
CONSENT

Bill No: SB 1189
Author: Valladares (R), et al.
Introduced: 2/19/26
Vote: 21

SENATE JUDICIARY COMMITTEE: 12-0, 3/24/26
AYES: Umberg, Niello, Allen, Caballero, Durazo, Laird, Reyes, Stern,
Valladares, Wahab, Weber Pierson, Wiener
NO VOTE RECORDED: Ashby

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Advance health care directive of a skilled nursing facility patient

SOURCE: California Advocates for Nursing Home Reform

DIGEST: This bill eliminates the provision in the Health Care Decisions Law (HCDL) 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.

ANALYSIS:

Existing law:

- 1) Establishes the HCDL, which sets forth when and how a person may set forth their health care decisions in advance. (Probate (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

The 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/13/26)

California Advocates for Nursing Home Reform (source)
California Long-Term Care Ombudsman Association

OPPOSITION: (Verified 4/13/26)

None received

ARGUMENTS IN SUPPORT: According to the California Advocates for Nursing Home Reform:

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.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
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