

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 16-0035.01 Richard Sweetman x4333

HOUSE BILL 16-1101

HOUSE SPONSORSHIP

Young,

SENATE SPONSORSHIP

Lundberg,

House Committees

Health, Insurance, & Environment

Senate Committees

Health & Human Services

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.*

SENATE
3rd Reading Unamended
April 25, 2016

SENATE
Amended 2nd Reading
April 22, 2016

HOUSE
3rd Reading Unamended
April 1, 2016

HOUSE
Amended 2nd Reading
March 24, 2016

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), (6.5), (7), and (9); and **add** (1.5) as follows:

4 **15-18.5-103. Proxy decision-makers for medical treatment**
5 **authorized - definitions.** (1.5) AS USED IN THIS SECTION:

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

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

11 (3) Upon a determination that an adult patient lacks decisional
12 capacity to provide informed consent to or refusal of medical treatment,
13 the attending physician, the advanced practice nurse, or such physician's
14 or nurse's designee, shall make reasonable efforts to notify the patient of
15 the patient's lack of decisional capacity. In addition, the attending
16 physician, or such physician's designee, shall make reasonable efforts to

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

11 (4) (a) ~~It shall be the responsibility of the Interested persons~~
12 ~~specified in subsection (3) of this section to~~ WHO ARE INFORMED OF THE
13 PATIENT'S LACK OF DECISIONAL CAPACITY SHALL make reasonable efforts
14 to reach a consensus as to ~~whom~~ WHO among them shall make medical
15 treatment decisions on behalf of the patient. The person selected to act as
16 the patient's proxy decision-maker should be the person who has a close
17 relationship with the patient and who is most likely to be currently
18 informed of the patient's wishes regarding medical treatment decisions.
19 If any of the interested persons ~~specified in subsection (3) of this section~~
20 disagrees with the selection or the decision of the proxy decision-maker
21 or, if, after reasonable efforts, the interested persons ~~specified in~~
22 ~~subsection (3) of this section~~ are unable to reach a consensus as to who
23 should act as the proxy decision-maker, then any of the interested persons
24 ~~specified in subsection (3) of this section~~ may seek guardianship of the
25 patient by initiating guardianship proceedings pursuant to part 3 of article
26 14 of this title. Only said INTERESTED persons may initiate such
27 proceedings with regard to the patient.

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

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

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

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

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

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

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

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

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

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

7 (B) A GUARDIAN IS APPOINTED;

8 (C) THE PATIENT REGAINS DECISIONAL CAPACITY;

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

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

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

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

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

26 (B) FOR TREATMENTS THAT OTHERWISE REQUIRE A WRITTEN,
27 INFORMED CONSENT, SUCH AS TREATMENTS INVOLVING ANESTHESIA,

1 TREATMENTS INVOLVING A SIGNIFICANT RISK OF COMPLICATION, OR
2 INVASIVE PROCEDURES, THE ATTENDING PHYSICIAN SHALL OBTAIN THE
3 WRITTEN CONSENT OF THE PROXY DECISION-MAKER AND A CONSENSUS
4 WITH THE MEDICAL ETHICS COMMITTEE;

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

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

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

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

24 (6.5) The assistance of a health care facility's medical ethics
25 committee shall be provided upon the request of a proxy decision-maker
26 or any other interested person ~~specified in subsection (3) of this section~~
27 whenever the proxy decision-maker is considering or has made a decision

1 to withhold or withdraw medical treatment. If there is no medical ethics
2 committee for a health care facility, such facility may provide an outside
3 referral for such assistance or consultation.

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

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

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

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2016 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.