

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 1189 (Valladares)
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Hearing Date: March 24, 2026
Fiscal: No
Urgency: No
AWM

SUBJECT

Advance health care directive of a skilled nursing facility patient

DIGEST

This bill eliminates the provision permitting a “patient advocate” to witness the advance health care directive of a person in a skilled nursing facility (SNF), thereby requiring every such advance directive to be witnessed by an ombudsperson designated by the Department of Aging.

EXECUTIVE SUMMARY

The Health Care Decisions Law (HCDL) establishes when and how a person may create an advance health care directive (or “advance directive”), which sets forth their wishes for what type of health care they wish to receive, establishes a power of attorney for health care, or both. Because an advance directive can involve serious, life-changing decisions—including the decision to refuse or discontinue life-preserving treatment—the HCDL requires an advance directive to be signed by the individual executing the document, dated, and either witnessed by two individuals or notarized; certain individuals, such as employees of a community care or residential facility in which the individual resides, may not serve as witnesses. For residents in an SNF, the HCDL imposes an additional requirement for executing a written advance directive: an SNF resident’s written advance directive must be witnessed by a patient advocate or an ombudsperson designated by the Department of Aging, in addition to either the two witness signatures or the notarization. “Patient advocate” is not defined in the HCDL.

This bill eliminates the provision of the HCDL permitting a “patient advocate” to witness an SNF resident’s advance directive in lieu of the designated ombudsperson. According to the author and sponsor, this undefined term has led to confusion over whether the employee of a residential facility may serve as a “patient advocate,” which runs contrary to the protections for SNF residents. By eliminating the “patient advocate” witness option, this bill would require all advance directives executed by

SNF residents to be witnessed by the ombudsperson designated by the Department of Aging, preserving the layer of oversight intended to ensure that the individual is executing their advance directive willingly and voluntarily.

This bill is sponsored by California Advocates for Nursing Home Reform (CANHR) and is supported by the California Long-Term Care Ombudsman Association. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the HCDL, which sets forth when and how a person may set forth their health care decisions in advance. (Prob. Code, div. 4.7, §§ 4600 et seq.)
- 2) Defines the following relevant terms:
 - a) "Advance health care directive" or "advance directive" means either an individual health care instruction or a power of attorney for health care. (Prob. Code, § 4605.)
 - b) "Capacity" means a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of a proposed health care, the ability to understand its significant benefits, risks, and alternatives. (Prob. Code, § 4609.)
 - c) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental health condition." (Prob. Code, § 4615.)
 - d) "Health care decision" means a decision by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including selection and discharge of health care providers and institutions; approval or disapproval of diagnostic tests, surgical procedures, and programs of medication, including mental health conditions; directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation. "Health care decision" does not include placement in a mental health treatment facility, convulsive treatment, psychosurgery, sterilization, or abortion. (Prob. Code, § 4617, 4652.)
 - e) "Power of attorney for health care" means a written instrument designating an agent to make health care decisions for the principal. (Prob. Code, § 4629.)
 - f) "Skilled nursing facility," or SNF, means an SNF as defined in Health and Safety Code section 1250. (Prob. Code, § 4639.)
- 3) Establishes, within the HCDL, the Uniform Health Care Decisions Act, which sets forth the procedures for establishing an advance health care directive or a power of attorney for health care. (Prob. Code, div. 4.7, pt. 2, §§ 4670 et seq.)

- 4) Provides that any adult having capacity may give an individual health care instruction, which may be oral or written, and which may be limited to take effect only if a specified condition arises. (Prob. Code, § 4670.)
- 5) Provides that any adult having capacity may execute a power of attorney for health care, which may authorize the agent to make health care decisions and may also include individual health care instructions; 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. (Prob. Code, § 4671.)
- 6) Provides that, as a general rule, 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 by the patient or 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 acknowledged before a notary public or signed by at least two witnesses who satisfy the requirements of 7) and 8). (Prob. Code, § 4673.)
- 7) Establishes criteria for who may serve as a witness for a written advance health care directive, including that they must be adults and may not be any of the following:
 - a) The patient's health care provider or an employee of the patient's health care provider.
 - b) The operator or an employee of a community care facility.
 - c) The operator or an employee of a residential care facility for the elderly.
 - d) The agent, where the advance directive is a power of attorney for health care. (Prob. Code, § 4674.)
- 8) Provides that, if an individual is a patient in an SNF when a written advance health care directive is executed, the advance directive is not effective unless a patient advocate or ombudsmen, as may be designated by the Department of Aging for this purpose, signs the advance directive as a witness, either as one of the two witnesses or in addition to notarization.
 - a) The patient advocate or ombudsperson shall declare that they are serving as a witness as required.
 - b) A witness who is a patient advocate or ombudsperson may rely on the representations of the administrators or staff of the SNF, or of family members, as convincing evidence of the identity of the patient if the patient advocate or ombudsperson believes that the representations provide a reasonable basis for determining the identity of the patient.
 - c) The intent of these provisions is to recognize that some patients in SNFs are insulated from a voluntary decisionmaking role, by virtue of the custodial

nature of their care, so as to require that they are capable of willfully and voluntarily executing an advance directive. (Prob. Code, § 4675.)

This bill eliminates the provisions permitting a patient advocate to witness a written advance directive for a person in an SNF in lieu of an ombudsperson designated by the Department of Aging, so that the ombudsperson is required to witness every such written advance directive.

COMMENTS

1. Author's comment

According to the author:

SB 1189 amends Probate Code Section 4675 to remove the term "patient advocate" as a permissible witness for advance health care directives (AHCDs) executed by skilled nursing facility residents, leaving the Long-Term Care (LTC) Ombudsperson as the sole designated special witness for such signings.

Residents of skilled nursing facilities are in a uniquely vulnerable position when executing AHCDs. Because of the custodial nature of their care, special protections are required to ensure that their health care wishes are expressed freely and voluntarily. California law has long required an independent witness for these signings, and the LTC Ombudsperson, designated by the Department of Aging, has served as that witness in practice.

However, the current statutory language in Probate Code Section 4675 lists both a "patient advocate or ombudsperson" as permissible witnesses. The Department of Aging has not designated any entity as a "patient advocate" separate from the LTC Ombudsperson program, leaving the term ambiguous. This ambiguity recently led at least one nursing home social services designee to serve as an AHCD witness under the mistaken belief that they qualified as a "patient advocate." This undermines the protective intent of the law. SB 1189 corrects this by deleting references to "patient advocate" from Probate Code Section 4675 and replacing them with "ombudsperson," consistent with the actual practice and the intent of the statute. The bill also updates gendered pronoun language. This is a technical cleanup bill that brings the statute in line with how it has been implemented and ensures nursing home residents' AHCDs are witnessed by the appropriate, independent party.

2. Background on advance health care directives

California law "recognizes that an adult has the fundamental right to control the decisions relating to [their] own health care, including the decision to have life-

sustaining treatment withheld or withdrawn.”¹ To that end, the HCDL permits adults who are legally permitted to make their own decisions – known as “having capacity” – to set forth their instructions for health care treatment in the event that they are unable to articulate those wishes in the future.² An advance directive can include an advance health care directive, which sets forth specific requirements for what sorts of treatment the person consents to or does not consent to; a power of attorney for health care, which grants a designated person the right to make health care decisions for the person in the event that the person is incapacitated; or both.³

Because an advance directive can involve serious, life-changing decisions – including the decision to refuse or discontinue life-preserving treatment – the HCDL requires an advance directive to be signed by the individual executing the document, dated, and either witnessed by two individuals or notarized.⁴ The HCDL also prohibits specified persons from serving as a witness, due to potential conflicts of interest, including the person’s health care provider or the operator of a community care facility or residential facility for the elderly.⁵

For residents in an SNF, the HCDL imposes an additional requirement for executing a written advance directive. An SNF resident’s written advance directive must be witnessed by a patient advocate or an ombudsperson designated by the Department of Aging, in addition to either the two witness signatures or the notarization.⁶ This added requirement is intended to provide another layer of protection for SNF residents, who, by nature of the custodial care of the SNF, may be less likely to have the ability to willfully and voluntarily execute an advanced directive.⁷ “Patient advocate,” however, is not defined in the HCDL.

3. This bill eliminates the provisions allowing a “patient advocate,” in lieu of the ombudsperson, to witness a written advanced directive for a person in an SNF

The failure to define “patient advocate” in the HDCL has, according to the author and sponsor, given rise to confusion over who may witness an advance directive for a person in an SNF. The sponsor reports an incident where a nursing home’s social services designee witnessed an advance directive as a “patient advocate,” which is contrary to the spirit, if not the letter, of the law. The purpose of the additional witness signature requirement is to provide an added layer of protection for persons whose ability to execute an advance directive may be in question; this added protection is lost when the additional signatory is an employee of the SNF.

¹ Prob. Code, § 4650(a).

² See generally Prob. Code, div. 4.7, §§ 4600 et seq.

³ *Ibid.*

⁴ *Id.*, § 4673.

⁵ *Id.*, § 4674.

⁶ See Prob. Code, § 4675.

⁷ See *id.*, § 4675(a.)

To close this gap in the law, this bill deletes the option to have a “patient advocate” serve as an additional witness for an advance directive executed by a person in an SNF, so that all such advance directives must be signed by the ombudsperson designated by the Department of Aging. This deletion ensures that a person outside of the SNF will be involved in the execution and determine whether the person has the capacity to execute the document. This Committee has not received any opposition to this bill or concerns that it will overly burden SNFs.

4. Arguments in support

According to CANHR:

AHCDs completed in a nursing home require a special witness. This requirement ensures residents are not coerced by facility staff or other parties into an AHCD that does not reflect their health care wishes. Probate Code § 4675 names the potential special witnesses: “patient advocate or ombudsman, as may be designated by the Department of Aging...”

Although the statute lists both “patient advocate” and “ombudsman,” the Long Term Care Ombudsman is generally understood to be the required witness, as they are designated by the Department of Aging to advocate on behalf of nursing home residents. Recently, however, a misunderstanding occurred where an individual who believed themselves to be the patient’s “advocate” witnessed the execution of an AHCD without the ombudsman present. The misunderstanding not only subjected the resident to an invalid AHCD, it exposed the risk of the statute’s reference to a patient advocate position that does not exist. Others may similarly misinterpret the statute’s special witnessing requirement, potentially bypassing ombudsman involvement and creating AHCDs that could later be deemed invalid.

Removing outdated references to a “patient advocate” would prevent the further misunderstanding that people who claim to be patient advocates can witness nursing home residents’ AHCDs.

SUPPORT

CANHR (sponsor)
California Long-Term Care Ombudsman Association

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation:

AB 2288 (Choi, Ch. 21, 2022) clarified that advance health care directives can include instructions for mental health treatment.

AB 1234 (Arambula, 2021) would have, among other things, allowed a witness to a written advance directive to witness the subject's signature via audiovisual means, and reduced the digital signature requirements to require merely an electronic signature. AB 1234 died in the Assembly Health Committee.
