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AB-2338 Health care decisions: decisionmakers and surrogates. (2021-2022)

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Assembly Bill No. 2338

CHAPTER 782

An act to amend Section 4711 of, and to add Section 4712 to, the Probate Code, relating to health care decisions.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2338, Gipson. Health care decisions: decisionmakers and surrogates.

Existing law authorizes an adult having capacity to give an individual health care instruction and to designate a health care decisionmaker, including an agent designated in a power of attorney to make health care decisions on the person's behalf. Existing law also authorizes a patient to designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. Existing law authorizes a patient to disqualify a person, including a family member, from acting as the patient's surrogate.

This bill would authorize the patient to designate an adult as a surrogate to make health care decisions by also personally informing a designee of the health care facility caring for the patient. The bill would authorize legally recognized health care decisionmakers, in an order of priority, to make health care decisions on a patient's behalf if the patient lacks the capacity to make a health care decision. If a patient does not have a legally recognized health care decisionmaker, the bill would specify individuals who may be chosen by a health care provider or a designee of the health care facility caring for the patient as a surrogate if the patient lacks the capacity to make a health care decision. The bill would require the patient's surrogate to be an adult who has demonstrated special care and concern for the patient, is familiar with the patient's personal values and beliefs to the extent known, and is reasonably available and willing to serve.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4711 of the Probate Code is amended to read:

4711. (a) A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider or a designee of the health care facility caring for the patient. The designation of a surrogate shall be promptly recorded in the patient's health care record.

(b) Unless the patient specifies a shorter period, a surrogate designation under subdivision (a) is effective only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter.

(c) The expiration of a surrogate designation under subdivision (b) does not affect any role the person designated under subdivision (a) may have in making health care decisions for the patient under any other law or standards of practice.

(d) Notwithstanding Section 4685, if the patient has designated an agent under a power of attorney for health care, the surrogate designated under subdivision (a) has priority over the agent for the period provided in subdivision (b), but the designation of a surrogate does not revoke the designation of an agent unless the patient communicates the intention to revoke in compliance with subdivision (a) of Section 4695.

SEC. 2. Section 4712 is added to the Probate Code, to read:

4712. (a) If a patient lacks the capacity to make a health care decision, the following legally recognized health care decisionmakers may make health care decisions on the patient's behalf, in the following descending order of priority:

- (1) The patient's surrogate selected pursuant to Section 4711.
- (2) The patient's agent pursuant to an advance health care directive or a power of attorney for health care.
- (3) The conservator or guardian of the patient having the authority to make health care decisions for the patient.

(b) Except as set forth in Section 4715, if a patient lacks the capacity to make a health care decision, but does not have a legally recognized health care decisionmaker pursuant to subdivision (a), a health care provider or a designee of the health care facility caring for the patient may choose a surrogate to make health care decisions on the patient's behalf, as appropriate in the given situation. The patient's surrogate shall be an adult who has demonstrated special care and concern for the patient, is familiar with the patient's personal values and beliefs to the extent known, and is reasonably available and willing to serve. A surrogate may be chosen from any of the following persons:

- (1) The spouse or domestic partner of the patient.
- (2) An adult child of the patient.
- (3) A parent of the patient.
- (4) An adult sibling of the patient.
- (5) An adult grandchild of the patient.
- (6) An adult relative or close personal friend.