

Date of Hearing: June 9, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 1189 (Valladares) – As Amended June 4, 2026

SENATE VOTE: 38-0

SUBJECT: ADVANCE HEALTH CARE DIRECTIVE OF A SKILLED NURSING FACILITY PATIENT

SYNOPSIS

Advance health care directives allow individuals to provide instructions for their medical care in the event that they are unable to do so in the future. These directives allow patients to provide instructions for life-altering decisions, including decisions to discontinue life-sustaining treatment. Accordingly, existing law sets out specific requirements for a directive to be effective, including witness requirements. Because residents of skilled nursing facilities are among the most vulnerable populations in the state, often elderly, with limited mobility, cognitive impairment, or reduced capacity to self-advocate, existing law imposes an additional special witnessing requirement for an advance health care directive involving these residents. Specifically, current law requires a patient advocate or an ombudsman designated by the California Department of Aging to sign the advance health care directive for it to be effective. However, according to the author and sponsors, the only individuals that have been fulfilling this role are ombudsmen who have been certified through the State’s Long-Term Care Ombudsman program. By contrast, the term “patient advocate” is undefined, and has no designated entity behind it. This, according to supporters, has led to confusion as to whom may serve as a special witness for advance health care directive in these facilities.

This bill would simply remove the term patient advocate from the existing statute, leaving an ombudsman designated by the California Department of Aging as the only permissible witness for advance health care directives in skilled nursing facilities. The bill is sponsored by the California Advocates for Nursing Home Reform. It also enjoys the support of the California Long Term Care Ombudsman Association and the Office of the State Long-term Care Ombudsman. Collectively, they contend that this bill will remove the legal ambiguity surrounding those who may act as a witness for this purpose and update the law to align with current practices. This bill has no registered opposition.

SUMMARY: Removes the provision in existing law permitting a “patient advocate” in lieu of an “ombudsman” to witness the advance health care directive of a person in a skilled nursing facility, leaving an ombudsman designated by the California Department of Aging as the only permissible witness for this purpose.

EXISTING LAW:

- 1) Defines “advance health care directive” or “advance directive” as either an individual health care instruction or a power of attorney for health care. (Probate Code Section 4605.)

- 2) Defines “individual health care instruction” or “individual instruction” as a patient’s written or oral direction concerning a health care decision for the patient. (Probate Code Section 4623.)
- 3) Defines “skilled nursing facility” as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. (Health and Safety Code Section 1250 (c).)
- 4) Provides that an adult having capacity may give an individual health care instruction, which may be oral or written, and may be limited to take effect only if a specified condition arises. (Probate Code Section 4670.)
- 5) Provides that 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 specified requirements under existing law. (Probate Code Section 4673 (a).)
- 6) Provides that, if a written advance health care directive is signed by witnesses, the following requirements must be satisfied:
 - a) The witnesses must be adults.
 - b) Each witness signing the advance directive must witness either the signing of the advance directive by the patient or the patient’s acknowledgment of the signature or the advance directive.
 - c) Specifies that none of the following persons may act as witnesses:
 - i. The patient’s health care provider or an employee of the patient’s health care provider.
 - ii. The operator or an employee of a community care facility.
 - iii. The operator or an employee of a residential care facility for the elderly.
 - iv. The agent, where the advance directive is power of an attorney for health care. (Probate Code Section 4674 (a) –(c).)
- 7) Provides that if an individual is a patient in a skilled nursing facility when a written advance health care directive is executed, the advance directive is not effective unless a patient advocate or ombudsman, as may be designated by the Department of Aging for this purpose, signs the advance directive as a witness, either as one of two witnesses or in addition to notarization. Specifies that the patient advocate or ombudsman must declare that they are serving as a witness. (Probate Code Section 4675 (a).)

- 8) Provides that a witness who is a patient advocate or ombudsman rely on the representations of the administrators or staff of the skilled nursing facility, or of family members, as convincing evidence of the identity of the patient if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the patient. (Probate Code Section 4675 (b).)
- 9) Establishes the Office of the State Long-Term Care Ombudsman within the California Department of Aging. (Welfare and Institutions Code Section 9710.)
- 10) Establishes the federal Older Americans Act, which authorized the establishment of the Long-Term Care Ombudsman Program nationally. (42 U.S.C. Section 3001 *et seq.*)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: California law allows individuals to provide instructions for their health care treatment through an advance health care directive in the event that they lose the capacity to do so in the future. (*See generally* Probate Code Section 4600 *et seq.*) An advance health care directive can provide instructions for serious life-altering decisions, including a decision to discontinue life-sustaining treatments. Accordingly, existing law sets out specific witnessing requirements before an advance health care directive can become effective. (*See, e.g.*, Probate Code Section 4673.) For residents of skilled nursing facilities, the law adds an additional layer of protection by requiring additional witnesses, an ombudsman or patient advocate. (*See* Probate Code 4675.) However, the author and supporters argue that the term “patient advocate” in the existing statute is undefined, ambiguous, and has generated some confusion.

According to the author:

SB 1189 amends Probate Code Section 4675 to remove the term “patient advocate” and replace [it] with “ombuds[man],” as designated by the Department of Aging. By removing the ambiguous “patient advocate” term, the bill ensures that only the LTC Ombudsman, the sole entity designated for this purpose by the Department of Aging, can serve as the required special witness for AHCDs executed in skilled nursing facilities. This eliminates the risk of unauthorized individuals serving in that role and ensures the protective intent of the statute is fulfilled. SB 1189 is a technical cleanup bill that brings the statute into alignment with how it has been implemented in practice.

Advance Health Care Directives & the Long-Term Care Ombudsman Program. Among other things, existing law requires that a written advance health care directive be acknowledged before notary public or signed by at least two witnesses that satisfy specified requirements. (Probate Code Section 4673.) Those witnesses must be adults, and cannot be the patient’s health care provider, an operator or employee of a community care facility or residential care facility for the elderly, nor the patient’s agent, where the advance directive is a power of attorney for health care. (Probate Code Section 4674.)

Because residents of skilled nursing facilities are among the most vulnerable populations in the state, often elderly, with limited mobility, cognitive impairment, or reduced capacity to self-advocate, existing law imposes a special witnessing requirement for an advance health care directive involving these residents. (Probate Code Section 4675.) As mentioned above, Probate Code Section 4675 specifically requires a “patient advocate or ombudsman, as may designated

by the Department of Aging” to sign the advance directive as a witness or in addition to notarization.

According to the sponsor, though the statute includes the term “patient advocate,” it has been widely understood that only an ombudsman designated by the Department of Aging through its Long-Term Care Ombudsman program may serve as special witnesses in this role. The Office of the State Long-Term Care Ombudsman has stated that the Long-Term Care program has performed an average of 1,500 advance health care directives over the last five years, making this one of its core functions. Further, the State’s Long-Term Care Ombudsman has specified that ombudsmen are required to complete “an additional two hours of specialized training and field shadowing- above and beyond the program’s rigorous 36-hour training- to be able to witness an [advance health care directive].” By contrast, the term patient advocate is not defined, and there are no equivalent training requirements for patient advocates under existing law.

This bill removes the term “patient advocate” from the statute altogether, making it clear that only an ombudsman designated by the Department of Aging may serve in this important role. Because this appears to be one of the core functions of the Long-Term Care Ombudsman program, limiting the statute to allowing only ombudsmen to serve as special witnesses for this purpose should not alter current practice nor increase ombudsman workload. Furthermore, the required training and oversight by the department should ensure that skilled nursing facility residents continue to have qualified individuals witnessing these important and potentially life-altering documents.

ARGUMENTS IN SUPPORT: The bill’s sponsor, California Advocates for Nursing Home Reform, the California Long Term Care Ombudsman Association, and the Office of the State Long-term Care Ombudsman generally contend that this bill eliminates legal ambiguity by removing the reference to “patient advocates” within existing law.

Specifically, the sponsor states:

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.

[...]

The bill’s proposed change would not alter current practice or increase the ombudsman workload because they have long served as the witnesses for AHCDs executed in nursing homes. Ombudsmen are assigned to each licensed nursing home in the state and conduct regular visits to address issues related to daily care, health, and safety of nursing home residents. Witnessing the execution of AHCDs is, therefore, part of their normal routine. In just the last five years, the ombudsman across the state witnessed an annual average of 1,514

AHCDs. Because no other entities currently serve in this role, the ability of nursing home residents to complete AHCDs would remain the same.

SB 1189 simply updates the Probate Code to reflect current practice and stop further misunderstanding that any self-proclaimed patient advocates can witness nursing home residents' AHCDs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform
California Long Term Care Ombudsman Association (CLTCOA)
Office of the State Long-term Care Ombudsman

Opposition

None on file

Analysis Prepared by: Kristian Wright / JUD. / (916) 319-2334