

AMENDED IN SENATE AUGUST 28, 2006
AMENDED IN SENATE JUNE 29, 2006
AMENDED IN ASSEMBLY MAY 17, 2006
AMENDED IN ASSEMBLY MAY 11, 2006
AMENDED IN ASSEMBLY MARCH 27, 2006
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2805

Introduced by Assembly Member Blakeslee
(Coauthor: Senator Bowen)

February 24, 2006

~~An act to amend Section 650.02 of the Business and Professions Code, relating to health care.~~ *An act to amend Section 4673 of the Probate Code, relating to advanced health care directives, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2805, as amended, Blakeslee. ~~Health care referrals.~~ *Advanced Health care directives.*

Existing law provides that a written advanced health care directive is legally sufficient if it meets certain requirements, including the requirement that the 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. Existing law also requires that the directive be acknowledged by a notary public or signed by two witnesses, as specified.

This bill would provide that an electronic advance health care directive or a power of attorney for health care is legally sufficient if the existing requirements for directives are satisfied, the directive is acknowledged before a notary public, and any digital signatures used meet specified requirements.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that it is a misdemeanor for a healing arts licensee, including physicians and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, to refer a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law provides specified exemptions from this prohibition, including an exemption for the lease of space or equipment between a licensee and the recipient of the referral if the lease is in writing and meets certain other requirements.~~

~~This bill would, for purposes of the exemption, require the lease agreement to meet additional requirements, including (1) being signed by all parties to the agreement, (2) being exclusive with regard to all premises or equipment leased between the parties, (3) setting the aggregate lease payments in advance, (4) setting lease payments at fair market value without considering other business generated between the parties, (5) leasing only aggregate space or equipment necessary to accomplish the commercially reasonable purpose of the lease, and (6) if the lease is for periodic intervals rather than on a full-time basis, specifying certain other terms.~~

~~Because failure to meet these additional provisions would be a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority ²/₃. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: ~~yes~~ no.~~

The people of the State of California do enact as follows:

1 *SECTION 1. Section 4673 of the Probate Code is amended to*
2 *read:*

3 4673. (a) A written advance health care directive is legally
4 sufficient if all of the following requirements are satisfied:

5 ~~(a)~~

6 (1) The advance directive contains the date of its execution.

7 ~~(b)~~

8 (2) The advance directive is signed either ~~(1)~~ by the patient or
9 ~~(2)~~ in the patient's name by another adult in the patient's
10 presence and at the patient's direction.

11 ~~(c)~~

12 (3) The advance directive is either ~~(1)~~ acknowledged before a
13 notary public or ~~(2)~~ signed by at least two witnesses who satisfy
14 the requirements of Sections 4674 and 4675.

15 (b) *An electronic advance health care directive or power of*
16 *attorney for health care is legally sufficient if the requirements in*
17 *subdivision (a) are satisfied, except that for the purposes of*
18 *paragraph (3) of subdivision (a), an acknowledgment before a*
19 *notary public shall be required, and if a digital signature is used,*
20 *it meets all of the following requirements:*

21 (1) *The digital signature either meets the requirements of*
22 *Section 16.5 of the Government Code and Chapter 10*
23 *(commencing with Section 22000) of Division 7 of Title 2 of the*
24 *California Code of Regulations or the digital signature uses an*
25 *algorithm approved by the National Institute of Standards and*
26 *Technology.*

27 (2) *The digital signature is unique to the person using it.*

28 (3) *The digital signature is capable of verification.*

29 (4) *The digital signature is under the sole control of the*
30 *person using it.*

31 (5) *The digital signature is linked to data in such a manner*
32 *that if the data are changed, the digital signature is invalidated.*

33 (6) *The digital signature persists with the document and not by*
34 *association in separate files.*

35 (7) *The digital signature is bound to a digital certificate.*

36 SEC. 2. *This act is an urgency statute necessary for the*
37 *immediate preservation of the public peace, health, or safety*

1 *within the meaning of Article IV of the Constitution and shall go*
2 *into immediate effect. The facts constituting the necessity are:*

3 *In order to ensure that the end-of-life decisions of individuals*
4 *who use digital signatures to sign advanced health care directive*
5 *are honored and legally valid, it is necessary that this act take*
6 *effect immediately.*

7 ~~SECTION 1. Section 650.02 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~650.02. The prohibition of Section 650.01 shall not apply to~~
10 ~~or restrict any of the following:~~

11 ~~(a) A licensee may refer a patient for a good or service~~
12 ~~otherwise prohibited by subdivision (a) of Section 650.01 if the~~
13 ~~licensee's regular practice is located where there is no alternative~~
14 ~~provider of the service within either 25 miles or 40 minutes~~
15 ~~traveling time, via the shortest route on a paved road. If an~~
16 ~~alternative provider commences furnishing the good or service~~
17 ~~for which a patient was referred pursuant to this subdivision, the~~
18 ~~licensee shall cease referrals under this subdivision within six~~
19 ~~months of the time at which the licensee knew or should have~~
20 ~~known that the alternative provider is furnishing the good or~~
21 ~~service. A licensee who refers to or seeks consultation from an~~
22 ~~organization in which the licensee has a financial interest under~~
23 ~~this subdivision shall disclose this interest to the patient or the~~
24 ~~patient's parents or legal guardian in writing at the time of~~
25 ~~referral.~~

26 ~~(b) A licensee, when the licensee or his or her immediate~~
27 ~~family has one or more of the following arrangements with~~
28 ~~another licensee, a person, or an entity, is not prohibited from~~
29 ~~referring a patient to the licensee, person, or entity because of the~~
30 ~~arrangement:~~

31 ~~(1) A loan between a licensee and the recipient of the referral,~~
32 ~~if the loan has commercially reasonable terms, bears interest at~~
33 ~~the prime rate or a higher rate that does not constitute usury, is~~
34 ~~adequately secured, and the loan terms are not affected by either~~
35 ~~party's referral of any person or the volume of services provided~~
36 ~~by either party.~~

37 ~~(2) A lease of space or equipment between a licensee and the~~
38 ~~recipient of the referral, if the lease agreement meets all of the~~
39 ~~following requirements:~~

40 ~~(A) It is in writing and signed by all parties to the agreement.~~

1 ~~(B) It is for a term of at least one year and states the fixed~~
2 ~~periodic lease payments and aggregate lease payments, which~~
3 ~~shall be set in advance.~~

4 ~~(C) It has commercially reasonable terms, including, but not~~
5 ~~limited to, lease payments that are set at fair market value and~~
6 ~~that are not affected by either party's referral of any person, by~~
7 ~~the volume or value of services provided by either party, or by~~
8 ~~any other business generated between the parties.~~

9 ~~(D) All of the premises or equipment leased between the~~
10 ~~parties are exclusively reserved for the use of the lessee for the~~
11 ~~term of the lease, and the lease agreement specifies all of the~~
12 ~~premises or equipment included in the lease.~~

13 ~~(E) If the lease is intended to provide the lessee with access to~~
14 ~~the premises or use of the equipment for periodic intervals of~~
15 ~~time, rather than on a full-time basis, for the term of the lease, it~~
16 ~~shall specify the exact lease payments and schedule for the~~
17 ~~intervals. Part-time, fluctuating schedules do not meet this~~
18 ~~requirement.~~

19 ~~(F) The aggregate space or equipment leased does not exceed~~
20 ~~that reasonably necessary to accomplish the commercially~~
21 ~~reasonable purpose of the lease.~~

22 ~~(3) Ownership of corporate investment securities, including~~
23 ~~shares, bonds, or other debt instruments that may be purchased~~
24 ~~on terms generally available to the public and that are traded on a~~
25 ~~licensed securities exchange or NASDAQ, do not base profit~~
26 ~~distributions or other transfers of value on the licensee's referral~~
27 ~~of persons to the corporation, do not have a separate class or~~
28 ~~accounting for any persons or for any licensees who may refer~~
29 ~~persons to the corporation, and are in a corporation that had, at~~
30 ~~the end of the corporation's most recent fiscal year, or on average~~
31 ~~during the previous three fiscal years, stockholder equity~~
32 ~~exceeding seventy-five million dollars (\$75,000,000).~~

33 ~~(4) Ownership of shares in a regulated investment company as~~
34 ~~defined in Section 851(a) of the federal Internal Revenue Code, if~~
35 ~~the company had, at the end of the company's most recent fiscal~~
36 ~~year, or on average during the previous three fiscal years, total~~
37 ~~assets exceeding seventy-five million dollars (\$75,000,000).~~

38 ~~(5) A one-time sale or transfer of a practice or property or~~
39 ~~other financial interest between a licensee and the recipient of the~~
40 ~~referral if the sale or transfer is for commercially reasonable~~

1 terms and the consideration is not affected by either party's
 2 referral of any person or the volume of services provided by
 3 either party.

4 (6) A personal services arrangement between a licensee or an
 5 immediate family member of the licensee and the recipient of the
 6 referral if the arrangement meets all of the following
 7 requirements:

8 (A) It is set out in writing and is signed by the parties.

9 (B) It specifies all of the services to be provided by the
 10 licensee or an immediate family member of the licensee.

11 (C) The aggregate services contracted for do not exceed those
 12 that are reasonable and necessary for the legitimate business
 13 purposes of the arrangement.

14 (D) A person who is referred by a licensee or an immediate
 15 family member of the licensee is informed in writing of the
 16 personal services arrangement that includes information on
 17 where a person may go to file a complaint against the licensee or
 18 the immediate family member of the licensee.

19 (E) The term of the arrangement is for at least one year.

20 (F) The compensation to be paid over the term of the
 21 arrangement is set in advance, does not exceed fair market value,
 22 and is not determined in a manner that takes into account the
 23 volume or value of any referrals or other business generated
 24 between the parties.

25 (G) The services to be performed under the arrangement do
 26 not involve the counseling or promotion of a business
 27 arrangement or other activity that violates any state or federal
 28 law.

29 (e)(1) A licensee may refer a person to a health facility, as
 30 defined in Section 1250 of the Health and Safety Code, or to any
 31 facility owned or leased by a health facility, if the recipient of the
 32 referral does not compensate the licensee for the patient referral,
 33 and any equipment lease arrangement between the licensee and
 34 the referral recipient complies with the requirements of
 35 paragraph (2) of subdivision (b).

36 (2) Nothing shall preclude this subdivision from applying to a
 37 licensee solely because the licensee has an ownership or
 38 leasehold interest in an entire health facility or an entity that
 39 owns or leases an entire health facility.

1 ~~(3) A licensee may refer a person to a health facility for any~~
2 ~~service classified as an emergency under subdivision (a) or (b) of~~
3 ~~Section 1317.1 of the Health and Safety Code.~~

4 ~~(4) A licensee may refer a person to any organization that~~
5 ~~owns or leases a health facility licensed pursuant to subdivision~~
6 ~~(a), (b), or (f) of Section 1250 of the Health and Safety Code if~~
7 ~~the licensee is not compensated for the patient referral, the~~
8 ~~licensee does not receive any payment from the recipient of the~~
9 ~~referral that is based or determined on the number or value of any~~
10 ~~patient referrals, and any equipment lease arrangement between~~
11 ~~the licensee and the referral recipient complies with the~~
12 ~~requirements of paragraph (2) of subdivision (b). For purposes of~~
13 ~~this paragraph, the ownership may be through stock or~~
14 ~~membership, and may be represented by a parent holding~~
15 ~~company that solely owns or controls both the health facility~~
16 ~~organization and the affiliated organization.~~

17 ~~(d) A licensee may refer a person to a nonprofit corporation~~
18 ~~that provides physician services pursuant to subdivision (l) of~~
19 ~~Section 1206 of the Health and Safety Code if the nonprofit~~
20 ~~corporation is controlled through membership by one or more~~
21 ~~health facilities or health facility systems and the amount of~~
22 ~~compensation or other transfer of funds from the health facility~~
23 ~~or nonprofit corporation to the licensee is fixed annually, except~~
24 ~~for adjustments caused by physicians joining or leaving the~~
25 ~~groups during the year, and is not based on the number of~~
26 ~~persons utilizing goods or services specified in Section 650.01.~~

27 ~~(e) A licensee compensated or employed by a university may~~
28 ~~refer a person for a physician service, to any facility owned or~~
29 ~~operated by the university, or to another licensee employed by~~
30 ~~the university, provided that the facility or university does not~~
31 ~~compensate the referring licensee for the patient referral. In the~~
32 ~~case of a facility that is totally or partially owned by an entity~~
33 ~~other than the university, but that is staffed by university~~
34 ~~physicians, those physicians may not refer patients to the facility~~
35 ~~if the facility compensates the referring physicians for those~~
36 ~~referrals.~~

37 ~~(f) The prohibition of Section 650.01 shall not apply to any~~
38 ~~service for a specific patient that is performed within, or goods~~
39 ~~that are supplied by, a licensee's office, or the office of a group~~
40 ~~practice. Further, the provisions of Section 650.01 shall not alter,~~

1 limit, or expand a licensee's ability to deliver, or to direct or
2 supervise the delivery of, in-office goods or services according to
3 the laws, rules, and regulations governing his or her scope of
4 practice.

5 (g) The prohibition of Section 650.01 shall not apply to
6 cardiac rehabilitation services provided by a licensee or by a
7 suitably trained individual under the direct or general supervision
8 of a licensee, if the services are provided to patients meeting the
9 criteria for Medicare reimbursement for the services.

10 (h) The prohibition of Section 650.01 shall not apply if a
11 licensee is in the office of a group practice and refers a person for
12 services or goods specified in Section 650.01 to a multispecialty
13 clinic, as defined in subdivision (l) of Section 1206 of the Health
14 and Safety Code.

15 (i) The prohibition of Section 650.01 shall not apply to health
16 care services provided to an enrollee of a health care service plan
17 licensed pursuant to the Knox-Keene Health Care Service Plan
18 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
19 Division 2 of the Health and Safety Code).

20 (j) The prohibition of Section 650.01 shall not apply to a
21 request by a pathologist for clinical diagnostic laboratory tests
22 and pathological examination services, a request by a radiologist
23 for diagnostic radiology services, or a request by a radiation
24 oncologist for radiation therapy if those services are furnished
25 by, or under the supervision of, the pathologist, radiologist, or
26 radiation oncologist pursuant to a consultation requested by
27 another physician.

28 (k) This section shall not apply to referrals for services that are
29 described in and covered by Sections 139.3 and 139.31 of the
30 Labor Code.

31 (l) This section shall become operative on January 1, 1995.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a

1 ~~crime within the meaning of Section 6 of Article XIII B of the~~
2 ~~California Constitution.~~

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