1) An employee who is related to the patient by
12 blood, marriage, or adoption.

13 (2) An employee who is employed by the same health
14 care institution, community care facility, or residential
15 care facility for the elderly as the patient.

16 (c) A conservator under the Lanterman-Petris-Short
17 Act (Part 1 (commencing with Section 5000) of Division
18 5 of the Welfare and Institutions Code) may not be
19 designated as an agent or surrogate to make health care
20 decisions by the conservatee, unless all of the following
21 are satisfied:

22 (1) The advance health care directive is otherwise
23 valid.

24 (2) The conservatee is represented by legal counsel.

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

27 “I am a lawyer authorized to practice law in the state
28 where this advance health care directive was executed,
29 and the principal or patient was my client at the time this
30 advance directive was executed. I have advised my client
31 concerning his or her rights in connection with this
32 advance directive and the applicable law and the
33 consequences of signing or not signing this advance
34 directive, and my client, after being so advised, has
35 executed this advance directive.”

36
37 4660. A copy of a written advance health care
38 directive, revocation of an advance directive, or
39 designation or disqualification of a surrogate has the same
40 effect as the original.

CHAPTER 3. TRANSITIONAL PROVISIONS

4665. Except as otherwise provided by statute:

(a) On and after July 1, 2000, this division applies to all advance health care directives, including, but not limited to, durable powers of attorney for health care and declarations under the Natural Death Act (former Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code), regardless of whether they were given or executed before, on, or after July 1, 2000.

(b) This division applies to all proceedings concerning advance health care directives commenced on or after July 1, 2000.

(c) This division applies to all proceedings concerning written advance health care directives commenced before July 1, 2000, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

(d) Nothing in this division affects the validity of an advance health care directive executed before July 1, 2000, that was valid under prior law.

(e) Nothing in this division affects the validity of a durable power of attorney for health care executed on a printed form that was valid under prior law, regardless of whether execution occurred before, on, or after July 1, 2000.

PART 2. UNIFORM HEALTH CARE DECISIONS
ACT

CHAPTER 1. ADVANCE HEALTH CARE DIRECTIVES

Article 1. General Provisions

4670. An adult having capacity may give an individual health care instruction. The individual instruction may be

1 oral or written. The individual instruction may be limited
2 to take effect only if a specified condition arises.

3 4671. (a) An adult having capacity may execute a
4 power of attorney for health care, as provided in Article
5 2 (commencing with Section 4680). The power of
6 attorney for health care may authorize the agent to make
7 health care decisions and may also include individual
8 health care instructions.

9 (b) The principal in a power of attorney for health
10 care may grant authority to make decisions relating to the
11 personal care of the principal, including, but not limited
12 to, determining where the principal will live, providing
13 meals, hiring household employees, providing
14 transportation, handling mail, and arranging recreation
15 and entertainment.

16 4672. (a) A written advance health care directive
17 may include the individual's nomination of a conservator
18 of the person or estate or both, or a guardian of the person
19 or estate or both, for consideration by the court if
20 protective proceedings for the individual's person or
21 estate are thereafter commenced.

22 (b) If the protective proceedings are conservatorship
23 proceedings in this state, the nomination has the effect
24 provided in Section 1810 and the court shall give effect to
25 the most recent writing executed in accordance with
26 Section 1810, whether or not the writing is a written
27 advance health care directive.

28 4673. (a) If an individual is a patient in a skilled
29 nursing facility when the advance health care directive
30 is executed, the advance directive shall be acknowledged
31 before a notary public or signed by at least two witnesses
32 as provided in this section.

33 (b) If the advance health care directive is signed by
34 witnesses, the following requirements shall be satisfied:

35 (1) The witnesses shall be adults.

36 (2) Each witness shall witness either the signing of the
37 advance health care directive by the patient or the
38 patient's acknowledgment of the signature or the
39 advance directive.

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



1 (A) The agent, with regard to a power of attorney for
2 health care.

3 (B) The patient's health care provider or an employee
4 of the patient's health care provider.

5 (C) The operator or an employee of a community care
6 facility.

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

9 (4) Each witness shall make the following declaration
10 in substance:

11 "I declare under penalty of perjury under the laws of
12 California that the individual who signed or
13 acknowledged this document is personally known to me,
14 or that the identity of the individual was proven to me by
15 convincing evidence, that the individual signed or
16 acknowledged this advance health care directive in my
17 presence, that the individual appears to be of sound mind
18 and under no duress, fraud, or undue influence, that I am
19 not the person appointed as agent by this document, and
20 that I am not the individual's health care provider, an
21 employee of the individual's health care provider, the
22 operator of a community care facility, an employee of an
23 operator of a community care facility, the operator of a
24 residential care facility for the elderly, nor an employee
25 of an operator of a residential care facility for the elderly."
26

27 (c) An advance health care directive governed by this
28 section is not effective unless a patient advocate or
29 ombudsman, as may be designated by the Department of
30 Aging for this purpose pursuant to any other applicable
31 provision of law, signs the advance directive as a witness,
32 either as one of two witnesses or in addition to
33 notarization. The patient advocate or ombudsman shall
34 declare that he or she is serving as a witness as required
35 by this subdivision. It is the intent of this subdivision to
36 recognize that some patients in skilled nursing facilities
37 are insulated from a voluntary decisionmaking role, by
38 virtue of the custodial nature of their care, so as to require
39 special assurance that they are capable of willfully and
40 voluntarily executing an advance directive.

1 (d) For the purposes of the declaration of witnesses,
2 “convincing evidence” means the absence of any
3 information, evidence, or other circumstances that would
4 lead a reasonable person to believe the individual
5 executing the advance health care directive, whether by
6 signing or acknowledging his or her signature, is not the
7 individual he or she claims to be, and any one of the
8 following:

9 (1) Reasonable reliance on the presentation of any one
10 of the following, if the document is current or has been
11 issued within five years:

12 (A) An identification card or driver’s license issued by
13 the California Department of Motor Vehicles.

14 (B) A passport issued by the Department of State of
15 the United States.

16 (2) Reasonable reliance on the presentation of any one
17 of the following, if the document is current or has been
18 issued within five years and contains a photograph and
19 description of the person named on it, is signed by the
20 person, bears a serial or other identifying number, and, in
21 the event that the document is a passport, has been
22 stamped by the United States Immigration and
23 Naturalization Service:

24 (A) A passport issued by a foreign government.

25 (B) A driver’s license issued by a state other than
26 California or by a Canadian or Mexican public agency
27 authorized to issue drivers’ licenses.

28 (C) An identification card issued by a state other than
29 California.

30 (D) An identification card issued by any branch of the
31 armed forces of the United States.

32 (e) A witness who is a patient advocate or ombudsman
33 may rely on the representations of the administrators or
34 staff of the skilled nursing facility, or of family members,
35 as convincing evidence of the identity of the patient if the
36 patient advocate or ombudsman believes that the
37 representations provide a reasonable basis for
38 determining the identity of the patient.

(f) The provisions of this section applicable to witnesses do not apply to a notary who acknowledges an advance health care directive.

4674. (a) A written advance health care directive or similar instrument executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction or of this state, is valid and enforceable in this state to the same extent as a written advance directive validly executed in this state.

(b) In the absence of knowledge to the contrary, a physician or other health care provider may presume that a written advance health care directive or similar instrument, whether executed in another state or jurisdiction or in this state, is valid.

4675. A health care provider, health care service plan, health care institution, disability insurer, self-insured employee welfare plan, or nonprofit hospital plan or a similar insurance plan may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care, admission to a facility, or furnishing insurance.

4676. Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

Article 2. Powers of Attorney for Health Care

4680. A power of attorney for health care is legally sufficient if all of the following requirements are satisfied:

(a) The power of attorney is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction.

(b) The power of attorney satisfies applicable witnessing requirements of Section 4673.

4681. (a) Except as provided in subdivision (b), the principal may limit the application of any provision of this

1 division by an express statement in the power of attorney
2 for health care or by providing an inconsistent rule in the
3 power of attorney.

4 (b) A power of attorney for health care may not limit
5 either the application of a statute specifically providing
6 that it is not subject to limitation in the power of attorney
7 or a statute concerning any of the following:

8 (1) Statements required to be included in a power of
9 attorney.

10 (2) Operative dates of statutory enactments or
11 amendments.

12 (3) Formalities for execution of a power of attorney for
13 health care.

14 (4) Qualifications of witnesses.

15 (5) Qualifications of agents.

16 (6) Protection of third persons from liability.

17 4682. Unless otherwise provided in a power of
18 attorney for health care, the authority of an agent
19 becomes effective only on a determination that the
20 principal lacks capacity, and ceases to be effective on a
21 determination that the principal has recovered capacity.

22 4683. Subject to any limitations in the power of
23 attorney for health care:

24 (a) An agent designated in the power of attorney may
25 make health care decisions for the principal to the same
26 extent the principal could make health care decisions if
27 the principal had the capacity to do so.

28 (b) The agent may also make decisions that may be
29 effective after the principal's death, including the
30 following:

31 (1) Making a disposition under the Uniform
32 Anatomical Gift Act (Chapter 3.5 (commencing with
33 Section 7150) of Part 1 of Division 7 of the Health and
34 Safety Code).

35 (2) Authorizing an autopsy under Section 7113 of the
36 Health and Safety Code.

37 (3) Directing the disposition of remains under Section
38 7100 of the Health and Safety Code.

39 4684. An agent shall make a health care decision in
40 accordance with the principal's individual health care

instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

4685. Unless the power of attorney for health care provides otherwise, the agent designated in the power of attorney who is known to the health care provider to be reasonably available and willing to make health care decisions has priority over any other person in making health care decisions for the principal.

4686. Unless the power of attorney for health care provides a time of termination, the authority of the agent is exercisable notwithstanding any lapse of time since execution of the power of attorney.

4687. Nothing in this division affects any right the person designated as an agent under a power of attorney for health care may have, apart from the power of attorney, to make or participate in making health care decisions for the principal.

4688. Where this division does not provide a rule governing agents under powers of attorney, the law of agency applies.

4689. Nothing in this division authorizes an agent under a power of attorney for health care to make a health care decision if the principal objects to the decision. If the principal objects to the health care decision of the agent under a power of attorney, the matter shall be governed by the law that would apply if there were no power of attorney for health care.

Article 3. Revocation of Advance Directives

4695. (a) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) A patient having capacity may revoke all or part of an advance health care directive, other than the

1 designation of an agent, at any time and in any manner
2 that communicates an intent to revoke.

3 4696. A health care provider, agent, conservator, or
4 surrogate who is informed of a revocation of an advance
5 health care directive shall promptly communicate the
6 fact of the revocation to the supervising health care
7 provider and to any health care institution where the
8 patient is receiving care.

9 4697. (a) If after executing a power of attorney for
10 health care the principal's marriage to the agent is
11 dissolved or annulled, the principal's designation of the
12 former spouse as an agent to make health care decisions
13 for the principal is revoked.

14 (b) If the agent's authority is revoked solely by
15 subdivision (a), it is revived by the principal's remarriage
16 to the agent.

17 4698. An advance health care directive that conflicts
18 with an earlier advance directive revokes the earlier
19 advance directive to the extent of the conflict.

20

21 CHAPTER 2. ADVANCE HEALTH CARE DIRECTIVE FORMS

22

23 4700. The form provided in Section 4701 may, but
24 need not, be used to create an advance health care
25 directive. The other sections of this division govern the
26 effect of the form or any other writing used to create an
27 advance health care directive. An individual may
28 complete or modify all or any part of the form in Section
29 4701.

30 4701. The statutory advance health care directive
31 form is as follows:

32

33 ADVANCE HEALTH CARE DIRECTIVE

34

35 (California Probate Code Section 4701)

36

37 Explanation

38

39 You have the right to give instructions about your own
40 health care. You also have the right to name someone else



1 to make health care decisions for you. This form lets you
2 do either or both of these things. It also lets you express
3 your wishes regarding donation of organs and the
4 designation of your primary physician. If you use this
5 form, you may complete or modify all or any part of it. You
6 are free to use a different form.

7 Part 1 of this form is a power of attorney for health care.
8 Part 1 lets you name another individual as agent to make
9 health care decisions for you if you become incapable of
10 making your own decisions or if you want someone else
11 to make those decisions for you now even though you are
12 still capable. You may also name an alternate agent to act
13 for you if your first choice is not willing, able, or
14 reasonably available to make decisions for you. (Your
15 agent may not be an operator or employee of a
16 community care facility or a residential care facility
17 where you are receiving care, or your supervising health
18 care provider or employee of the health care institution
19 where you are receiving care, unless your agent is related
20 to you or is a co-worker.)

21 Unless the form you sign limits the authority of your
22 agent, your agent may make all health care decisions for
23 you. This form has a place for you to limit the authority
24 of your agent. You need not limit the authority of your
25 agent if you wish to rely on your agent for all health care
26 decisions that may have to be made. If you choose not to
27 limit the authority of your agent, your agent will have the
28 right to:

29 (a) Consent or refuse consent to any care, treatment,
30 service, or procedure to maintain, diagnose, or otherwise
31 affect a physical or mental condition.

32 (b) Select or discharge health care providers and
33 institutions.

34 (c) Approve or disapprove diagnostic tests, surgical
35 procedures, and programs of medication.

36 (d) Direct the provision, withholding, or withdrawal
37 of artificial nutrition and hydration and all other forms of
38 health care, including cardiopulmonary resuscitation.

39 (e) Make anatomical gifts, authorize an autopsy, and
40 direct disposition of remains.

1 Part 2 of this form lets you give specific instructions
2 about any aspect of your health care, whether or not you
3 appoint an agent. Choices are provided for you to express
4 your wishes regarding the provision, withholding, or
5 withdrawal of treatment to keep you alive, as well as the
6 provision of pain relief. Space is also provided for you to
7 add to the choices you have made or for you to write out
8 any additional wishes. If you are satisfied to allow your
9 agent to determine what is best for you in making
10 end-of-life decisions, you need not fill out Part 2 of this
11 form.

12 Part 3 of this form lets you express an intention to
13 donate your bodily organs and tissues following your
14 death.

15 Part 4 of this form lets you designate a physician to have
16 primary responsibility for your health care.

17 After completing this form, sign and date the form at
18 the end. It is recommended but not required that you
19 request two other adults to sign as witnesses. Give a copy
20 of the signed and completed form to your physician, to
21 any other health care providers you may have, to any
22 health care institution at which you are receiving care,
23 and to any health care agents you have named. You
24 should talk to the person you have named as agent to
25 make sure that he or she understands your wishes and is
26 willing to take the responsibility.

27 You have the right to revoke this advance health care
28 directive or replace this form at any time.

29

30

* * * * *

31

32

PART 1

33

POWER OF ATTORNEY FOR HEALTH CARE

34

35

(1.1) DESIGNATION OF AGENT: I designate the following
individual as my agent to make health care decisions for me:

36

37

38

(name of individual you choose as agent)

39



(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(1.2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed.)

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box ☐, my agent's authority to make health care decisions for me takes effect immediately:

(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form:

(Add additional sheets if needed.)



(1.6) NOMINATION OF CONSERVATOR: If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

(2.1) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(2.2) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(Add additional sheets if needed.)

(2.3) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

(3.1) Upon my death (mark applicable box):

- ☐ (a) I give any needed organs, tissues, or parts, OR
☐ (b) I give the following organs, tissues, or parts only.

(c) My gift is for the following purposes (strike any of the following you do not want):

- (1) Transplant
(2) Therapy
(3) Research
(4) Education

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

(4.1) I designate the following physician as my primary physician:

(name of physician)

(address)

(city)

(state)

(zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

* * * * *

PART 5

(5.1) EFFECT OF COPY: A copy of this form has the same effect as the original.

(5.2) SIGNATURES: Sign and date the form here:

(date) (sign your name)

(address) (print your name)

(city) (state)

(Optional) SIGNATURES OF WITNESSES:

First witness

Second witness

(print name)

(print name)

(address)

(address)

(city)

(state)

(city)

(state)

(signature of witness)

(signature of witness)

(date)

(date)

PART 6

SPECIAL WITNESS REQUIREMENT

(6.1) The following statement is required only if you are a patient in a skilled nursing facility—a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign the following statement:

Statement of Patient Advocate or Ombudsman

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by Section 4673 of the Probate Code.

(date)

(sign your name)

(address)

(print your name)

(city) (state)

CHAPTER 3. *HEALTH CARE SURROGATES*

4711. *A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. An oral designation of a surrogate is effective only during the course of treatment or illness or during the stay in the health care institution when the designation is made.*

CHAPTER 4. DUTIES OF HEALTH CARE PROVIDERS

4730. Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

4731. (a) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy. If a copy is furnished, the supervising health care provider shall arrange for its maintenance in the patient's health care record.

(b) A supervising health care provider who knows of a revocation of a power of attorney for health care or a disqualification of a surrogate shall make a reasonable effort to notify the agent or surrogate of the revocation or disqualification.

4732. A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists affecting an individual health care instruction or the authority of an agent, conservator of the person, or surrogate, shall promptly record the determination in the patient's

1 health care record and communicate the determination
2 to the patient, if possible, and to a person then authorized
3 to make health care decisions for the patient.

4 4733. Except as provided in Sections 4734 and 4735, a
5 health care provider or health care institution providing
6 care to a patient shall do the following:

7 (a) Comply with an individual health care instruction
8 of the patient and with a reasonable interpretation of that
9 instruction made by a person then authorized to make
10 health care decisions for the patient.

11 (b) Comply with a health care decision for the patient
12 made by a person then authorized to make health care
13 decisions for the patient to the same extent as if the
14 decision had been made by the patient while having
15 capacity.

16 4734. (a) A health care provider may decline to
17 comply with an individual health care instruction or
18 health care decision for reasons of conscience.

19 (b) A health care institution may decline to comply
20 with an individual health care instruction or health care
21 decision if the instruction or decision is contrary to a
22 policy of the institution that is expressly based on reasons
23 of conscience and if the policy was timely communicated
24 to the patient or to a person then authorized to make
25 health care decisions for the patient.

26 4735. A health care provider or health care institution
27 may decline to comply with an individual health care
28 instruction or health care decision that requires
29 medically ineffective health care or health care contrary
30 to generally accepted health care standards applicable to
31 the health care provider or institution.

32 4736. A health care provider or health care institution
33 that declines to comply with an individual health care
34 instruction or health care decision shall do all of the
35 following:

36 (a) Promptly so inform the patient, if possible, and any
37 person then authorized to make health care decisions for
38 the patient.

39 (b) Unless the patient or person then authorized to
40 make health care decisions for the patient refuses

1 assistance, immediately make all reasonable efforts to
2 assist in the transfer of the patient to another health care
3 provider or institution that is willing to comply with the
4 instruction or decision.

5 (c) Provide continuing care to the patient until a
6 transfer can be accomplished or until it appears that a
7 transfer cannot be accomplished. In all cases, appropriate
8 pain relief and other palliative care shall be continued.

10 CHAPTER ~~4~~. 5. IMMUNITIES AND LIABILITIES

12 4740. A health care provider or health care institution
13 acting in good faith and in accordance with generally
14 accepted health care standards applicable to the health
15 care provider or institution is not subject to civil or
16 criminal liability or to discipline for unprofessional
17 conduct for any actions in compliance with this division,
18 including, but not limited to, any of the following
19 conduct:

20 (a) Complying with a health care decision of a person
21 ~~apparently having that the health care provider or health~~
22 ~~care institution believes in good faith has the~~ authority to
23 make a health care decision for a patient, including a
24 decision to withhold or withdraw health care.

25 (b) Declining to comply with a health care decision of
26 a person based on a belief that the person then lacked
27 authority.

28 (c) Complying with an advance health care directive
29 and assuming that the directive was valid when made and
30 has not been revoked or terminated.

31 (d) Declining to comply with an individual health care
32 instruction or health care decision, in accordance with
33 Sections 4734 to 4736, inclusive.

34 4741. A person acting as agent or surrogate under this
35 part is not subject to civil or criminal liability or to
36 discipline for unprofessional conduct for health care
37 decisions made in good faith.

38 4742. (a) A health care provider or health care
39 institution that intentionally violates this part is subject to
40 liability to the aggrieved individual for damages of two

1 thousand five hundred dollars (\$2,500) or actual damages
2 resulting from the violation, whichever is greater, plus
3 reasonable attorney's fees.

4 (b) A person who intentionally falsifies, forges,
5 conceals, defaces, or obliterates an individual's advance
6 health care directive or a revocation of an advance health
7 care directive without the individual's consent, or who
8 coerces or fraudulently induces an individual to give,
9 revoke, or not to give an advance health care directive,
10 is subject to liability to that individual for damages of ten
11 thousand dollars (\$10,000) or actual damages resulting
12 from the action, whichever is greater, plus reasonable
13 attorney's fees.

14 (c) The damages provided in this section are
15 cumulative and not exclusive of any other remedies
16 provided by law.

17 4743. Any person who alters or forges a written
18 advance health care directive of another, or willfully
19 conceals or withholds personal knowledge of a revocation
20 of an advance directive, with the intent to cause a
21 withholding or withdrawal of health care necessary to
22 keep the patient alive contrary to the desires of the
23 patient, and thereby directly causes health care necessary
24 to keep the patient alive to be withheld or withdrawn and
25 the death of the patient thereby to be hastened, is subject
26 to prosecution for unlawful homicide as provided in
27 Chapter 1 (commencing with Section 187) of Title 8 of
28 Part 1 of the Penal Code.

29 30 PART 3. JUDICIAL PROCEEDINGS

31 32 CHAPTER 1. GENERAL PROVISIONS

33
34 4750. Subject to this division:

35 (a) An advance health care directive is effective and
36 exercisable free of judicial intervention.

37 (b) A health care decision made by an agent for a
38 principal is effective without judicial approval.

39 (c) A health care decision made by a surrogate for a
40 patient is effective without judicial approval.

1 4751. The remedies provided in this part are
2 cumulative and not exclusive of any other remedies
3 provided by law.

4 4752. Except as provided in Section 4753, this part is
5 not subject to limitation in an advance health care
6 directive.

7 4753. (a) Subject to subdivision (b), an advance
8 health care directive may expressly eliminate the
9 authority of a person listed in Section 4765 to petition the
10 court for any one or more of the purposes enumerated in
11 Section 4766, if both of the following requirements are
12 satisfied:

13 (1) The advance directive is executed by an individual
14 having the advice of a lawyer authorized to practice law
15 in the state where the advance directive is executed.

16 (2) The individual's lawyer signs a certificate stating in
17 substance:

18 "I am a lawyer authorized to practice law in the state
19 where this advance health care directive was executed,
20 and _____ [insert name] was my client at
21 the time this advance directive was executed. I have
22 advised my client concerning his or her rights in
23 connection with this advance directive and the
24 applicable law and the consequences of signing or not
25 signing this advance directive, and my client, after being
26 so advised, has executed this advance directive."
27

28 (b) An advance health care directive may not limit the
29 authority of the following persons to petition under this
30 part:

31 (1) The conservator of the person, with respect to a
32 petition relating to an advance directive, for a purpose
33 specified in subdivision (b) or (d) of Section 4766.

34 (2) The agent, with respect to a petition relating to a
35 power of attorney for health care, for a purpose specified
36 in subdivision (b) or (c) of Section 4766.

37 4754. There is no right to a jury trial in proceedings
38 under this division.

1 4755. Except as otherwise provided in this division,
2 the general provisions in Division 3 (commencing with
3 Section 1000) apply to proceedings under this division.

4
5 CHAPTER 2. JURISDICTION AND VENUE
6

7 4760. (a) The superior court has jurisdiction in
8 proceedings under this division.

9 (b) The court in proceedings under this division is a
10 court of general jurisdiction and the court, or a judge of
11 the court, has the same power and authority with respect
12 to the proceedings as otherwise provided by law for a
13 superior court, or a judge of the superior court, including,
14 but not limited to, the matters authorized by Section 128
15 of the Code of Civil Procedure.

16 4761. The court may exercise jurisdiction in
17 proceedings under this division on any basis permitted by
18 Section 410.10 of the Code of Civil Procedure.

19 4762. Without limiting Section 4761, a person who acts
20 as an agent under a power of attorney for health care or
21 as a surrogate under this division is subject to personal
22 jurisdiction in this state with respect to matters relating
23 to acts and transactions of the agent or surrogate
24 performed in this state or affecting a patient in this state.

25 4763. The proper county for commencement of a
26 proceeding under this division shall be determined in the
27 following order of priority:

28 (a) The county in which the patient resides.

29 (b) The county in which the agent or surrogate
30 resides.

31 (c) Any other county that is in the patient's best
32 interest.

33
34 CHAPTER 3. PETITIONS, ORDERS, APPEALS
35

36 4765. Subject to Section 4753, a petition may be filed
37 under this part by any of the following persons:

38 (a) The patient.

39 (b) The patient's spouse, unless legally separated.

40 (c) A relative of the patient.

1 (d) The patient's agent or surrogate.

2 (e) The conservator of the person of the patient.

3 (f) The court investigator, described in Section 1454,
4 of the county where the patient resides.

5 (g) The public guardian of the county where the
6 patient resides.

7 (h) The supervising health care provider or health
8 care institution involved with the patient's care.

9 (i) Any other interested person or friend of the
10 patient.

11 4766. A petition may be filed under this part for any
12 one or more of the following purposes:

13 (a) Determining whether or not the patient has
14 capacity to make health care decisions.

15 (b) Determining whether an advance health care
16 directive is in effect or has terminated.

17 (c) Determining whether the acts or proposed acts of
18 an agent or surrogate are consistent with the patient's
19 desires as expressed in an advance health care directive
20 or otherwise made known to the court or, where the
21 patient's desires are unknown or unclear, whether the
22 acts or proposed acts of the agent or surrogate are in the
23 patient's best interest.

24 (d) Declaring that the authority of an agent or
25 surrogate is terminated, upon a determination by the
26 court that the agent or surrogate has made a health care
27 decision for the patient that authorized anything illegal
28 or upon a determination by the court of both of the
29 following:

30 (1) The agent or surrogate has violated, has failed to
31 perform, or is unfit to perform, the duty under an
32 advance health care directive to act consistent with the
33 patient's desires or, where the patient's desires are
34 unknown or unclear, is acting (by action or inaction) in
35 a manner that is clearly contrary to the patient's best
36 interest.

37 (2) At the time of the determination by the court, the
38 patient lacks the capacity to execute or to revoke an
39 advance health care directive or disqualify a surrogate.

1 4767. A proceeding under this part is commenced by
2 filing a petition stating facts showing that the petition is
3 authorized under this part, the grounds of the petition,
4 and, if known to the petitioner, the terms of any advance
5 health care directive in question.

6 4768. The court may dismiss a petition if it appears
7 that the proceeding is not reasonably necessary for the
8 protection of the interests of the patient and shall stay or
9 dismiss the proceeding in whole or in part when required
10 by Section 410.30 of the Code of Civil Procedure.

11 4769. (a) Subject to subdivision (b), at least 15 days
12 before the time set for hearing, the petitioner shall serve
13 notice of the time and place of the hearing, together with
14 a copy of the petition, on the following:

15 (1) The agent or surrogate, if not the petitioner.

16 (2) The patient, if not the petitioner.

17 (b) In the case of a petition to compel a third person
18 to honor the authority of an agent or surrogate, notice of
19 the time and place of the hearing, together with a copy
20 of the petition, shall be served on the third person in the
21 manner provided in Chapter 4 (commencing with
22 Section 413.10) of Title 5 of Part 2 of the Code of Civil
23 Procedure.

24 4770. The court in its discretion, on a showing of good
25 cause, may issue a temporary order prescribing the health
26 care of the patient until the disposition of the petition
27 filed under Section 4766. If a power of attorney for health
28 care is in effect and a conservator (including a temporary
29 conservator) of the person is appointed for the principal,
30 the court that appoints the conservator in its discretion,
31 on a showing of good cause, may issue a temporary order
32 prescribing the health care of the principal, the order to
33 continue in effect for the period ordered by the court but
34 in no case longer than the period necessary to permit the
35 filing and determination of a petition filed under Section
36 4766.

37 4771. In a proceeding under this part commenced by
38 the filing of a petition by a person other than the agent
39 or surrogate, the court may in its discretion award
40 reasonable attorney's fees to one of the following:

(a) The agent or surrogate, if the court determines that the proceeding was commenced without any reasonable cause.

(b) The person commencing the proceeding, if the court determines that the agent or surrogate has clearly violated the duties under the advance health care directive.

PART 4. REQUEST TO FORGO RESUSCITATIVE MEASURES

4780. (a) As used in this part:

(1) “Request to forgo resuscitative measures” means a written document, signed by (A) an individual, or a legally recognized surrogate health care decisionmaker, and (B) a physician, that directs a health care provider to forgo resuscitative measures for the individual.

(2) “Request to forgo resuscitative measures” includes a prehospital “do not resuscitate” form as developed by the Emergency Medical Services Authority or other substantially similar form.

(b) A request to forgo resuscitative measures may also be evidenced by a medallion engraved with the words “do not resuscitate” or the letters “DNR,” a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

4781. As used in this part, “health care provider” includes, but is not limited to, the following:

(a) Persons described in Section 4621.

(b) Emergency response employees, including, but not limited to, firefighters, law enforcement officers, emergency medical technicians I and II, paramedics, and employees and volunteer members of legally organized and recognized volunteer organizations, who are trained in accordance with standards adopted as regulations by the Emergency Medical Services Authority pursuant to Sections 1797.170, 1797.171, 1797.172, 1797.182, and 1797.183 of the Health and Safety Code to respond to

1 medical emergencies in the course of performing their
2 volunteer or employee duties with the organization.

3 4782. A health care provider who honors a request to
4 forgo resuscitative measures is not subject to criminal
5 prosecution, civil liability, discipline for unprofessional
6 conduct, administrative sanction, or any other sanction,
7 as a result of his or her reliance on the request, if the
8 health care provider (a) believes in good faith that the
9 action or decision is consistent with this part, and (b) has
10 no knowledge that the action or decision would be
11 inconsistent with a health care decision that the
12 individual signing the request would have made on his or
13 her own behalf under like circumstances.

14 4783. (a) Forms for requests to forgo resuscitative
15 measures printed after January 1, 1995, shall contain the
16 following:

17 “By signing this form, the surrogate acknowledges that
18 this request to forgo resuscitative measures is consistent
19 with the known desires of, and with the best interest of,
20 the individual who is the subject of the form.”

21
22 (b) A substantially similar printed form is valid and
23 enforceable if all of the following conditions are met:

24 (1) The form is signed by the individual, or the
25 individual’s legally recognized surrogate health care
26 decisionmaker, and a physician.

27 (2) The form directs health care providers to forgo
28 resuscitative measures.

29 (3) The form contains all other information required
30 by this section.

31 4784. In the absence of knowledge to the contrary, a
32 health care provider may presume that a request to forgo
33 resuscitative measures is valid and unrevoked.

34 4785. This part applies regardless of whether the
35 individual executing a request to forgo resuscitative
36 measures is within or outside a hospital or other health
37 care institution.

38 4786. This part does not repeal or narrow laws relating
39 to health care decisionmaking.

40

PART 5. ADVANCE HEALTH CARE DIRECTIVE
REGISTRY

4800. (a) The Secretary of State shall establish a registry system through which a person who has executed a written advance health care directive may register in a central information center, information regarding the advance directive, making that information available upon request to any health care provider, the public guardian, or other person authorized by the registrant.

(b) Information that may be received and released is limited to the registrant's name, social security or driver's license or other individual identifying number established by law, if any, address, date and place of birth, the intended place of deposit or safekeeping of the written advance health care directive, and the name and telephone number of the agent and any alternative agent.

(c) The Secretary of State, at the request of the registrant, may transmit the information received regarding the written advance health care directive to the registry system of another jurisdiction as identified by the registrant.

(d) The Secretary of State may charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry.

4801. The Secretary of State shall establish procedures to verify the identities of health care providers, the public guardian, and other authorized persons requesting information pursuant to Section 4800. No fee shall be charged to any health care provider, the public guardian, or other authorized person requesting information pursuant to Section 4800.

4802. The Secretary of State shall establish procedures to advise each registrant of the following:

(a) A health care provider may not honor a written advance health care directive until it receives a copy from the registrant.

(b) Each registrant must notify the registry upon revocation of the advance directive.

(c) Each registrant must reregister upon execution of a subsequent advance directive.

4803. Failure to register with the Secretary of State does not affect the validity of any advance health care directive.

4804. Registration with the Secretary of State does not affect the ability of the registrant to revoke the registrant's advance health care directive or a later executed advance directive, nor does registration raise any presumption of validity or superiority among any competing advance directives or revocations.

4805. Nothing in this chapter shall be construed to require a health care provider to request from the registry information about whether a patient has executed an advance health care directive. Nothing in this chapter shall be construed to affect the duty of a health care provider to provide information to a patient regarding advance health care directives pursuant to any provision of federal law.

SEC. 41. Part 5 (commencing with Section 4900) of Division 4.5 of the Probate Code is repealed.

SEC. 42. Section 14110.8 of the Welfare and Institutions Code is amended to read:

14110.8. (a) For the purposes of this section:

(1) "Facility" means a nursing facility.

(2) "Patient" means a person who is a facility resident and a Medi-Cal beneficiary and whose facility care is being paid for in whole or in part by Medi-Cal.

(3) "Agent" means a person who manages, uses, or controls those funds or assets that legally may be used to pay the patient's share of cost and other charges not paid for by the Medi-Cal program.

(4) "Responsible party" means a person other than the patient or potential patient, who, by virtue of signing or cosigning an admissions agreement of a nursing facility, either together with, or on behalf of, a potential patient, becomes personally responsible or liable for payment of any portion of the charges incurred by the patient while

1 in the facility. A person who signs or cosigns a facility's
2 admissions agreement by virtue of being an agent under
3 a power of attorney for health care or an attorney-in-fact
4 under a durable power of attorney executed by the
5 potential patient, a conservator of the person or estate of
6 the potential patient, or a representative payee, is not a
7 responsible party under this section, and does not thereby
8 assume personal responsibility or liability for payment of
9 any charges incurred by the patient, except to the extent
10 that the person, or the patient's conservator or
11 representative payee is an agent as defined in paragraph
12 (3).

13 (b) No facility may require or solicit, as a condition of
14 admission into the facility, that a Medi-Cal beneficiary
15 have a responsible party sign or cosign the admissions
16 agreement. No facility may accept or receive, as a
17 condition of admission into the facility, the signature or
18 cosignature of a responsible party for a Medi-Cal
19 beneficiary.

20 (c) A facility may require, as a condition of admission,
21 where a patient has an agent, that the patient's agent sign
22 or cosign the admissions agreement and agree to
23 distribute to the facility promptly when due, the share of
24 cost and any other charges not paid for by the Medi-Cal
25 program which the patient or his or her agent has agreed
26 to pay. The financial obligation of the agent shall be
27 limited to the amount of the patient's funds received but
28 not distributed to the facility. A new agent who did not
29 sign or cosign the admissions agreement shall be held
30 responsible to distribute funds in accordance with this
31 section.

32 (d) When a patient on non-Medi-Cal status converts to
33 Medi-Cal coverage, any security deposit paid to the
34 facility by the patient or on the patient's behalf as a
35 condition of admission to the facility shall be returned and
36 the obligations and responsibilities of the patient or
37 responsible party shall be null and void.

38 (e) Any agent who willfully violates the requirements
39 of this section is guilty of a misdemeanor, and upon
40 conviction thereof, shall be punished by a fine not to

1 exceed two thousand five hundred dollars (\$2,500) or by
2 imprisonment in the county jail not to exceed 180 days, or
3 both.

4 SEC. 43. This act shall become operative on July 1,
5 2000.

6 SEC. 44. No reimbursement is required by this act
7 pursuant to Section 6 of Article XIII B of the California
8 Constitution because the only costs that may be incurred
9 by a local agency or school district will be incurred
10 because this act creates a new crime or infraction,
11 eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition
14 of a crime within the meaning of Section 6 of Article
15 XIII B of the California Constitution.

