

CHAPTER 170

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 16-1101

BY REPRESENTATIVE(S) Young, Court, Esgar, Fields, Ginal, Kagan, Kraft-Tharp, Lontine, McCann, Mitsch Bush, Pabon, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Singer, Vigil, Hullinghorst, Danielson, Duran, Klingenschmitt, Moreno; also SENATOR(S) Lundberg, Aguilar, Crowder, Guzman, Heath, Hodge, Jahn, Kefalas, Kerr, Merrifield, Newell, Steadman, Todd.

AN ACT**CONCERNING MEDICAL DECISIONS FOR UNREPRESENTED PATIENTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 15-18.5-103, **amend** (3), (4), (6), (6.5), (7), and (9); and **add** (1.5) as follows:

15-18.5-103. Proxy decision-makers for medical treatment authorized - definitions. (1.5) AS USED IN THIS SECTION:

(a) "INTERESTED PERSON" MEANS A PATIENT'S SPOUSE, EITHER PARENT OF THE PATIENT, ANY ADULT CHILD, SIBLING, OR GRANDCHILD OF THE PATIENT, OR ANY CLOSE FRIEND OF THE PATIENT.

(b) "PROXY DECISION-MAKER" DOES NOT MEAN THE ATTENDING PHYSICIAN.

(3) Upon a determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, the advanced practice nurse, or such physician's or nurse's designee, shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity. In addition, the attending physician, or such physician's designee, shall make reasonable efforts to locate as many interested persons as defined in this subsection (3) as practicable, and the attending physician or advanced practice nurse may rely on such individuals to notify other family members or interested persons. ~~For the purposes of this section, "interested persons" means the patient's spouse, either parent of the patient, any adult child, sibling, or grandchild of the patient, or any close friend of the patient.~~ Upon locating an interested person, the attending

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

physician, advanced practice nurse, or such physician's or nurse's designee, shall inform such person of the patient's lack of decisional capacity and that a proxy decision-maker should be selected for the patient.

(4) (a) ~~It shall be the responsibility of the Interested persons specified in subsection (3) of this section to~~ WHO ARE INFORMED OF THE PATIENT'S LACK OF DECISIONAL CAPACITY SHALL make reasonable efforts to reach a consensus as to ~~whom~~ WHO among them shall make medical treatment decisions on behalf of the patient. The person selected to act as the patient's proxy decision-maker should be the person who has a close relationship with the patient and who is most likely to be currently informed of the patient's wishes regarding medical treatment decisions. If any of the interested persons ~~specified in subsection (3) of this section~~ disagrees with the selection or the decision of the proxy decision-maker or, if, after reasonable efforts, the interested persons ~~specified in subsection (3) of this section~~ are unable to reach a consensus as to who should act as the proxy decision-maker, then any of the interested persons ~~specified in subsection (3) of this section~~ may seek guardianship of the patient by initiating guardianship proceedings pursuant to part 3 of article 14 of this title. Only said INTERESTED persons may initiate such proceedings with regard to the patient.

(b) Nothing in this section ~~shall be construed to preclude~~ PRECLUDES any interested person ~~described in subsection (3) of this section~~ from initiating a guardianship proceeding pursuant to part 3 of article 14 of this title for any reason any time after said persons have conformed with paragraph (a) of this subsection (4).

(c) (I) AN ATTENDING PHYSICIAN MAY DESIGNATE ANOTHER WILLING PHYSICIAN TO MAKE HEALTH CARE TREATMENT DECISIONS AS A PATIENT'S PROXY DECISION-MAKER IF:

(A) AFTER MAKING REASONABLE EFFORTS, THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE CANNOT LOCATE ANY INTERESTED PERSONS, OR NO INTERESTED PERSON IS WILLING AND ABLE TO SERVE AS PROXY DECISION-MAKER;

(B) THE ATTENDING PHYSICIAN HAS OBTAINED AN INDEPENDENT DETERMINATION OF THE PATIENT'S LACK OF DECISIONAL CAPACITY BY ANOTHER PHYSICIAN; BY AN ADVANCED PRACTICE NURSE WHO HAS COLLABORATED ABOUT THE PATIENT WITH A LICENSED PHYSICIAN EITHER IN PERSON, BY TELEPHONE, OR ELECTRONICALLY; OR BY A COURT;

(C) THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE HAS CONSULTED WITH AND OBTAINED A CONSENSUS ON THE PROXY DESIGNATION WITH THE MEDICAL ETHICS COMMITTEE OF THE HEALTH CARE FACILITY WHERE THE PATIENT IS RECEIVING CARE; AND

(D) THE IDENTITY OF THE PHYSICIAN DESIGNATED AS PROXY DECISION-MAKER IS DOCUMENTED IN THE MEDICAL RECORD.

(II) FOR THE PURPOSES OF SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) AND SUB-SUBPARAGRAPHS (B) AND (C) OF SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c), IF THE HEALTH CARE FACILITY DOES NOT HAVE A MEDICAL ETHICS COMMITTEE, THE

FACILITY SHALL REFER THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE TO A MEDICAL ETHICS COMMITTEE AT ANOTHER HEALTH CARE FACILITY.

(III) THE AUTHORITY OF THE PROXY DECISION-MAKER TERMINATES IN THE EVENT THAT:

(A) AN INTERESTED PERSON IS WILLING TO SERVE AS PROXY DECISION-MAKER;

(B) A GUARDIAN IS APPOINTED;

(C) THE PATIENT REGAINS DECISIONAL CAPACITY;

(D) THE PROXY DECISION-MAKER DECIDES TO NO LONGER SERVE AS THE PATIENT'S PROXY DECISION-MAKER; OR

(E) THE PATIENT IS TRANSFERRED OR DISCHARGED FROM THE FACILITY, IF ANY, WHERE THE PATIENT IS RECEIVING CARE, UNLESS THE PROXY DECISION-MAKER EXPRESSES HIS OR HER INTENTION TO CONTINUE TO SERVE AS PROXY DECISION-MAKER.

(IV) IF THE AUTHORITY OF A PROXY DECISION-MAKER TERMINATES FOR ONE OF THE REASONS DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c), THE ATTENDING PHYSICIAN SHALL DOCUMENT THE REASON IN THE PATIENT'S MEDICAL RECORD.

(V) THE ATTENDING PHYSICIAN AND THE PROXY DECISION-MAKER SHALL ADHERE TO THE FOLLOWING GUIDELINES FOR PROXY DECISION MAKING:

(A) FOR ROUTINE TREATMENTS AND PROCEDURES THAT ARE LOW-RISK AND WITHIN BROADLY ACCEPTED STANDARDS OF MEDICAL PRACTICE, THE ATTENDING PHYSICIAN MAY MAKE HEALTH CARE TREATMENT DECISIONS;

(B) FOR TREATMENTS THAT OTHERWISE REQUIRE A WRITTEN, INFORMED CONSENT, SUCH AS TREATMENTS INVOLVING ANESTHESIA, TREATMENTS INVOLVING A SIGNIFICANT RISK OF COMPLICATION, OR INVASIVE PROCEDURES, THE ATTENDING PHYSICIAN SHALL OBTAIN THE WRITTEN CONSENT OF THE PROXY DECISION-MAKER AND A CONSENSUS WITH THE MEDICAL ETHICS COMMITTEE;

(C) FOR END-OF-LIFE TREATMENT THAT IS NONBENEFICIAL AND INVOLVES WITHHOLDING OR WITHDRAWING SPECIFIC MEDICAL TREATMENTS, THE ATTENDING PHYSICIAN SHALL OBTAIN AN INDEPENDENT CONCURRING OPINION FROM A PHYSICIAN OTHER THAN THE PROXY-DECISION-MAKER, AND OBTAIN A CONSENSUS WITH THE MEDICAL ETHICS COMMITTEE.

(6) (a) Artificial nourishment and hydration may be withheld or withdrawn from a patient upon a decision of a proxy only when the attending physician and a second independent physician trained in neurology or neurosurgery certify in the patient's medical record that the provision or continuation of artificial nourishment or hydration is merely prolonging the act of dying and is unlikely to result in the restoration of the patient to independent neurological functioning.

(b) (I) NOTHING IN THIS ARTICLE MAY BE CONSTRUED AS CONDONING, AUTHORIZING, OR APPROVING EUTHANASIA OR MERCY KILLING.

(II) NOTHING IN THIS ARTICLE MAY BE CONSTRUED AS PERMITTING ANY AFFIRMATIVE OR DELIBERATE ACT TO END A PERSON'S LIFE, EXCEPT TO PERMIT NATURAL DEATH AS PROVIDED BY THIS ARTICLE.

(6.5) The assistance of a health care facility's medical ethics committee shall be provided upon the request of a proxy decision-maker or any other interested person ~~specified in subsection (3) of this section~~ whenever the proxy decision-maker is considering or has made a decision to withhold or withdraw medical treatment. If there is no medical ethics committee for a health care facility, such facility may provide an outside referral for such assistance or consultation.

(7) ~~If any of the interested persons specified in subsection (3) of this section~~ PERSON or the guardian or the attending physician believes the patient has regained decisional capacity, then the attending physician shall reexamine the patient and determine whether ~~or not~~ the patient has regained such decisional capacity and shall enter the decision and the basis therefore into the patient's medical record and shall notify the patient, the proxy decision-maker, and the person who initiated the redetermination of decisional capacity.

(9) (a) Any attending physician, health care provider, or health care facility that makes reasonable attempts to locate and communicate with a proxy decision-maker shall not be subject to civil or criminal liability or regulatory sanction therefor.

(b) A PHYSICIAN ACTING IN GOOD FAITH AS A PROXY DECISION-MAKER IN ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION FOR ACTING AS A PROXY DECISION-MAKER. AN ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE REMAINS RESPONSIBLE FOR HIS OR HER NEGLIGENT ACTS OR OMISSIONS IN RENDERING CARE TO AN UNREPRESENTED PATIENT.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 18, 2016