



# Legislative Council Staff

## Research Note

Version: Final

Date: 7/29/2016

### Bill Number

House Bill 16-1101

### Sponsors

*Representative Young*  
*Senator Lundberg*

### Short Title

*Medical Decisions For*  
*Unrepresented Patients*

### Research Analyst

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### Status

This research note reflects the final version of the bill which becomes effective August 10, 2016, assuming no referendum petition is filed.

### Summary

This bill allows an attending physician to designate another willing physician as a patient's proxy decision maker if certain conditions are met. The bill outlines when the authority of the proxy decision-maker terminates. The bill states that nothing in the bill may be construed as condoning, authorizing, or approving euthanasia or mercy killing or permitting the deliberate act to end a person's life, except to permit natural death. The bill specifies that a physician who is acting in good faith as a proxy decision-maker is not subject to civil or criminal liability or regulatory sanctions for acting as a proxy decision-maker.

### Background

In 1992, the General Assembly enacted legislation addressing proxy decision-makers for medical treatment and surrogate decision-makers for health care benefit decisions. However, according to the Colorado Collaborative for Unrepresented Patients, state laws do not establish a clear and effective process for medical decision making when patients lack capacity and are unrepresented.

The Colorado Collaborative for Unrepresented Patients defines an unrepresented patient as an adult patient who lacks decisional capacity to give informed consent for medical treatment, does not have an applicable advance directive, and for whom there is no legally authorized surrogate

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decision-maker, family, or friend available, competent and willing to assist with medical decision-making.

## House Action

**House Health, Insurance, and Environment Committee (March 3, 2016).** At the hearing, representatives from the Colorado Collaborative for Unrepresented Patients and three private citizens testified in support of the bill; a representative from COPIC testified in opposition to the bill; a representative from the Colorado Hospital Association testified in a neutral position; and representatives of the Colorado Trial Lawyers Association and the Arc of Colorado testified on the bill, but did not state a position.

The committee adopted amendment L.001, L.003, and L.005, and referred the bill, as amended, to the House Committee of the Whole. Amendment L.001 made a technical correction to the bill. Amendment L.003 removed language concerning immunity from civil and criminal liability. Amendment L.005 specified that if a health care facility does not have a medical ethics committee, the facility should refer the attending physician to the medical ethics committee at another health care facility.

**House second reading (March 24, 2016).** The House adopted the House Health, Insurance, and Environment committee report and Amendment No. 2, which:

- specified that a patient's attending physician is not the proxy decision-maker;
- specified when the authority of a proxy decision-maker terminates;
- outlined the guidelines the attending physician and proxy decision-maker should follow for routine treatments, treatments that require patient consent, and end-of-life treatments;
- stated that nothing in the bill can be construed as condoning, authorizing, or approving euthanasia or mercy killing; and
- reinstated the immunity from civil or criminal liability for a physician acting in good faith as a proxy decision-maker.

The House passed the bill on second reading, as amended.

**House third reading (April 1, 2016).** The House passed the bill on third reading with no amendments.

## Senate Action

**Senate Health and Human Services Committee (April 14, 2016).** At the hearing, representatives from the Colorado Collaborative for Unrepresented Patients and the Arc of Adams County testified in support of the bill; and representatives from COPIC and Denver Health testified in a neutral position.

The committee adopted amendment L.023, which clarified language about the liability of physicians who act as a proxy decision-makers. The committee referred the bill, as amended, to the Senate Committee of the Whole.

**Senate second reading (April 22, 2016).** The Senate passed the Senate Health and Human Services committee report and Amendment No. 2. The amendment clarified language about determining the patient's lack of decisional capacity and stated that the identity of the physician designated as proxy decision-maker must be documented in the patient's medical record. The Senate passed the bill on second reading, as amended.

**Senate third reading (April 25, 2016).** The Senate passed the bill on third reading with no amendments.

### **Consideration of Amendments**

**Consideration of amendments (April 29, 2016).** The House concurred with Senate amendments and repassed the bill.

### **Relevant Research**

Addressing Gaps in Healthcare Decision Making for Unrepresented Adults: A Proposal for the Inclusion of a Public Healthcare Guardian in the Office of Public Guardianship; a White Paper by the Colorado Collaborative for Unrepresented Patients: <http://bit.ly/29GyQdV>.