

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0035.01 Richard Sweetman x4333

**HOUSE BILL 16-1101**

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**HOUSE SPONSORSHIP**

**Young,**

**SENATE SPONSORSHIP**

**Lundberg,**

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**House Committees**

Health, Insurance, & Environment

**Senate Committees**

Health & Human Services

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**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.*

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.

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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 ASSESSMENT OF DECISIONAL CAPACITY BY ANOTHER HEALTH CARE  
15 PROVIDER CONFIRMING THE PATIENT'S LACK OF DECISIONAL CAPACITY;  
16 AND

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

21 (II) FOR THE PURPOSES OF SUB-SUBPARAGRAPH (C) OF  
22 SUBPARAGRAPH (I) AND SUB-SUBPARAGRAPHS (B) AND (C) OF  
23 SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c), IF THE HEALTH CARE  
24 FACILITY DOES NOT HAVE A MEDICAL ETHICS COMMITTEE, THE FACILITY  
25 SHALL REFER THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE TO A  
26 MEDICAL ETHICS COMMITTEE AT ANOTHER HEALTH CARE FACILITY.

27 (III) THE AUTHORITY OF THE PROXY DECISION-MAKER TERMINATES

1 IN THE EVENT THAT:

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

4 (B) A GUARDIAN IS APPOINTED;

5 (C) THE PATIENT REGAINS DECISIONAL CAPACITY;

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

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

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

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

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

23 (B) FOR TREATMENTS THAT OTHERWISE REQUIRE A WRITTEN,  
24 INFORMED CONSENT, SUCH AS TREATMENTS INVOLVING ANESTHESIA,  
25 TREATMENTS INVOLVING A SIGNIFICANT RISK OF COMPLICATION, OR  
26 INVASIVE PROCEDURES, THE ATTENDING PHYSICIAN SHALL OBTAIN THE  
27 WRITTEN CONSENT OF THE PROXY DECISION-MAKER AND A CONSENSUS

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

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

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

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

21 (6.5) The assistance of a health care facility's medical ethics  
22 committee shall be provided upon the request of a proxy decision-maker  
23 or any other interested person ~~specified in subsection (3) of this section~~  
24 whenever the proxy decision-maker is considering or has made a decision  
25 to withhold or withdraw medical treatment. If there is no medical ethics  
26 committee for a health care facility, such facility may provide an outside  
27 referral for such assistance or consultation.

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

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

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

20           **SECTION 2. Act subject to petition - effective date.** This act  
21 takes effect at 12:01 a.m. on the day following the expiration of the  
22 ninety-day period after final adjournment of the general assembly (August  
23 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a  
24 referendum petition is filed pursuant to section 1 (3) of article V of the  
25 state constitution against this act or an item, section, or part of this act  
26 within such period, then the act, item, section, or part will not take effect  
27 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.