

SB073_L.002

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Health & Human Services.

SB19-073 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, add article 51 to
4 title 25 as follows:

5 **ARTICLE 51**

6 **Statewide System for Advance**

7 **Health Care Directives**

8 **25-51-101. Definitions.** AS USED IN THIS ARTICLE 51, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) (a) "ADVANCE HEALTH CARE DIRECTIVE" MEANS:

11 (I) A DIRECTIVE CONCERNING MEDICAL ORDERS FOR SCOPE OF
12 TREATMENT EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15;

13 (II) A DECLARATION AS TO MEDICAL TREATMENT EXECUTED
14 PURSUANT TO SECTION 15-18-104;

15 (III) A DIRECTIVE RELATING TO CARDIOPULMONARY
16 RESUSCITATION EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15;

17 (IV) A MEDICAL DURABLE POWER OF ATTORNEY EXECUTED
18 PURSUANT TO SECTION 15-14-506; OR

19 (V) ANY OF THE ADVANCE HEALTH CARE DIRECTIVES LISTED IN
20 SUBSECTIONS (1)(a)(I) TO (1)(a)(IV) OF THIS SECTION OR THIS SUBSECTION
21 (1)(a)(V) THAT HAS BEEN PROPERLY EXECUTED IN ANOTHER STATE.

22 (b) A POWER OF ATTORNEY FORM EXECUTED PURSUANT TO
23 SECTION 15-14-741 IS NOT AN ADVANCE HEALTH CARE DIRECTIVE FOR THE
24 PURPOSES OF THIS ARTICLE 51.

25 (2) "AUTHORIZED SURROGATE DECISION-MAKER" MEANS A
26 GUARDIAN APPOINTED PURSUANT TO ARTICLE 14 OF TITLE 15, AN AGENT
27 APPOINTED PURSUANT TO A MEDICAL DURABLE POWER OF ATTORNEY, A
28 PROXY DECISION-MAKER FOR MEDICAL TREATMENT DECISIONS APPOINTED
29 PURSUANT TO ARTICLE 18.5 OF TITLE 15, OR A SIMILARLY AUTHORIZED
30 SURROGATE, AS DEFINED BY THE LAWS OF ANOTHER STATE, WHO IS
31 AUTHORIZED TO MAKE MEDICAL DECISIONS FOR AN INDIVIDUAL WHO
32 LACKS DECISIONAL CAPACITY.

33 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
34 AND ENVIRONMENT CREATED AND EXISTING PURSUANT TO SECTION
35 24-1-119.

36 (4) "HEALTH INFORMATION ORGANIZATION NETWORK" MEANS A
37 COLORADO ORGANIZATION THAT HAS EXPERIENCE IN OVERSEEING AND
38 GOVERNING THE EXCHANGE OF HEALTH-RELATED INFORMATION AMONG
39 ORGANIZATIONS ACCORDING TO COLORADO LAW AND NATIONALLY
40 RECOGNIZED STANDARDS INCLUDING BUT NOT LIMITED TO THE FEDERAL

1 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
2 PUB.L. 104-191, AS AMENDED.

3 (5) "INDIVIDUAL" MEANS THE INDIVIDUAL WHOSE MEDICAL
4 TREATMENT IS THE SUBJECT OF THE ADVANCE HEALTH CARE DIRECTIVE.

5 (6) "QUALIFIED PROVIDER" MEANS A PERSON OR ENTITY THAT MAY
6 USE OR DISCLOSE PROTECTED HEALTH INFORMATION FOR TREATMENT
7 PURPOSES IN ACCORDANCE WITH GUIDELINES UNDER THE FEDERAL
8 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
9 PUB.L. 104-191, AS AMENDED.

10 **25-51-102. Statewide system for advance directives created -**
11 **rules.** (1) THE DEPARTMENT SHALL CREATE AND ADMINISTER A
12 STATEWIDE ELECTRONIC SYSTEM, REFERRED TO IN THIS SECTION AS THE
13 "SYSTEM", THAT ALLOWS QUALIFIED PROVIDERS TO UPLOAD AND ACCESS
14 ADVANCE HEALTH CARE DIRECTIVES. THE DEPARTMENT SHALL ENSURE
15 THAT QUALIFIED PROVIDERS MAY ACCESS THE SYSTEM FOR TREATMENT
16 PURPOSES THAT ARE ALLOWED UNDER THE FEDERAL "HEALTH INSURANCE
17 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS
18 AMENDED.

19 (2) THE DEPARTMENT SHALL CONTRACT WITH ONE OR MORE
20 HEALTH INFORMATION ORGANIZATION NETWORKS FOR THE
21 ADMINISTRATION AND MAINTENANCE OF THE SYSTEM.

22 (3) THE DEPARTMENT SHALL PROMULGATE RULES IN ACCORDANCE
23 WITH ARTICLE 4 OF TITLE 24 TO ADMINISTER THE PROVISIONS OF THIS
24 ARTICLE 51, INCLUDING BUT NOT LIMITED TO RULES ESTABLISHING:

25 (a) CRITERIA FOR QUALIFIED PROVIDERS TO HAVE ACCESS TO THE
26 SYSTEM AND ADVANCE HEALTH CARE DIRECTIVES;

27 (b) PROCEDURES BY WHICH A QUALIFIED PROVIDER MAY ADD OR
28 REMOVE AN ADVANCE HEALTH CARE DIRECTIVE TO OR FROM THE SYSTEM;

29 (c) PROCEDURES BY WHICH A QUALIFIED PROVIDER MAY ACCESS
30 AND DOWNLOAD AN ADVANCE HEALTH CARE DIRECTIVE FROM THE
31 SYSTEM; AND

32 (d) PROCEDURES AND SAFEGUARDS FOR ENSURING THE
33 CONFIDENTIALITY AND SECURE STORAGE OF THE INFORMATION
34 CONTAINED IN AN ADVANCE HEALTH CARE DIRECTIVE THAT IS ADDED TO
35 AND MAINTAINED IN THE SYSTEM.

36 (4) (a) UPON THE REQUEST OF AN INDIVIDUAL, OR AUTHORIZED
37 SURROGATE DECISION-MAKER, A QUALIFIED PROVIDER THAT HAS AN
38 AGREEMENT WITH THE HEALTH INFORMATION ORGANIZATION NETWORK
39 AS REQUIRED UNDER THE FEDERAL "HEALTH INSURANCE PORTABILITY
40 AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, MAY
41 UPLOAD THE INDIVIDUAL'S ADVANCE HEALTH CARE DIRECTIVE TO THE
42 SYSTEM. THE ADVANCE HEALTH CARE DIRECTIVE SHALL ONLY BE
43 UPLOADED TO THE SYSTEM BY A QUALIFIED PROVIDER AFTER THE

1 INDIVIDUAL OR AUTHORIZED SURROGATE DECISION-MAKER HAS
2 CONSULTED WITH THE QUALIFIED PROVIDER IN PERSON OR THROUGH
3 TELEHEALTH, AS DEFINED IN SECTION 10-16-123 (4)(e)(I). A QUALIFIED
4 PROVIDER WHO UPLOADS AN ADVANCE HEALTH CARE DIRECTIVE TO THE
5 SYSTEM IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR REGULATORY
6 SANCTION FOR ACTION TAKEN IN ACCORDANCE WITH THIS SUBSECTION (4).

7 (b) PRIOR TO THE UPLOAD OF AN ADVANCE HEALTH CARE
8 DIRECTIVE TO THE SYSTEM, THE INDIVIDUAL, OR AUTHORIZED SURROGATE
9 DECISION-MAKER, SHALL SIGN AN ELECTRONIC AFFIDAVIT IN THE
10 PRESENCE OF A QUALIFIED PROVIDER AFFIRMING THE ADVANCE HEALTH
11 CARE DIRECTIVE IS APPROPRIATELY EXECUTED, CURRENT, AND ACCURATE.
12 SIGNING THE ELECTRONIC AFFIDAVIT REVOKES ANY PRIOR ADVANCE
13 HEALTH CARE DIRECTIVES OF THE SAME TYPE PREVIOUSLY UPLOADED TO
14 THE SYSTEM.

15 (c) THE INDIVIDUAL, OR AUTHORIZED SURROGATE
16 DECISION-MAKER, IS RESPONSIBLE FOR ENSURING THAT THE ADVANCE
17 HEALTH CARE DIRECTIVE UPLOADED TO THE SYSTEM IS APPROPRIATELY
18 EXECUTED, CURRENT, AND ACCURATE.

19 (5) EMERGENCY MEDICAL SERVICE PERSONNEL, AN INDIVIDUAL
20 HEALTH CARE PROVIDER, A HEALTH CARE FACILITY, OR ANY OTHER
21 PERSON OR ENTITY THAT COMPLIES WITH AN ADVANCE HEALTH CARE
22 DIRECTIVE ACCESSED FROM THE SYSTEM IS NOT SUBJECT TO CIVIL OR
23 CRIMINAL LIABILITY OR REGULATORY SANCTION FOR ACTION TAKEN IN
24 ACCORDANCE WITH THE ADVANCE HEALTH CARE DIRECTIVE, UNLESS THE
25 PERSON OR ENTITY HAS ACTUAL KNOWLEDGE OF AN ADVANCE HEALTH
26 CARE DIRECTIVE PROPERLY EXECUTED AFTER THE DATE OF THE ADVANCE
27 HEALTH CARE DIRECTIVE THAT IS UPLOADED TO THE SYSTEM.

28 **SECTION 2. Act subject to petition - effective date.** This act
29 takes effect at 12:01 a.m. on the day following the expiration of the
30 ninety-day period after final adjournment of the general assembly (August
31 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
32 referendum petition is filed pursuant to section 1 (3) of article V of the
33 state constitution against this act or an item, section, or part of this act
34 within such period, then the act, item, section, or part will not take effect
35 unless approved by the people at the general election to be held in
36 November 2020 and, in such case, will take effect on the date of the
37 official declaration of the vote thereon by the governor."

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