

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0035.01 Richard Sweetman x4333

HOUSE BILL 16-1101

HOUSE SPONSORSHIP

Young,

SENATE SPONSORSHIP

(None),

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MEDICAL DECISIONS FOR UNREPRESENTED PATIENTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

An attending physician or his or her designee (physician) may make health care treatment decisions as a patient's proxy decision-maker if:

- ! After making reasonable efforts, the physician cannot locate any interested persons, or none of the interested persons are willing and able to serve as proxy

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

decision-maker;

- ! The attending physician has obtained an independent assessment of decisional capacity by another health care provider; and
- ! The physician has consulted with and obtained an agreement with the medical ethics committee of the health care facility where the patient is receiving care. If the health care facility does not have a medical ethics committee, the facility shall refer the physician to a party that can provide consultation and recommendations.

The authority of the physician to act as proxy decision-maker terminates in the event an interested person is willing to serve as proxy decision-maker or a guardian is appointed.

When acting in good faith as the proxy decision-maker, an attending physician or his or her designee is not subject to civil or criminal liability or regulatory sanction.

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

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

4 **15-18.5-103. Proxy decision-makers for medical treatment**
5 **authorized.** (1.5) AS USED WITHIN THIS SECTION, "INTERESTED PERSON"
6 MEANS A PATIENT'S SPOUSE, EITHER PARENT OF THE PATIENT, ANY ADULT
7 CHILD, SIBLING, OR GRANDCHILD OF THE PATIENT, OR ANY CLOSE FRIEND
8 OF THE PATIENT.

9 (3) Upon a determination that an adult patient lacks decisional
10 capacity to provide informed consent to or refusal of medical treatment,
11 the attending physician, the advanced practice nurse, or such physician's
12 or nurse's designee, shall make reasonable efforts to notify the patient of
13 the patient's lack of decisional capacity. In addition, the attending
14 physician, or such physician's designee, shall make reasonable efforts to
15 locate as many interested persons as ~~defined in this subsection (3) as~~
16 practicable, and the attending physician or advanced practice nurse may

1 rely on such individuals to notify other family members or interested
2 persons. For the purposes of this section, "interested persons" means the
3 ~~patient's spouse, either parent of the patient, any adult child, sibling, or~~
4 ~~grandchild of the patient, or any close friend of the patient.~~ Upon locating
5 an interested person, the attending physician, advanced practice nurse, or
6 such physician's or nurse's designee, shall inform such person of the
7 patient's lack of decisional capacity and that a proxy decision-maker
8 should be selected for the patient.

9 (4) (a) ~~It shall be the responsibility of the Interested persons~~
10 ~~specified in subsection (3) of this section to~~ WHO ARE INFORMED OF THE
11 PATIENT'S LACK OF DECISIONAL CAPACITY SHALL make reasonable efforts
12 to reach a consensus as to ~~whom~~ WHO among them shall make medical
13 treatment decisions on behalf of the patient. The person selected to act as
14 the patient's proxy decision-maker should be the person who has a close
15 relationship with the patient and who is most likely to be currently
16 informed of the patient's wishes regarding medical treatment decisions.
17 If any of the interested persons ~~specified in subsection (3) of this section~~
18 disagrees with the selection or the decision of the proxy decision-maker
19 or, if, after reasonable efforts, the interested persons ~~specified in~~
20 ~~subsection (3) of this section~~ are unable to reach a consensus as to who
21 should act as the proxy decision-maker, then any of the interested persons
22 ~~specified in subsection (3) of this section~~ may seek guardianship of the
23 patient by initiating guardianship proceedings pursuant to part 3 of article
24 14 of this title. Only said INTERESTED persons may initiate such
25 proceedings with regard to the patient.

26 (b) Nothing in this section ~~shall be construed to preclude~~
27 PRECLUDES any interested person ~~described in subsection (3) of this~~

1 ~~section~~ from initiating a guardianship proceeding pursuant to part 3 of
2 article 14 of this title for any reason any time after said persons have
3 conformed with paragraph (a) of this subsection (4).

4 (c) (I) AN ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE MAY
5 MAKE HEALTH CARE TREATMENT DECISIONS AS A PATIENT'S PROXY
6 DECISION-MAKER IF:

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

11 (B) THE ATTENDING PHYSICIAN HAS OBTAINED AN INDEPENDENT
12 ASSESSMENT OF DECISIONAL CAPACITY BY ANOTHER HEALTH CARE
13 PROVIDER; AND

14 (C) THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE HAS
15 CONSULTED WITH AND OBTAINED AN AGREEMENT WITH THE MEDICAL
16 ETHICS COMMITTEE OF THE HEALTH CARE FACILITY WHERE THE PATIENT
17 IS RECEIVING CARE.

18 (II) FOR THE PURPOSE OF SUB-SUBPARAGRAPH (B) OF
19 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), IF THE HEALTH CARE FACILITY
20 DOES NOT HAVE A MEDICAL ETHICS COMMITTEE, THE FACILITY SHALL
21 REFER THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE TO A PARTY
22 THAT CAN PROVIDE CONSULTATION AND RECOMMENDATIONS.

23 (III) THE AUTHORITY OF THE ATTENDING PHYSICIAN OR HIS OR HER
24 DESIGNEE TO ACT AS PROXY DECISION-MAKER TERMINATES IN THE EVENT
25 AN INTERESTED PERSON IS WILLING TO SERVE AS PROXY DECISION-MAKER
26 OR A GUARDIAN IS APPOINTED.

27 (6.5) The assistance of a health care facility's medical ethics

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

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

15 (9) (a) Any attending physician, health care provider, or health
16 care facility that makes reasonable attempts to locate and communicate
17 with a proxy decision-maker ~~shall~~ AND IN GOOD FAITH RELIES UPON THE
18 DECISIONS OF THE PROXY DECISION-MAKER IS ~~not be~~ subject to civil or
19 criminal liability or regulatory sanction therefor.

20 (b) WHEN ACTING IN GOOD FAITH AS THE PROXY DECISION-MAKER
21 IN ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (4) OF THIS
22 SECTION, AN ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE IS NOT
23 SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION
24 THEREFOR.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2016 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.