

**Text of AB 2333, passed 2022, signed by Governor, effective January 1, 2023
With commentary from Coalition for Compassionate Care of California.**

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.

SECTION 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.

This section is part PROBATE CODE, DIVISION 4.7. HEALTH CARE DECISIONS [4600–4806]; PART 2. UNIFORM HEALTH CARE DECISIONS ACT [4670–4743]; CHAPTER 3. Health Care Surrogates [4711–4717]

(b) Note the duration of the verbally designated surrogate.

(d) Section 4685 states that the agent appointed under medical durable power of attorney has priority over all other any other person making decisions for the patient. This amendment gives priority to the verbally designated surrogate; however, note the time limitation on the verbally designated surrogate. Authority reverts to the MDPOA (if there is one) at the end of the period, unless revoked.

(a) This section clarifies the priority of decision makers if there is more than one associated with the patient. The informally designated surrogate is #1, but only for the timeframe as stated above. If the need for the surrogate extends past the time period, the surrogate must be reaffirmed or a new one selected.

(b) Section 4715 states "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."

Emphasis on "may" added. Note that the provider MAY choose a surrogate from ANY of the following persons. This is NOT a hierarchy of priority. See specific criteria which should be used to choose the surrogate.