

AMENDED IN SENATE AUGUST 30, 1999

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JULY 8, 1999

AMENDED IN ASSEMBLY MAY 27, 1999

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.

This bill would also make changes to Section 7100 of the Health and Safety Code proposed by AB 1677 to take effect if both bills are enacted and amend this section and this bill is enacted last.

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:



1 8205. (a) It is the duty of a notary public, when
2 requested:

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

11 (2) To take the acknowledgment or proof of advance
12 health care directives, powers of attorney, mortgages,
13 deeds, grants, transfers, and other instruments of writing
14 executed by any person, and to give a certificate of that
15 proof or acknowledgment, endorsed on or attached to the
16 instrument. The certificate shall be signed by the notary
17 public in the notary public's own handwriting. A notary
18 public may not accept any acknowledgment or proof of
19 any instrument that is incomplete.

20 (3) To take depositions and affidavits, and administer
21 oaths and affirmations, in all matters incident to the
22 duties of the office, or to be used before any court, judge,
23 officer, or board. Any deposition, affidavit, oath, or
24 affirmation shall be signed by the notary public in the
25 notary public's own handwriting.

26 (4) To certify copies of powers of attorney under
27 Section 4307 of the Probate Code. The certification shall
28 be signed by the notary public in the notary public's own
29 handwriting.

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

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

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

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

1 1569.156. (a) A residential care facility for the elderly
2 shall do all of the following:

3 (1) Not condition the provision of care or otherwise
4 discriminate based on whether or not an individual has
5 executed an advance directive, consistent with
6 applicable laws and regulations.

7 (2) Provide education to staff on issues concerning
8 advance directives.

9 (3) Provide written information, upon admission,
10 about the right to make decisions concerning medical
11 care, including the right to accept or refuse medical or
12 surgical treatment and the right, under state law, to
13 formulate advance directives.

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

17 (b) For purposes of this section, “advance directive”
18 means an “advance health care directive,” as defined in
19 Section 4605 of the Probate Code, or some other form of
20 instruction recognized under state law specifically
21 addressing the provision of health care.

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

24 1584. (a) An adult day health care center that
25 provides care for adults with Alzheimer’s disease and
26 other dementias may install for the safety and security of
27 those persons secured perimeter fences or egress control
28 devices of the time-delay type on exit doors.

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

35 (c) Adult day health care centers installing security
36 devices pursuant to this section shall meet all of the
37 following requirements:

38 (1) The center shall be subject to all fire and building
39 codes, regulations, and standards applicable to adult day
40 health care centers using egress control devices or

1 secured perimeter fences and shall receive a fire
2 clearance from the fire authority having jurisdiction for
3 the egress control devices or secured perimeter fences.

4 (2) The center shall maintain documentation of
5 diagnosis by a physician of a participant's Alzheimer's
6 disease or other dementia.

7 (3) The center shall provide staff training regarding
8 the use and operation of the egress control devices
9 utilized by the center, the protection of participants'
10 personal rights, wandering behavior and acceptable
11 methods of redirection, and emergency evacuation
12 procedures for persons with dementia.

13 (4) All admissions to the center shall continue to be
14 voluntary on the part of the participant or with consent
15 of the participant's conservator, an agent of the
16 participant under a power of attorney *for* health care, or
17 other person who has the authority to act on behalf of the
18 participant. Persons who have the authority to act on
19 behalf of the participant include the participant's spouse
20 or closest available relative.

21 (5) The center shall inform all participants,
22 conservators, agents, and persons who have the authority
23 to act on behalf of participants of the use of security
24 devices. The center shall maintain a signed participation
25 agreement indicating the use of the devices and the
26 consent of the participant, conservator, agent, or person
27 who has the authority to act on behalf of the participant.
28 The center shall retain the original statement in the
29 participant's files at the center.

30 (6) The use of egress control devices or secured
31 perimeter fences shall not substitute for adequate staff.
32 Staffing ratios shall at all times meet the requirements of
33 applicable regulations.

34 (7) Emergency fire and earthquake drills shall be
35 conducted at least once every three months, or more
36 frequently as required by a county or city fire department
37 or local fire prevention district. The drills shall include all
38 center staff and volunteers providing participant care
39 and supervision. This requirement does not preclude
40 drills with participants as required by regulations.

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

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

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

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

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

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

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

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

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

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and

1 services to be provided, unless other directions have been
2 given by the decedent pursuant to Section 7100.1, vests in,
3 and the duty of disposition and the liability for the
4 reasonable cost of disposition of the remains devolves
5 upon, the following in the order named:

6 (1) An agent under a power of attorney for health care
7 governed by Division 4.7 (commencing with Section
8 4600) of the Probate Code.

9 (2) The surviving spouse.

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

22 (4) The surviving parent or parents of the decedent.
23 If one of the surviving parents is absent, the remaining
24 parent shall be vested with the rights and duties of this
25 section after reasonable efforts have been unsuccessful in
26 locating the absent surviving parent.

27 (5) The surviving competent adult person or persons
28 respectively in the next degrees of kindred. If there is
29 more than one surviving person of the same degree of
30 kindred, the majority of those persons. Less than the
31 majority of surviving persons of the same degree of
32 kindred shall be vested with the rights and duties of this
33 section if those persons have used reasonable efforts to
34 notify all other surviving persons of the same degree of
35 kindred of their instructions and are not aware of any
36 opposition to those instructions on the part of one-half or
37 more of all surviving persons of the same degree of
38 kindred.

39 (6) The public administrator when the deceased has
40 sufficient assets.

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

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

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

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

(1) Either of the following applies:

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

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

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

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent. However, if a person accepts the

1 gift of an entire body under subdivision (a) of Section
2 7155.5, that person, subject to the terms of the gift, shall
3 be liable for the reasonable cost of final disposition of the
4 decedent.

5 (e) This section shall be administered and construed to
6 the end that the expressed instructions of the decedent
7 or the person entitled to control the disposition shall be
8 faithfully and promptly performed.

9 (f) A funeral director or cemetery authority shall not
10 be liable to any person or persons for carrying out the
11 instructions of the decedent or the person entitled to
12 control the disposition.

13 (g) For purposes of paragraph (5) of subdivision (a),
14 “competent adult” means an adult who has not been
15 declared incompetent by a court of law or who has been
16 declared competent by a court of law following a
17 declaration of incompetence.

18 *SEC. 5.5. Section 7100 of the Health and Safety Code*
19 *is amended to read:*

20 7100. (a) The right to control the disposition of the
21 remains of a deceased person, the location and conditions
22 of interment, and arrangements for funeral goods and
23 services to be provided, unless other directions have been
24 given by the decedent pursuant to Section 7100.1, vests in,
25 and the duty of disposition and the liability for the
26 reasonable cost of disposition of the remains devolves
27 upon, the following in the order named:

28 (1) An ~~attorney-in-fact~~ agent under a ~~durable~~ power
29 of attorney for health care ~~executed pursuant to Chapter~~
30 ~~4 governed by Division 4.7~~ (commencing with Section
31 4600) ~~of Part 4 of Division 4.5~~ of the Probate Code.

32 (2) The *competent* surviving spouse.

33 (3) The sole surviving *competent* adult child of the
34 decedent, or if there is more than one *competent* adult
35 child of the decedent, ~~one-half or more the majority of~~
36 the surviving *competent* adult children. However, less
37 than one-half of the surviving adult children shall be
38 vested with the rights and duties of this section if they
39 have used reasonable efforts to notify all other surviving
40 *competent* adult children of their instructions and are not

1 aware of any opposition to those instructions on the part
2 of more than one-half of all surviving *competent* adult
3 children. ~~For purposes of this section, “adult child” means~~
4 ~~a competent natural or adopted child of the decedent~~
5 ~~who has attained 18 years of age.~~

6 (4) The surviving *competent* parent or parents of the
7 decedent. If one of the surviving *competent* parents is
8 absent, the remaining *competent* parent shall be vested
9 with the rights and duties of this section after reasonable
10 efforts have been unsuccessful in locating the absent
11 surviving *competent* parent.

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

25 (6) The public administrator when the deceased has
26 sufficient assets.

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

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

37 (3) Notwithstanding this subdivision, no person who
38 has been charged with first or second degree murder or
39 voluntary manslaughter in connection with the
40 decedent’s death to whom the right of control has not

1 been returned pursuant to paragraph (2) shall have any
2 right to control disposition pursuant to subdivision (a)
3 which shall be applied, to the extent the funeral director
4 or cemetery authority know about the charges, as if that
5 person did not exist.

6 (c) A funeral director or cemetery authority shall have
7 complete authority to control the disposition of the
8 remains, and to proceed under this chapter to recover
9 usual and customary charges for the disposition, when
10 both of the following apply:

11 (1) Either of the following applies:

12 (A) The funeral director or cemetery authority has
13 knowledge that none of the persons described in
14 paragraphs (1) to—(6) (5), inclusive, of subdivision (a)
15 exists.

16 (B) None of the persons described in paragraphs (1)
17 to—(6) (5), inclusive, of subdivision (a) can be found after
18 reasonable inquiry, or contacted by reasonable means.

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

24 (d) The liability for the reasonable cost of final
25 disposition devolves jointly and severally upon all kin of
26 the decedent in the same degree of kindred and upon the
27 estate of the decedent. However, if a person accepts the
28 gift of an entire body under subdivision (a) of Section
29 7155.5, that person, subject to the terms of the gift, shall
30 be liable for the reasonable cost of final disposition of the
31 decedent.

32 (e) This section shall be administered and construed to
33 the end that the expressed instructions of the decedent
34 or the person entitled to control the disposition shall be
35 faithfully and promptly performed.

36 (f) A funeral director or cemetery authority shall not
37 be liable to any person or persons for carrying out the
38 instructions of the decedent or the person entitled to
39 control the disposition.

(g) For purposes of ~~paragraph (5) of subdivision (a),~~
~~“competent adult”~~ this section, “adult” means an ~~adult~~
individual who has attained 18 years of age, “child” means
a natural or adopted child of the decedent, and
“competent” means an individual who has not been
declared incompetent by a court of law or who has been
declared competent by a court of law following a
declaration of incompetence.

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

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

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

(2) The spouse of the decedent.

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

(4) Either parent of the decedent.

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

(6) A grandparent of the decedent.

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

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

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

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

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

(c) An anatomical gift by a person authorized under
subdivision (a) shall be made by a document of gift signed

1 by the person or the person's telegraphic, recorded
2 telephonic, or other recorded message, or other form of
3 communication from the person that is
4 contemporaneously reduced to writing and signed by the
5 recipient.

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

12 (e) A failure to make an anatomical gift under
13 subdivision (a) is not an objection to the making of an
14 anatomical gift.

15 SEC. 7. Chapter 3.9 (commencing with Section 7185)
16 of Part 1 of Division 7 of the Health and Safety Code is
17 repealed.

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

20 24179.5. Notwithstanding any other provision of this
21 chapter, this chapter does not apply to an adult in a
22 terminal condition who executes a directive directing the
23 withholding or withdrawal of life-sustaining procedures
24 pursuant to Section 7188. To the extent of any conflict,
25 Division 4.7 (commencing with Section 4600) of the
26 Probate Code prevails over the provisions of this chapter.

27 SEC. 9. Section 1302 of the Probate Code is amended
28 to read:

29 1302. With respect to a power of attorney governed
30 by the Power of Attorney Law (Division 4.5
31 (commencing with Section 4000)), an appeal may be
32 taken from any of the following:

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

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

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

39 1302.5. With respect to an advance health care
40 directive governed by the Health Care Decisions Law

1 (Division 4.7 (commencing with Section 4600)), an
2 appeal may be taken from any of the following:

3 (a) Any final order under Section 4766.

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

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

8 2105. (a) The court, in its discretion, may appoint for
9 a ward or conservatee:

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

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

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

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

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

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

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

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

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

35 (f) If a custodial parent has been diagnosed as having
36 a terminal condition, as evidenced by a declaration
37 executed by a licensed physician, the court, in its
38 discretion, may appoint the custodial parent and a person
39 nominated by the custodial parent as joint guardians of
40 the person of the minor. However, this appointment shall

1 not be made over the objection of a noncustodial parent
2 without a finding that the noncustodial parent's custody
3 would be detrimental to the minor, as provided in Section
4 3041 of the Family Code. It is the intent of the Legislature
5 in enacting the amendments to this subdivision adopted
6 during the 1995–96 Regular Session for a parent with a
7 terminal condition to be able to make arrangements for
8 the joint care, custody, and control of his or her minor
9 children so as to minimize the emotional stress of, and
10 disruption for, the minor children whenever the parent
11 is incapacitated or upon the parent's death, and to avoid
12 the need to provide a temporary guardian or place the
13 minor children in foster care, pending appointment of a
14 guardian, as might otherwise be required.

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

19 SEC. 12. Section 2355 of the Probate Code is amended
20 to read:

21 2355. (a) If the conservatee has been adjudicated to
22 lack the capacity to make health care decisions, the
23 conservator has the exclusive authority to make health
24 care decisions for the conservatee that the conservator in
25 good faith based on medical advice determines to be
26 necessary. The conservator shall make health care
27 decisions for the conservatee in accordance with the
28 conservatee's individual health care instructions, if any,
29 and other wishes to the extent known to the conservator.
30 Otherwise, the conservator shall make the decision in
31 accordance with the conservator's determination of the
32 conservatee's best interest. In determining the
33 conservatee's best interest, the conservator shall consider
34 the conservatee's personal values to the extent known to
35 the conservator. The conservator may require the
36 conservatee to receive the health care, whether or not
37 the conservatee objects. In this case, the health care
38 decision of the conservator alone is sufficient and no
39 person is liable because the health care is administered to
40 the conservatee without the conservatee's consent. For

1 the purposes of this subdivision, “health care” and “health
2 care decision” have the meanings provided in Sections
3 4615 and 4617, respectively.

4 (b) If prior to the establishment of the conservatorship
5 the conservatee was an adherent of a religion whose
6 tenets and practices call for reliance on prayer alone for
7 healing, the treatment required by the conservator under
8 the provisions of this section shall be by an accredited
9 practitioner of that religion.

10 SEC. 13. Section 2356 of the Probate Code is amended
11 to read:

12 2356. (a) No ward or conservatee may be placed in
13 a mental health treatment facility under this division
14 against the will of the ward or conservatee. Involuntary
15 civil placement of a ward or conservatee in a mental
16 health treatment facility may be obtained only pursuant
17 to Chapter 2 (commencing with Section 5150) or Chapter
18 3 (commencing with Section 5350) of Part 1 of Division
19 5 of the Welfare and Institutions Code. Nothing in this
20 subdivision precludes the placing of a ward in a state
21 hospital under Section 6000 of the Welfare and
22 Institutions Code upon application of the guardian as
23 provided in that section. The Director of Mental Health
24 shall adopt and issue regulations defining “mental health
25 treatment facility” for the purposes of this subdivision.

26 (b) No experimental drug as defined in Section 111515
27 of the Health and Safety Code may be prescribed for or
28 administered to a ward or conservatee under this
29 division. Such an experimental drug may be prescribed
30 for or administered to a ward or conservatee only as
31 provided in Article 4 (commencing with Section 111515)
32 of Chapter 6 of Part 5 of Division 104 of the Health and
33 Safety Code.

34 (c) No convulsive treatment as defined in Section 5325
35 of the Welfare and Institutions Code may be performed
36 on a ward or conservatee under this division. Convulsive
37 treatment may be performed on a ward or conservatee
38 only as provided in Article 7 (commencing with Section
39 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare
40 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.

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

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

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

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

1 (f) The efforts made to obtain consent from the
2 patient.

3 (g) If the petition is filed by a person on behalf of a
4 health care institution, the name of the person to be
5 designated to give consent to the recommended health
6 care on behalf of the patient.

7 (h) The deficit or deficits in the patient's mental
8 functions listed in subdivision (a) of Section 811 that are
9 impaired, and an identification of a link between the
10 deficit or deficits and the patient's inability to respond
11 knowingly and intelligently to queries about the
12 recommended health care or inability to participate in a
13 decision about the recommended health care by means
14 of a rational thought process.

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

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

20 3206. (a) Not less than 15 days before the hearing,
21 notice of the time and place of the hearing and a copy of
22 the petition shall be personally served on the patient, the
23 patient's attorney, and the agent under the patient's
24 power of attorney for health care, if any.

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

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

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

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

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

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

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

6 3207. Notwithstanding Section 3206, the matter
7 presented by the petition may be submitted for the
8 determination of the court upon proper and sufficient
9 medical declarations if the attorney for the petitioner and
10 the attorney for the patient so stipulate and further
11 stipulate that there remains no issue of fact to be
12 determined.

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

15 3208. (a) Except as provided in subdivision (b), the
16 court may make an order authorizing the recommended
17 health care for the patient and designating a person to
18 give consent to the recommended health care on behalf
19 of the patient if the court determines from the evidence
20 all of the following:

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

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

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

29 (b) In determining whether the patient's mental
30 functioning is so severely impaired that the patient lacks
31 the capacity to make any health care decision, the court
32 may take into consideration the frequency, severity, and
33 duration of periods of impairment.

34 (c) The court may make an order authorizing
35 withholding or withdrawing artificial nutrition and
36 hydration and all other forms of health care and
37 designating a person to give or withhold consent to the
38 recommended health care on behalf of the patient if the
39 court determines from the evidence all of the following:



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

5 (2) The patient is unable to consent to the
6 recommended health care.

7 SEC. 22. Section 3208.5 is added to the Probate Code,
8 to read:

9 3208.5. In a proceeding under this part:

10 (a) Where the patient has the capacity to consent to
11 the recommended health care, the court shall so find in
12 its order.

13 (b) Where the court has determined that the patient
14 has the capacity to consent to the recommended health
15 care, the court shall, if requested, determine whether the
16 patient has accepted or refused the recommended health
17 care, and whether the patient's consent to the
18 recommended health care is an informed consent.

19 (c) Where the court finds that the patient has the
20 capacity to consent to the recommended health care, but
21 that the patient refuses consent, the court shall not make
22 an order authorizing the recommended health care or
23 designating a person to give consent to the recommended
24 health care. If an order has been made authorizing the
25 recommended health care and designating a person to
26 give consent to the recommended health care, the order
27 shall be revoked if the court determines that the patient
28 has recovered the capacity to consent to the
29 recommended health care. Until revoked or modified,
30 the order is effective authorization for the recommended
31 health care.

32 SEC. 23. Section 3210 of the Probate Code is amended
33 to read:

34 3210. (a) This part is supplemental and alternative to
35 other procedures or methods for obtaining consent to
36 health care or making health care decisions, and is
37 permissive and cumulative for the relief to which it
38 applies.

39 (b) Nothing in this part limits the providing of health
40 care in an emergency case in which the health care is

1 required because (1) the health care is required for the
2 alleviation of severe pain or (2) the patient has a medical
3 condition that, if not immediately diagnosed and treated,
4 will lead to serious disability or death.

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

9 SEC. 24. Section 3211 of the Probate Code is amended
10 to read:

11 3211. (a) No person may be placed in a mental health
12 treatment facility under the provisions of this part.

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

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

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

20 (e) The provisions of this part are subject to a valid
21 advance health care directive under the Health Care
22 Decisions Law, Division 4.7 (commencing with Section
23 4600).

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

26 3212. Nothing in this part shall be construed to
27 supersede or impair the right of any individual to choose
28 treatment by spiritual means in lieu of medical
29 treatment, nor shall any individual choosing treatment by
30 spiritual means, in accordance with the tenets and
31 practices of that individual's established religious
32 tradition, be required to submit to medical testing of any
33 kind pursuant to a determination of capacity.

34 SEC. 26. Section 3722 of the Probate Code is amended
35 to read:

36 3722. If after the absentee executes a power of
37 attorney, the principal's spouse who is the
38 attorney-in-fact commences a proceeding for dissolution,
39 annulment, or legal separation, or a legal separation is
40 ordered, the attorney-in-fact's authority is revoked. This

1 section is in addition to the provisions of Sections 4154 and
2 4697.

3 SEC. 27. Section 4050 of the Probate Code is amended
4 to read:

5 4050. (a) This division applies to the following:

6 (1) Durable powers of attorney, other than powers of
7 attorney for health care governed by Division 4.7
8 (commencing with Section 4600).

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

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

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

14 (1) A power of attorney to the extent that the
15 authority of the attorney-in-fact is coupled with an
16 interest in the subject of the power of attorney.

17 (2) Reciprocal or interinsurance exchanges and their
18 contracts, subscribers, attorneys-in-fact, agents, and
19 representatives.

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

22 (c) This division is not intended to affect the validity
23 of any instrument or arrangement that is not described in
24 subdivision (a).

25 SEC. 28. Section 4100 of the Probate Code is amended
26 to read:

27 4100. This part applies to all powers of attorney under
28 this division, subject to any special rules applicable to
29 statutory form powers of attorney under Part 3
30 (commencing with Section 4400).

31 SEC. 29. Section 4121 of the Probate Code is amended
32 to read:

33 4121. A power of attorney is legally sufficient if all of
34 the following requirements are satisfied:

35 (a) The power of attorney contains the date of its
36 execution.

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

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

4 SEC. 30. Section 4122 of the Probate Code is amended
5 to read:

6 4122. If the power of attorney is signed by witnesses,
7 as provided in Section 4121, the following requirements
8 shall be satisfied:

9 (a) The witnesses shall be adults.

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

11 (c) Each witness signing the power of attorney shall
12 witness either the signing of the instrument by the
13 principal or the principal's acknowledgment of the
14 signature or the power of attorney.

15 SEC. 31. Section 4123 of the Probate Code is amended
16 to read:

17 4123. (a) In a power of attorney, a principal may
18 grant authority to an attorney-in-fact to act on the
19 principal's behalf with respect to all lawful subjects and
20 purposes or with respect to one or more express subjects
21 or purposes. The attorney-in-fact may be granted
22 authority with regard to the principal's property,
23 personal care, health care, or any other matter.

24 (b) With regard to property matters, a power of
25 attorney may grant authority to make decisions
26 concerning all or part of the principal's real and personal
27 property, whether owned by the principal at the time of
28 the execution of the power of attorney or thereafter
29 acquired or whether located in this state or elsewhere,
30 without the need for a description of each item or parcel
31 of property.

32 (c) With regard to personal care, a power of attorney
33 may grant authority to make decisions relating to the
34 personal care of the principal, including, but not limited
35 to, determining where the principal will live, providing
36 meals, hiring household employees, providing
37 transportation, handling mail, and arranging recreation
38 and entertainment.

39 SEC. 32. Section 4128 of the Probate Code is amended
40 to read:

1 4128. (a) Subject to subdivision (b), a printed form of
2 a durable power of attorney that is sold or otherwise
3 distributed in this state for use by a person who does not
4 have the advice of legal counsel shall contain, in not less
5 than 10-point boldface type or a reasonable equivalent
6 thereof, the following warning statement:

7
8 Notice to Person Executing Durable Power of Attorney
9

10 A durable power of attorney is an important legal
11 document. By signing the durable power of attorney, you
12 are authorizing another person to act for you, the
13 principal. Before you sign this durable power of attorney,
14 you should know these important facts:

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

17 This document gives your agent the powers to manage,
18 dispose of, sell, and convey your real and personal
19 property, and to use your property as security if your
20 agent borrows money on your behalf.

21 Your agent will have the right to receive reasonable
22 payment for services provided under this durable power
23 of attorney unless you provide otherwise in this power of
24 attorney.

25 The powers you give your agent will continue to exist
26 for your entire lifetime, unless you state that the durable
27 power of attorney will last for a shorter period of time or
28 unless you otherwise terminate the durable power of
29 attorney. The powers you give your agent in this durable
30 power of attorney will continue to exist even if you can
31 no longer make your own decisions respecting the
32 management of your property.

33 You can amend or change this durable power of
34 attorney only by executing a new durable power of
35 attorney or by executing an amendment through the
36 same formalities as an original. You have the right to
37 revoke or terminate this durable power of attorney at any
38 time, so long as you are competent.

39 This durable power of attorney must be dated and must
40 be acknowledged before a notary public or signed by two

1 witnesses. If it is signed by two witnesses, they must
2 witness either (1) the signing of the power of attorney or
3 (2) the principal's signing or acknowledgment of his or
4 her signature. A durable power of attorney that may
5 affect real property should be acknowledged before a
6 notary public so that it may easily be recorded.

7 You should read this durable power of attorney
8 carefully. When effective, this durable power of attorney
9 will give your agent the right to deal with property that
10 you now have or might acquire in the future. The durable
11 power of attorney is important to you. If you do not
12 understand the durable power of attorney, or any
13 provision of it, then you should obtain the assistance of an
14 attorney or other qualified person.

15
16 (b) Nothing in subdivision (a) invalidates any
17 transaction in which a third person relied in good faith on
18 the authority created by the durable power of attorney.

19 (c) This section does not apply to a statutory form
20 power of attorney under Part 3 (commencing with
21 Section 4400).

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

24 4203. (a) A principal may designate one or more
25 successor attorneys-in-fact to act if the authority of a
26 predecessor attorney-in-fact terminates.

27 (b) The principal may grant authority to another
28 person, designated by name, by office, or by function,
29 including the initial and any successor attorneys-in-fact,
30 to designate at any time one or more successor
31 attorneys-in-fact.

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

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

36 4206. (a) If, following execution of a durable power
37 of attorney, a court of the principal's domicile appoints a
38 conservator of the estate, guardian of the estate, or other
39 fiduciary charged with the management of all of the
40 principal's property or all of the principal's property

except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. Except as provided in subdivision (b), the fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if not incapacitated, subject to any required court approval.

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

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

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

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

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

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

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

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.

1 4503. (a) Subject to subdivision (b), a power of
2 attorney may expressly eliminate the authority of a
3 person listed in Section 4540 to petition the court for any
4 one or more of the purposes enumerated in Section 4541
5 if both of the following requirements are satisfied:

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

10 (2) The principal's lawyer signs a certificate stating in
11 substance:

12
13 "I am a lawyer authorized to practice law in the state
14 where this power of attorney was executed, and the
15 principal was my client at the time this power of attorney
16 was executed. I have advised my client concerning his or
17 her rights in connection with this power of attorney and
18 the applicable law and the consequences of signing or not
19 signing this power of attorney, and my client, after being
20 so advised, has executed this power of attorney."

21
22 (b) A power of attorney may not limit the authority of
23 the attorney-in-fact, the principal, the conservator of the
24 person or estate of the principal, or the public guardian
25 to petition under this part.

26 4504. There is no right to a jury trial in proceedings
27 under this division.

28 4505. Except as otherwise provided in this division,
29 the general provisions in Division 3 (commencing with
30 Section 1000) apply to proceedings under this division.

31
32 CHAPTER 2. JURISDICTION AND VENUE

33
34 4520. (a) The superior court has jurisdiction in
35 proceedings under this division.

36 (b) The court in proceedings under this division is a
37 court of general jurisdiction and the court, or a judge of
38 the court, has the same power and authority with respect
39 to the proceedings as otherwise provided by law for a
40 superior court, or a judge of the superior court, including,

1 but not limited to, the matters authorized by Section 128
2 of the Code of Civil Procedure.

3 4521. The court may exercise jurisdiction in
4 proceedings under this division on any basis permitted by
5 Section 410.10 of the Code of Civil Procedure.

6 4522. Without limiting Section 4521, a person who acts
7 as an attorney-in-fact under a power of attorney
8 governed by this division is subject to personal
9 jurisdiction in this state with respect to matters relating
10 to acts and transactions of the attorney-in-fact performed
11 in this state or affecting property or a principal in this
12 state.

13 4523. The proper county for commencement of a
14 proceeding under this division shall be determined in the
15 following order of priority:

- 16 (a) The county in which the principal resides.
- 17 (b) The county in which the attorney-in-fact resides.
- 18 (c) A county in which property subject to the power
19 of attorney is located.
- 20 (d) Any other county that is in the principal's best
21 interest.

22
23 CHAPTER 3. PETITIONS, ORDERS, APPEALS
24

25 4540. Subject to Section 4503, a petition may be filed
26 under this part by any of the following persons:

- 27 (a) The attorney-in-fact.
- 28 (b) The principal.
- 29 (c) The spouse of the principal.
- 30 (d) A relative of the principal.
- 31 (e) The conservator of the person or estate of the
32 principal.
- 33 (f) The court investigator, described in Section 1454,
34 of the county where the power of attorney was executed
35 or where the principal resides.
- 36 (g) The public guardian of the county where the
37 power of attorney was executed or where the principal
38 resides.
- 39 (h) The personal representative or trustee of the
40 principal's estate.

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

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

4 (k) Any other interested person or friend of the
5 principal.

6 4541. A petition may be filed under this part for any
7 one or more of the following purposes:

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

10 (b) Passing on the acts or proposed acts of the
11 attorney-in-fact, including approval of authority to
12 disobey the principal's instructions pursuant to
13 subdivision (b) of Section 4234.

14 (c) Compelling the attorney-in-fact to submit the
15 attorney-in-fact's accounts or report the attorney-in-fact's
16 acts as attorney-in-fact to the principal, the spouse of the
17 principal, the conservator of the person or the estate of
18 the principal, or to any other person required by the court
19 in its discretion, if the attorney-in-fact has failed to submit
20 an accounting or report within 60 days after written
21 request from the person filing the petition.

22 (d) Declaring that the authority of the attorney-in-fact
23 is revoked on a determination by the court of all of the
24 following:

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

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

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

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

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

38 (2) If the attorney-in-fact is not subject to a duty to act
39 under Section 4230, the court shall approve the

1 resignation, subject to the court's discretion to require the
2 attorney-in-fact to give notice to other interested persons.

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

5 4542. A proceeding under this part is commenced by
6 filing a petition stating facts showing that the petition is
7 authorized under this part, the grounds of the petition,
8 and, if known to the petitioner, the terms of the power of
9 attorney.

10 4543. The court may dismiss a petition if it appears
11 that the proceeding is not reasonably necessary for the
12 protection of the interests of the principal or the
13 principal's estate and shall stay or dismiss the proceeding
14 in whole or in part when required by Section 410.30 of the
15 Code of Civil Procedure.

16 4544. (a) Subject to subdivision (b), at least 15 days
17 before the time set for hearing, the petitioner shall serve
18 notice of the time and place of the hearing, together with
19 a copy of the petition, on the following:

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

21 (2) The principal if not the petitioner.

22 (b) In the case of a petition to compel a third person
23 to honor the authority of an attorney-in-fact, notice of the
24 time and place of the hearing, together with a copy of the
25 petition, shall be served on the third person in the
26 manner provided in Chapter 4 (commencing with
27 Section 413.10) of Title 5 of Part 2 of the Code of Civil
28 Procedure.

29 4545. In a proceeding under this part commenced by
30 the filing of a petition by a person other than the
31 attorney-in-fact, the court may in its discretion award
32 reasonable attorney's fees to one of the following:

33 (a) The attorney-in-fact, if the court determines that
34 the proceeding was commenced without any reasonable
35 cause.

36 (b) The person commencing the proceeding, if the
37 court determines that the attorney-in-fact has clearly
38 violated the fiduciary duties under the power of attorney
39 or has failed without any reasonable cause or justification
40 to submit accounts or report acts to the principal or

1 conservator of the estate or of the person, as the case may
2 be, after written request from the principal or
3 conservator.

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

6 SEC. 39. Division 4.7 (commencing with Section
7 4600) is added to the Probate Code, to read:

8

9 DIVISION 4.7. HEALTH CARE DECISIONS

10

11 PART 1. DEFINITIONS AND GENERAL

12

13 CHAPTER 1. SHORT TITLE AND DEFINITIONS

14

15 4600. This division may be cited as the Health Care
16 Decisions Law.

17 4603. Unless the provision or context otherwise
18 requires, the definitions in this chapter govern the
19 construction of this division.

20 4605. “Advance health care directive” or “advance
21 directive” means either an individual health care
22 instruction or a power of attorney for health care.

23 4607. (a) “Agent” means an individual designated in
24 a power of attorney for health care to make a health care
25 decision for the principal, regardless of whether the
26 person is known as an agent or attorney-in-fact, or by
27 some other term.

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

29 4609. “Capacity” means a patient’s ability to
30 understand the nature and consequences of proposed
31 health care, including its significant benefits, risks, and
32 alternatives, and to make and communicate a health care
33 decision.

34 4611. “Community care facility” means a
35 “community care facility” as defined in Section 1502 of
36 the Health and Safety Code.

37 4613. “Conservator” means a court-appointed
38 conservator having authority to make a health care
39 decision for a patient.



1 4615. "Health care" means any care, treatment,
2 service, or procedure to maintain, diagnose, or otherwise
3 affect a patient's physical or mental condition.

4 4617. "Health care decision" means a decision made
5 by a patient or the patient's agent, conservator, or
6 surrogate, regarding the patient's health care, including
7 the following:

8 (a) Selection and discharge of health care providers
9 and institutions.

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

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

15 4619. "Health care institution" means an institution,
16 facility, or agency licensed, certified, or otherwise
17 authorized or permitted by law to provide health care in
18 the ordinary course of business.

19 4621. "Health care provider" means an individual
20 licensed, certified, or otherwise authorized or permitted
21 by the law of this state to provide health care in the
22 ordinary course of business or practice of a profession.

23 4623. "Individual health care instruction" or
24 "individual instruction" means a patient's written or oral
25 direction concerning a health care decision for the
26 patient.

27 4625. "Patient" means an adult whose health care is
28 under consideration, and includes a principal under a
29 power of attorney for health care and an adult who has
30 given an individual health care instruction or designated
31 a surrogate.

32 4627. "Physician" means a physician and surgeon
33 licensed by the Medical Board of California or the
34 Osteopathic Medical Board of California.

35 4629. "Power of attorney for health care" means a
36 written instrument designating an agent to make health
37 care decisions for the principal.

38 4631. "Primary physician" means a physician
39 designated by a patient or the patient's agent,
40 conservator, or surrogate, to have primary responsibility

1 for the patient's health care or, in the absence of a
2 designation or if the designated physician is not
3 reasonably available or declines to act as primary
4 physician, a physician who undertakes the responsibility.

5 4633. "Principal" means an adult who executes a
6 power of attorney for health care.

7 4635. "Reasonably available" means readily able to be
8 contacted without undue effort and willing and able to
9 act in a timely manner considering the urgency of the
10 patient's health care needs.

11 4637. "Residential care facility for the elderly" means
12 a "residential care facility for the elderly" as defined in
13 Section 1569.2 of the Health and Safety Code.

14 4639. "Skilled nursing facility" means a "skilled
15 nursing facility" as defined in Section 1250 of the Health
16 and Safety Code.

17 4641. "Supervising health care provider" means the
18 primary physician or, if there is no primary physician or
19 the primary physician is not reasonably available, the
20 health care provider who has undertaken primary
21 responsibility for a patient's health care.

22 4643. "Surrogate" means an adult, other than a
23 patient's agent or conservator, authorized under this
24 division to make a health care decision for the patient.

25 26 CHAPTER 2. GENERAL PROVISIONS 27

28 4650. The Legislature finds the following:

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

34 (b) Modern medical technology has made possible the
35 artificial prolongation of human life beyond natural
36 limits. In the interest of protecting individual autonomy,
37 this prolongation of the process of dying for a person for
38 whom continued health care does not improve the
39 prognosis for recovery may violate patient dignity and

1 cause unnecessary pain and suffering, while providing
2 nothing medically necessary or beneficial to the person.

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

7 4651. (a) Except as otherwise provided, this division
8 applies to health care decisions for adults who lack
9 capacity to make health care decisions for themselves.

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

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

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

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

16 4652. This division does not authorize consent to any
17 of the following on behalf of a patient:

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

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

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

24 (d) Sterilization.

25 (e) Abortion.

26 4653. Nothing in this division shall be construed to
27 condone, authorize, or approve mercy killing, assisted
28 suicide, or euthanasia. This division is not intended to
29 permit any affirmative or deliberate act or omission to
30 end life other than withholding or withdrawing health
31 care pursuant to an advance health care directive, by a
32 surrogate, or as otherwise provided, so as to permit the
33 natural process of dying.

34 4654. This division does not authorize or require a
35 health care provider or health care institution to provide
36 health care contrary to generally accepted health care
37 standards applicable to the health care provider or health
38 care institution.

1 4655. (a) This division does not create a presumption
2 concerning the intention of a patient who has not made
3 or who has revoked an advance health care directive.

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

8 4656. Death resulting from withholding or
9 withdrawing health care in accordance with this division
10 does not for any purpose constitute a suicide or homicide
11 or legally impair or invalidate a policy of insurance or an
12 annuity providing a death benefit, notwithstanding any
13 term of the policy or annuity to the contrary.

14 4657. A patient is presumed to have the capacity to
15 make a health care decision, to give or revoke an advance
16 health care directive, and to designate or disqualify a
17 surrogate. This presumption is a presumption affecting
18 the burden of proof.

19 4658. Unless otherwise specified in a written advance
20 health care directive, for the purposes of this division, a
21 determination that a patient lacks or has recovered
22 capacity, or that another condition exists that affects an
23 individual health care instruction or the authority of an
24 agent or surrogate, shall be made by the primary
25 physician.

26 4659. (a) Except as provided in subdivision (b), none
27 of the following persons may make health care decisions
28 as an agent under a power of attorney for health care or
29 a surrogate under this division:

30 (1) The supervising health care provider or an
31 employee of the health care institution where the patient
32 is receiving care.

33 (2) An operator or employee of a community care
34 facility or residential care facility where the patient is
35 receiving care.

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

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

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

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

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

(2) The conservatee is represented by legal counsel.

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

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

4660. A copy of a written advance health care directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same 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

1 whether they were given or executed before, on, or after
2 July 1, 2000.

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

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

14 (d) Nothing in this division affects the validity of an
15 advance health care directive executed before July 1,
16 2000, that was valid under prior law.

17 (e) Nothing in this division affects the validity of a
18 durable power of attorney for health care executed on a
19 printed form that was valid under prior law, regardless of
20 whether execution occurred before, on, or after July 1,
21 2000.

22 PART 2. UNIFORM HEALTH CARE DECISIONS 23 ACT 24

25 CHAPTER 1. ADVANCE HEALTH CARE DIRECTIVES 26

27 Article 1. General Provisions 28

29
30 4670. An adult having capacity may give an individual
31 health care instruction. The individual instruction may be
32 oral or written. The individual instruction may be limited
33 to take effect only if a specified condition arises.

34 4671. (a) An adult having capacity may execute a
35 power of attorney for health care, as provided in Article
36 2 (commencing with Section 4680). The power of
37 attorney for health care may authorize the agent to make
38 health care decisions and may also include individual
39 health care instructions.

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

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

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

4673. A written advance health care directive is legally sufficient if all of the following requirements are satisfied:

(a) The advance directive contains the date of its execution.

(b) The advance directive is signed either (1) by the patient or (2) in the patient's name by another adult in the patient's presence and at the patient's direction.

(c) The advance directive is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Sections 4674 and 4675.

4674. If the written advance health care directive is signed by witnesses, as provided in Section 4673, the following requirements shall be satisfied:

(a) The witnesses shall be adults.

(b) Each witness signing the advance directive shall witness either the signing of the advance directive by the patient or the patient's acknowledgment of the signature or the advance directive.

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

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

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

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

7 (4) The agent, where the advance directive is a power
8 of attorney for health care.

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

11
12 "I declare under penalty of perjury under the laws of
13 California (1) that the individual who signed or
14 acknowledged this advance health care directive is
15 personally known to me, or that the individual's identity
16 was proven to me by convincing evidence, (2) that the
17 individual signed or acknowledged this advance directive
18 in my presence, (3) that the individual appears to be of
19 sound mind and under no duress, fraud, or undue
20 influence, (4) that I am not a person appointed as agent
21 by this advance directive, and (5) that I am not the
22 individual's health care provider, an employee of the
23 individual's health care provider, the operator of a
24 community care facility, an employee of an operator of a
25 community care facility, the operator of a residential care
26 facility for the elderly, nor an employee of an operator of
27 a residential care facility for the elderly."

28
29 (e) At least one of the witnesses shall be an individual
30 who is neither related to the patient by blood, marriage,
31 or adoption, nor entitled to any portion of the patient's
32 estate upon the patient's death under a will existing when
33 the advance directive is executed or by operation of law
34 then existing.

35 (f) The witness satisfying the requirement of
36 subdivision (e) shall also sign the following declaration in
37 substance:

38
39 "I further declare under penalty of perjury under the
40 laws of California that I am not related to the individual

1 executing this advance health care directive by blood,
2 marriage, or adoption, and, to the best of my knowledge,
3 I am not entitled to any part of the individual's estate
4 upon his or her death under a will now existing or by
5 operation of law.”

6
7 (g) The provisions of this section applicable to
8 witnesses do not apply to a notary public before whom an
9 advance health care directive is acknowledged.

10 4675. (a) If an individual is a patient in a skilled
11 nursing facility when a written advance health care
12 directive is executed, the advance directive is not
13 effective unless a patient advocate or ombudsman, as may
14 be designated by the Department of Aging for this
15 purpose pursuant to any other applicable provision of
16 law, signs the advance directive as a witness, either as one
17 of two witnesses or in addition to notarization. The
18 patient advocate or ombudsman shall declare that he or
19 she is serving as a witness as required by this subdivision.
20 It is the intent of this subdivision to recognize that some
21 patients in skilled nursing facilities are insulated from a
22 voluntary decisionmaking role, by virtue of the custodial
23 nature of their care, so as to require special assurance that
24 they are capable of willfully and voluntarily executing an
25 advance directive.

26 (b) A witness who is a patient advocate or ombudsman
27 may rely on the representations of the administrators or
28 staff of the skilled nursing facility, or of family members,
29 as convincing evidence of the identity of the patient if the
30 patient advocate or ombudsman believes that the
31 representations provide a reasonable basis for
32 determining the identity of the patient.

33 4676. (a) A written advance health care directive or
34 similar instrument executed in another state or
35 jurisdiction in compliance with the laws of that state or
36 jurisdiction or of this state, is valid and enforceable in this
37 state to the same extent as a written advance directive
38 validly executed in this state.

39 (b) In the absence of knowledge to the contrary, a
40 physician or other health care provider may presume that

1 a written advance health care directive or similar
2 instrument, whether executed in another state or
3 jurisdiction or in this state, is valid.

4 4677. A health care provider, health care service plan,
5 health care institution, disability insurer, self-insured
6 employee welfare plan, or nonprofit hospital plan or a
7 similar insurance plan may not require or prohibit the
8 execution or revocation of an advance health care
9 directive as a condition for providing health care,
10 admission to a facility, or furnishing insurance.

11 4678. Unless otherwise specified in an advance health
12 care directive, a person then authorized to make health
13 care decisions for a patient has the same rights as the
14 patient to request, receive, examine, copy, and consent to
15 the disclosure of medical or any other health care
16 information.

17

18 Article 2. Powers of Attorney for Health Care

19

20 4680. A power of attorney for health care is legally
21 sufficient if it satisfies the requirements of Section 4673.

22 4681. (a) Except as provided in subdivision (b), the
23 principal may limit the application of any provision of this
24 division by an express statement in the power of attorney
25 for health care or by providing an inconsistent rule in the
26 power of attorney.

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

31 (1) Statements required to be included in a power of
32 attorney.

33 (2) Operative dates of statutory enactments or
34 amendments.

35 (3) Formalities for execution of a power of attorney for
36 health care.

37 (4) Qualifications of witnesses.

38 (5) Qualifications of agents.

39 (6) Protection of third persons from liability.



1 4682. Unless otherwise provided in a power of
2 attorney for health care, the authority of an agent
3 becomes effective only on a determination that the
4 principal lacks capacity, and ceases to be effective on a
5 determination that the principal has recovered capacity.

6 4683. Subject to any limitations in the power of
7 attorney for health care:

8 (a) An agent designated in the power of attorney may
9 make health care decisions for the principal to the same
10 extent the principal could make health care decisions if
11 the principal had the capacity to do so.

12 (b) The agent may also make decisions that may be
13 effective after the principal's death, including the
14 following:

15 (1) Making a disposition under the Uniform
16 Anatomical Gift Act (Chapter 3.5 (commencing with
17 Section 7150) of Part 1 of Division 7 of the Health and
18 Safety Code).

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

21 (3) Directing the disposition of remains under Section
22 7100 of the Health and Safety Code.

23 4684. An agent shall make a health care decision in
24 accordance with the principal's individual health care
25 instructions, if any, and other wishes to the extent known
26 to the agent. Otherwise, the agent shall make the decision
27 in accordance with the agent's determination of the
28 principal's best interest. In determining the principal's
29 best interest, the agent shall consider the principal's
30 personal values to the extent known to the agent.

31 4685. Unless the power of attorney for health care
32 provides otherwise, the agent designated in the power of
33 attorney who is known to the health care provider to be
34 reasonably available and willing to make health care
35 decisions has priority over any other person in making
36 health care decisions for the principal.

37 4686. Unless the power of attorney for health care
38 provides a time of termination, the authority of the agent
39 is exercisable notwithstanding any lapse of time since
40 execution of the power of attorney.

1 4687. Nothing in this division affects any right the
2 person designated as an agent under a power of attorney
3 for health care may have, apart from the power of
4 attorney, to make or participate in making health care
5 decisions for the principal.

6 4688. Where this division does not provide a rule
7 governing agents under powers of attorney, the law of
8 agency applies.

9 4689. Nothing in this division authorizes an agent
10 under a power of attorney for health care to make a
11 health care decision if the principal objects to the
12 decision. If the principal objects to the health care
13 decision of the agent under a power of attorney, the
14 matter shall be governed by the law that would apply if
15 there were no power of attorney for health care.

16 4690. If the principal becomes wholly or partially
17 incapacitated, or if there is a question concerning the
18 capacity of the principal, the agent may consult with a
19 person previously designated by the principal for this
20 purpose, and may also consult with and obtain
21 information needed to carry out the agent's duties from
22 the principal's spouse, physician, attorney, a member of
23 the principal's family, or other person, including a
24 business entity or government agency, with respect to
25 matters covered by the power of attorney for health care.
26 A person from whom information is requested shall
27 disclose relevant information to the agent. Disclosure
28 under this section is not a waiver of any privilege that may
29 apply to the information disclosed.

30 Article 3. Revocation of Advance Directives

31
32
33 4695. (a) A patient having capacity may revoke the
34 designation of an agent only by a signed writing or by
35 personally informing the supervising health care
36 provider.

37 (b) A patient having capacity may revoke all or part
38 of an advance health care directive, other than the
39 designation of an agent, at any time and in any manner
40 that communicates an intent to revoke.

1 4696. A health care provider, agent, conservator, or
2 surrogate who is informed of a revocation of an advance
3 health care directive shall promptly communicate the
4 fact of the revocation to the supervising health care
5 provider and to any health care institution where the
6 patient is receiving care.

7 4697. (a) If after executing a power of attorney for
8 health care the principal's marriage to the agent is
9 dissolved or annulled, the principal's designation of the
10 former spouse as an agent to make health care decisions
11 for the principal is revoked.

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

15 4698. An advance health care directive that conflicts
16 with an earlier advance directive revokes the earlier
17 advance directive to the extent of the conflict.

18
19 CHAPTER 2. ADVANCE HEALTH CARE DIRECTIVE FORMS
20

21 4700. The form provided in Section 4701 may, but
22 need not, be used to create an advance health care
23 directive. The other sections of this division govern the
24 effect of the form or any other writing used to create an
25 advance health care directive. An individual may
26 complete or modify all or any part of the form in Section
27 4701.

28 4701. The statutory advance health care directive
29 form is as follows:

30
31 ADVANCE HEALTH CARE DIRECTIVE
32

33 (California Probate Code Section 4701)
34

35 Explanation
36

37 You have the right to give instructions about your own
38 health care. You also have the right to name someone else
39 to make health care decisions for you. This form lets you
40 do either or both of these things. It also lets you express

1 your wishes regarding donation of organs and the
2 designation of your primary physician. If you use this
3 form, you may complete or modify all or any part of it. You
4 are free to use a different form.

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

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

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

30 (b) Select or discharge health care providers and
31 institutions.

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

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

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

39 Part 2 of this form lets you give specific instructions
40 about any aspect of your health care, whether or not you

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

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

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

15 After completing this form, sign and date the form at
16 the end. The form must be signed by two qualified
17 witnesses or acknowledged before a notary public. Give
18 a copy of the signed and completed form to your
19 physician, to any other health care providers you may
20 have, to any health care institution at which you are
21 receiving care, and to any health care agents you have
22 named. You should talk to the person you have named as
23 agent to make sure that he or she understands your wishes
24 and is willing to take the responsibility.

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

27
28 * * * * *

29
30 PART 1

31 POWER OF ATTORNEY FOR HEALTH CARE

32
33 (1.1) DESIGNATION OF AGENT: I designate the following
34 individual as my agent to make health care decisions for me:

35
36 _____
37 (name of individual you choose as agent)

38
39 _____
40 (address) (city) (state) (ZIP Code)

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(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:



(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)

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(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) SIGNATURE: Sign and date the form here:

(date)

(sign your name)

(address)

(print your name)

(city)

(state)



(5.3) STATEMENT OF WITNESSES: I declare under penalty of perjury under the laws of California (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

First witness

Second witness

(print name)

(print name)

(address)

(address)

(city)

(state)

(city)

(state)

(signature of witness)

(signature of witness)

(date)

(date)

(5.4) ADDITIONAL STATEMENT OF WITNESSES: At least one of the above witnesses must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

(signature of witness)

(signature of witness)

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 4675 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 shall be promptly recorded in the patient's health care record and is effective only during the course of treatment or illness or during the stay in the health care institution when the designation is made.

4714. A surrogate, including a person acting as a surrogate, shall make a health care decision in accordance with the patient's individual health care instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

4715. A patient having capacity at any time may disqualify another person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

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

1 health care provider shall arrange for its maintenance in
2 the patient's health care record.

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

8 4732. A primary physician who makes or is informed
9 of a determination that a patient lacks or has recovered
10 capacity, or that another condition exists affecting an
11 individual health care instruction or the authority of an
12 agent, conservator of the person, or surrogate, shall
13 promptly record the determination in the patient's
14 health care record and communicate the determination
15 to the patient, if possible, and to a person then authorized
16 to make health care decisions for the patient.

17 4733. Except as provided in Sections 4734 and 4735, a
18 health care provider or health care institution providing
19 care to a patient shall do the following:

20 (a) Comply with an individual health care instruction
21 of the patient and with a reasonable interpretation of that
22 instruction made by a person then authorized to make
23 health care decisions for the patient.

24 (b) Comply with a health care decision for the patient
25 made by a person then authorized to make health care
26 decisions for the patient to the same extent as if the
27 decision had been made by the patient while having
28 capacity.

29 4734. (a) A health care provider may decline to
30 comply with an individual health care instruction or
31 health care decision for reasons of conscience.

32 (b) A health care institution may decline to comply
33 with an individual health care instruction or health care
34 decision if the instruction or decision is contrary to a
35 policy of the institution that is expressly based on reasons
36 of conscience and if the policy was timely communicated
37 to the patient or to a person then authorized to make
38 health care decisions for the patient.

39 4735. A health care provider or health care institution
40 may decline to comply with an individual health care

1 instruction or health care decision that requires
2 medically ineffective health care or health care contrary
3 to generally accepted health care standards applicable to
4 the health care provider or institution.

5 4736. A health care provider or health care institution
6 that declines to comply with an individual health care
7 instruction or health care decision shall do all of the
8 following:

9 (a) Promptly so inform the patient, if possible, and any
10 person then authorized to make health care decisions for
11 the patient.

12 (b) Unless the patient or person then authorized to
13 make health care decisions for the patient refuses
14 assistance, immediately make all reasonable efforts to
15 assist in the transfer of the patient to another health care
16 provider or institution that is willing to comply with the
17 instruction or decision.

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

22
23 CHAPTER 5. IMMUNITIES AND LIABILITIES
24

25 4740. A health care provider or health care institution
26 acting in good faith and in accordance with generally
27 accepted health care standards applicable to the health
28 care provider or institution is not subject to civil or
29 criminal liability or to discipline for unprofessional
30 conduct for any actions in compliance with this division,
31 including, but not limited to, any of the following
32 conduct:

33 (a) Complying with a health care decision of a person
34 that the health care provider or health care institution
35 believes in good faith has the authority to make a health
36 care decision for a patient, including a decision to
37 withhold or withdraw health care.

38 (b) Declining to comply with a health care decision of
39 a person based on a belief that the person then lacked
40 authority.

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

4 (d) Declining to comply with an individual health care
5 instruction or health care decision, in accordance with
6 Sections 4734 to 4736, inclusive.

7 4741. A person acting as agent or surrogate under this
8 part is not subject to civil or criminal liability or to
9 discipline for unprofessional conduct for health care
10 decisions made in good faith.

11 4742. (a) A health care provider or health care
12 institution that intentionally violates this part is subject to
13 liability to the aggrieved individual for damages of two
14 thousand five hundred dollars (\$2,500) or actual damages
15 resulting from the violation, whichever is greater, plus
16 reasonable attorney's fees.

17 (b) A person who intentionally falsifies, forges,
18 conceals, defaces, or obliterates an individual's advance
19 health care directive or a revocation of an advance health
20 care directive without the individual's consent, or who
21 coerces or fraudulently induces an individual to give,
22 revoke, or not to give an advance health care directive,
23 is subject to liability to that individual for damages of ten
24 thousand dollars (\$10,000) or actual damages resulting
25 from the action, whichever is greater, plus reasonable
26 attorney's fees.

27 (c) The damages provided in this section are
28 cumulative and not exclusive of any other remedies
29 provided by law.

30 4743. Any person who alters or forges a written
31 advance health care directive of another, or willfully
32 conceals or withholds personal knowledge of a revocation
33 of an advance directive, with the intent to cause a
34 withholding or withdrawal of health care necessary to
35 keep the patient alive contrary to the desires of the
36 patient, and thereby directly causes health care necessary
37 to keep the patient alive to be withheld or withdrawn and
38 the death of the patient thereby to be hastened, is subject
39 to prosecution for unlawful homicide as provided in

Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code.

PART 3. JUDICIAL PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

4750. Subject to this division:

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

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

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

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

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

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

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

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

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

1 so advised, has executed this advance directive.”

2
3 (b) An advance health care directive may not limit the
4 authority of the following persons to petition under this
5 part:

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

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

12 4754. There is no right to a jury trial in proceedings
13 under this division.

14 4755. Except as otherwise provided in this division,
15 the general provisions in Division 3 (commencing with
16 Section 1000) apply to proceedings under this division.

17
18 CHAPTER 2. JURISDICTION AND VENUE
19

20 4760. (a) The superior court has jurisdiction in
21 proceedings under this division.

22 (b) The court in proceedings under this division is a
23 court of general jurisdiction and the court, or a judge of
24 the court, has the same power and authority with respect
25 to the proceedings as otherwise provided by law for a
26 superior court, or a judge of the superior court, including,
27 but not limited to, the matters authorized by Section 128
28 of the Code of Civil Procedure.

29 4761. The court may exercise jurisdiction in
30 proceedings under this division on any basis permitted by
31 Section 410.10 of the Code of Civil Procedure.

32 4762. Without limiting Section 4761, a person who acts
33 as an agent under a power of attorney for health care or
34 as a surrogate under this division is subject to personal
35 jurisdiction in this state with respect to matters relating
36 to acts and transactions of the agent or surrogate
37 performed in this state or affecting a patient in this state.

38 4763. The proper county for commencement of a
39 proceeding under this division shall be determined in the
40 following order of priority:

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

2 (b) The county in which the agent or surrogate
3 resides.

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

6
7 CHAPTER 3. PETITIONS, ORDERS, APPEALS
8

9 4765. Subject to Section 4753, a petition may be filed
10 under this part by any of the following persons:

11 (a) The patient.

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

13 (c) A relative of the patient.

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

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

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

18 (g) The public guardian of the county where the
19 patient resides.

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

22 (i) Any other interested person or friend of the
23 patient.

24 4766. A petition may be filed under this part for any
25 one or more of the following purposes:

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

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

30 (c) Determining whether the acts or proposed acts of
31 an agent or surrogate are consistent with the patient's
32 desires as expressed in an advance health care directive
33 or otherwise made known to the court or, where the
34 patient's desires are unknown or unclear, whether the
35 acts or proposed acts of the agent or surrogate are in the
36 patient's best interest.

37 (d) Declaring that the authority of an agent or
38 surrogate is terminated, upon a determination by the
39 court that the agent or surrogate has made a health care
40 decision for the patient that authorized anything illegal

1 or upon a determination by the court of both of the
2 following:

3 (1) The agent or surrogate has violated, has failed to
4 perform, or is unfit to perform, the duty under an
5 advance health care directive to act consistent with the
6 patient's desires or, where the patient's desires are
7 unknown or unclear, is acting (by action or inaction) in
8 a manner that is clearly contrary to the patient's best
9 interest.

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

13 4767. A proceeding under this part is commenced by
14 filing a petition stating facts showing that the petition is
15 authorized under this part, the grounds of the petition,
16 and, if known to the petitioner, the terms of any advance
17 health care directive in question.

18 4768. The court may dismiss a petition if it appears
19 that the proceeding is not reasonably necessary for the
20 protection of the interests of the patient and shall stay or
21 dismiss the proceeding in whole or in part when required
22 by Section 410.30 of the Code of Civil Procedure.

23 4769. (a) Subject to subdivision (b), at least 15 days
24 before the time set for hearing, the petitioner shall serve
25 notice of the time and place of the hearing, together with
26 a copy of the petition, on the following:

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

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

29 (b) In the case of a petition to compel a third person
30 to honor the authority of an agent or surrogate, notice of
31 the time and place of the hearing, together with a copy
32 of the petition, shall be served on the third person in the
33 manner provided in Chapter 4 (commencing with
34 Section 413.10) of Title 5 of Part 2 of the Code of Civil
35 Procedure.

36 4770. The court in its discretion, on a showing of good
37 cause, may issue a temporary order prescribing the health
38 care of the patient until the disposition of the petition
39 filed under Section 4766. If a power of attorney for health
40 care is in effect and a conservator (including a temporary

conservator) of the person is appointed for the principal, the court that appoints the conservator in its discretion, on a showing of good cause, may issue a temporary order prescribing the health care of the principal, the order to continue in effect for the period ordered by the court but in no case longer than the period necessary to permit the filing and determination of a petition filed under Section 4766.

4771. In a proceeding under this part commenced by the filing of a petition by a person other than the agent or surrogate, the court may in its discretion award 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.

1 4781. As used in this part, “health care provider”
2 includes, but is not limited to, the following:

3 (a) Persons described in Section 4621.

4 (b) Emergency response employees, including, but
5 not limited to, firefighters, law enforcement officers,
6 emergency medical technicians I and II, paramedics, and
7 employees and volunteer members of legally organized
8 and recognized volunteer organizations, who are trained
9 in accordance with standards adopted as regulations by
10 the Emergency Medical Services Authority pursuant to
11 Sections 1797.170, 1797.171, 1797.172, 1797.182, and
12 1797.183 of the Health and Safety Code to respond to
13 medical emergencies in the course of performing their
14 volunteer or employee duties with the organization.

15 4782. A health care provider who honors a request to
16 forgo resuscitative measures is not subject to criminal
17 prosecution, civil liability, discipline for unprofessional
18 conduct, administrative sanction, or any other sanction,
19 as a result of his or her reliance on the request, if the
20 health care provider (a) believes in good faith that the
21 action or decision is consistent with this part, and (b) has
22 no knowledge that the action or decision would be
23 inconsistent with a health care decision that the
24 individual signing the request would have made on his or
25 her own behalf under like circumstances.

26 4783. (a) Forms for requests to forgo resuscitative
27 measures printed after January 1, 1995, shall contain the
28 following:

29
30 “By signing this form, the surrogate acknowledges that
31 this request to forgo resuscitative measures is consistent
32 with the known desires of, and with the best interest of,
33 the individual who is the subject of the form.”

34
35 (b) A substantially similar printed form is valid and
36 enforceable if all of the following conditions are met:

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

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

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

5 4784. In the absence of knowledge to the contrary, a
6 health care provider may presume that a request to forgo
7 resuscitative measures is valid and unrevoked.

8 4785. This part applies regardless of whether the
9 individual executing a request to forgo resuscitative
10 measures is within or outside a hospital or other health
11 care institution.

12 4786. This part does not repeal or narrow laws relating
13 to health care decisionmaking.

14
15 PART 5. ADVANCE HEALTH CARE DIRECTIVE
16 REGISTRY
17

18 4800. (a) The Secretary of State shall establish a
19 registry system through which a person who has executed
20 a written advance health care directive may register in a
21 central information center, information regarding the
22 advance directive, making that information available
23 upon request to any health care provider, the public
24 guardian, or other person authorized by the registrant.

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

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

38 (d) The Secretary of State may charge a fee to each
39 registrant in an amount such that, when all fees charged
40 to registrants are aggregated, the aggregated fees do not

1 exceed the actual cost of establishing and maintaining the
2 registry.

3 4801. The Secretary of State shall establish procedures
4 to verify the identities of health care providers, the public
5 guardian, and other authorized persons requesting
6 information pursuant to Section 4800. No fee shall be
7 charged to any health care provider, the public guardian,
8 or other authorized person requesting information
9 pursuant to Section 4800.

10 4802. The Secretary of State shall establish procedures
11 to advise each registrant of the following:

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

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

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

19 4803. Failure to register with the Secretary of State
20 does not affect the validity of any advance health care
21 directive.

22 4804. Registration with the Secretary of State does not
23 affect the ability of the registrant to revoke the
24 registrant's advance health care directive or a later
25 executed advance directive, nor does registration raise
26 any presumption of validity or superiority among any
27 competing advance directives or revocations.

28 4805. Nothing in this chapter shall be construed to
29 require a health care provider to request from the
30 registry information about whether a patient has
31 executed an advance health care directive. Nothing in
32 this chapter shall be construed to affect the duty of a
33 health care provider to provide information to a patient
34 regarding advance health care directives pursuant to any
35 provision of federal law.

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

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

40 14110.8. (a) For the purposes of this section:

1 (1) "Facility" means a nursing facility.

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

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

9 (4) "Responsible party" means a person other than the
10 patient or potential patient, who, by virtue of signing or
11 cosigning an admissions agreement of a nursing facility,
12 either together with, or on behalf of, a potential patient,
13 becomes personally responsible or liable for payment of
14 any portion of the charges incurred by the patient while
15 in the facility. A person who signs or cosigns a facility's
16 admissions agreement by virtue of being an agent under
17 a power of attorney for health care or an attorney-in-fact
18 under a durable power of attorney executed by the
19 potential patient, a conservator of the person or estate of
20 the potential patient, or a representative payee, is not a
21 responsible party under this section, and does not thereby
22 assume personal responsibility or liability for payment of
23 any charges incurred by the patient, except to the extent
24 that the person, or the patient's conservator or
25 representative payee is an agent as defined in paragraph
26 (3).

27 (b) No facility may require or solicit, as a condition of
28 admission into the facility, that a Medi-Cal beneficiary
29 have a responsible party sign or cosign the admissions
30 agreement. No facility may accept or receive, as a
31 condition of admission into the facility, the signature or
32 cosignature of a responsible party for a Medi-Cal
33 beneficiary.

34 (c) A facility may require, as a condition of admission,
35 where a patient has an agent, that the patient's agent sign
36 or cosign the admissions agreement and agree to
37 distribute to the facility promptly when due, the share of
38 cost and any other charges not paid for by the Medi-Cal
39 program which the patient or his or her agent has agreed
40 to pay. The financial obligation of the agent shall be

1 limited to the amount of the patient's funds received but
2 not distributed to the facility. A new agent who did not
3 sign or cosign the admissions agreement shall be held
4 responsible to distribute funds in accordance with this
5 section.

6 (d) When a patient on non-Medi-Cal status converts to
7 Medi-Cal coverage, any security deposit paid to the
8 facility by the patient or on the patient's behalf as a
9 condition of admission to the facility shall be returned and
10 the obligations and responsibilities of the patient or
11 responsible party shall be null and void.

12 (e) Any agent who willfully violates the requirements
13 of this section is guilty of a misdemeanor, and upon
14 conviction thereof, shall be punished by a fine not to
15 exceed two thousand five hundred dollars (\$2,500) or by
16 imprisonment in the county jail not to exceed 180 days, or
17 both.

18 SEC. 43. This act shall become operative on July 1,
19 2000.

20 SEC. 44. *Section 5.5 of this bill incorporates*
21 *amendments to Section 7100 of the Health and Safety*
22 *Code proposed by both this bill and AB 1677. It shall only*
23 *become operative if (1) both bills are enacted and*
24 *become effective on or before January 1, 2000, but this bill*
25 *becomes operative first, (2) each bill amends Section*
26 *7100 of the Health and Safety Code, and (3) this bill is*
27 *enacted after AB 1677, in which case Section 7100 of the*
28 *Health and Safety Code, as amended by AB 1677 shall*
29 *become operative and remain operative until the*
30 *operative date of this bill, at which time Section 5.5 of this*
31 *bill shall become operative, and Section 5 of this bill shall*
32 *not become operative.*

33 SEC. 45. No reimbursement is required by this act
34 pursuant to Section 6 of Article XIII B of the California
35 Constitution because the only costs that may be incurred
36 by a local agency or school district will be incurred
37 because this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

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