

Title 15, Article 18

Colorado Medical Treatment Decision Act

15-18-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) Colorado law has traditionally recognized the right of a competent adult to accept or reject medical or surgical treatment affecting his person;

(b) Recent advances in medical science have made it possible to prolong dying through the use of artificial, extraordinary, extreme, or radical medical or surgical procedures;

(c) The use of such medical or surgical procedures increasingly involves patients who are unconscious or otherwise incompetent to accept or reject medical or surgical treatment affecting their persons;

(d) The traditional right to accept or reject medical or surgical treatment should be available to an adult while he is competent, notwithstanding the fact that such medical or surgical treatment may be offered or applied when he is suffering from a terminal condition and is either unconscious or otherwise incompetent to decide whether such medical or surgical treatment should be accepted or rejected;

(e) This article affirms the traditional right to accept or reject medical or surgical treatment affecting one's person, and creates a procedure by which a competent adult may make such decisions in advance, before he becomes unconscious or otherwise incompetent to do so;

(f) It is the legislative intent that nothing in this article shall have the effect of modifying or changing currently practiced medical ethics or protocol with respect to any patient in the absence of a declaration as provided for in section 15-18-104;

(g) It is the legislative intent that nothing in this article shall require any person to execute a declaration.

15-18-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Adult" means any person eighteen years of age or older.

(1.5) "Artificial nourishment" means nourishment supplied through a tube inserted into the stomach or intestines or nutrients injected intravenously into the bloodstream.

(2) "Attending physician" means the physician, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of said patient.

(3) "Court" means the district court of the county in which a declarant having a terminal condition is located at the time of commencement of a proceeding pursuant to this article or, in the city and county of Denver, the probate court.

(4) "Declarant" means a mentally competent adult who executes a declaration.

(5) "Declaration" means a written document voluntarily executed by a declarant in accordance with the requirements of section 15-18-104.

(6) "Hospital" means an institution holding a license or certificate of compliance as a hospital issued by the department of public health and environment of this state and includes hospitals operated by the federal government in Colorado.

(7) "Life-sustaining procedure" means any medical procedure or intervention that, if administered to a qualified patient, would serve only to prolong the dying process. "Life-sustaining procedure" shall not include any medical procedure or intervention for nourishment of the qualified patient or considered necessary by the attending physician to provide comfort or alleviate pain. However, artificial nourishment may be withdrawn or withheld pursuant to section 15-18-104 (2.5).

(8) "Physician" means a person duly licensed under the provisions of article 36 of title 12, C.R.S.

(9) "Qualified patient" means a patient who has executed a declaration in accordance with this article and who has been certified by the attending physician and one other physician to be in a terminal condition.

(10) "Terminal condition" means an incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to postpone the moment of death.

15-18-104. Declaration as to medical treatment.

(1) Any competent adult may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he is in a terminal condition and either unconscious or otherwise incompetent to decide whether any medical procedure or intervention should be accepted or rejected. It shall be the responsibility of the declarant or someone acting for him to submit the declaration to the attending physician for entry in the declarant's medical record.

(2) In the case of a declaration of a qualified patient known to the attending physician to be pregnant, a medical evaluation shall be made as to whether the fetus is viable and could with a reasonable degree of medical certainty develop to live birth with continued application of life-sustaining procedures. If such is the case, the declaration shall be given no force or effect.

(2.5) (a) The declarant may provide in his declaration that, in the event that the only procedure being provided is artificial nourishment, one of the following actions shall be taken:

(I) That artificial nourishment not be continued when it is the only procedure being provided; or

(II) That artificial nourishment be continued for a specified period of time when it is the only procedure being provided; or

(III) That artificial nourishment be continued when it is the only procedure being provided.

(b) A declaration executed prior to March 29, 1989, may be amended by a codicil to include the provisions of this subsection (2.5).

(2.6) Notwithstanding the provisions of subsection (2.5) of this section and section 15-18-103 (7), when an attending physician has determined that pain results from a discontinuance of artificial nourishment, he may order that such nourishment be provided but only to the extent necessary to provide comfort and alleviate such pain.

(3) A declaration executed before two witnesses by any competent adult shall be legally effective for the purposes of this article and may, but need not, be in the following form:

DECLARATION AS TO MEDICAL OR SURGICAL TREATMENT

I, (name of declarant), being of sound mind and at least eighteen years of age, direct that my life shall not be artificially prolonged under the circumstances set forth below and hereby declare that:

1. If at any time my attending physician and one other qualified physician certify in writing that:

a. I have an injury, disease, or illness which is not curable or reversible and which, in their judgment, is a terminal condition, and

b. For a period of seven consecutive days or more, I have been unconscious, comatose, or otherwise incompetent so as to be unable to make or communicate responsible decisions concerning my person, then

I direct that, in accordance with Colorado law, life-sustaining procedures shall be withdrawn and withheld pursuant to the terms of this declaration, it being understood that life-sustaining procedures shall not include any medical procedure or intervention for nourishment considered necessary by the attending physician to provide comfort or alleviate pain. However, I may specifically direct, in accordance with Colorado law, that artificial nourishment be withdrawn or withheld pursuant to the terms of this declaration.

2. In the event that the only procedure I am being provided is artificial nourishment, I direct that one of the following actions be taken:

(initials of declarant) a. Artificial nourishment shall not be continued when it is the only procedure being provided; or (initials of declarant) b. Artificial nourishment shall be continued for _____ days when it is the only procedure being provided; or (initials of declarant) c. Artificial nourishment shall be continued when it is the only procedure being provided.

3. I execute this declaration, as my free and voluntary act, this _____ day of _____, 20__.

By _____
Declarant

The foregoing instrument was signed and declared by _____ to be his declaration, in the presence of us, who, in his presence, in the presence of each other, and at his request, have signed our names below as witnesses, and we declare that, at the time of the execution of this instrument, the declarant, according to our best knowledge and belief, was of sound mind and under no constraint or undue influence.

Dated at _____, Colorado, this _____ day of _____, 20__.

Name and Address

Name and Address

STATE OF COLORADO)
County of _____) ss.
SUBSCRIBED and sworn to before me by _____, the declarant, and _____ and _____, witnesses, as the voluntary act and deed of the declarant this _____ day of _____, 20__.

My commission expires: _____

Notary Public

(4) Any declaration made pursuant to subsection (3) of this section may also have a document with a written statement as provided in section 12-34-105 (1) (c), C.R.S., or a written statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Uniform Anatomical Gift Act", article 34 of title 12, C.R.S. Such a written statement may be in the following form:

I hereby make an anatomical gift, to be effective upon my death, of:
A. _____ Any needed organs/tissues
B. _____ The following organs/tissues:

15-18-105. Inability of declarant to sign.

(1) In the event that the declarant is physically unable to sign the declaration, it may be signed by some other person in the declarant's presence and at his direction. Such other person shall not be:

(a) The attending physician or any other physician; or

(b) An employee of the attending physician or health care facility in which the declarant is a patient; or

(c) A person who has a claim against any portion of the estate of the declarant at his death at the time the declaration is signed; or

(d) A person who knows or believes that he is entitled to any portion of the estate of the declarant upon his death either as a beneficiary of a will in existence at the time the declaration is signed or as an heir at law.

15-18-106. Witnesses.

(1) The declaration shall be signed by the declarant in the presence of two witnesses. Said witnesses shall not include any person specified in section 15-18-105.

(2) If the declarant is a patient or resident of a health care facility, the witnesses shall not be patients of that facility.

15-18-107. Withdrawal - withholding of life-sustaining procedures.

In the event that an attending physician is presented with an unrevoked declaration executed by a declarant whom the physician believes has a terminal condition, the attending physician shall cause the declarant to be examined by one other physician. If both physicians find that the declarant has a terminal condition, they shall certify such fact in writing and enter such in the qualified patient's medical record of the hospital in which the withholding or withdrawal of life-sustaining procedures may occur, together with a copy of the declaration. If the attending physician has actual knowledge of the whereabouts of the qualified patient's spouse, any of his adult children, a parent, or attorney-in-fact under a durable power of attorney, the attending physician shall immediately make a reasonable effort to notify at least one of said persons, in the order named, that a certificate of terminal condition has been signed. If no action to challenge the validity of a declaration has been filed within forty-eight consecutive hours after the certification is made by the physicians, the attending physician shall then withdraw or withhold all life-sustaining procedures pursuant to the terms of the declaration.

15-18-108. Determination of validity.

(1) Any person who is the parent, adult child, spouse, or attorney-in-fact under a durable power of attorney of the qualified patient may challenge the validity of a declaration in the appropriate court of the county in which the qualified patient is located. Upon the filing of a petition to challenge the validity of a declaration and notification to the attending physician, a temporary restraining order shall be issued until a final determination as to validity is made.

(2) (a) In proceedings pursuant to this section, the court shall appoint a guardian ad litem for the qualified patient, and the guardian ad litem shall take such action as he deems necessary and prudent in the best interest of the qualified patient and shall present to the court a report of his actions, findings, conclusions, and recommendations.

(b) (I) Unless the court for good cause shown provides for a different method or time of notice, the petitioner, at least five days prior to the hearing, shall cause notice of the time and place of hearing to be given as follows:

(A) To the qualified patient's guardian or conservator, if any, and the court-appointed guardian ad litem; and

(B) To the qualified patient's spouse, if the identity and whereabouts of the spouse are known, to the petitioner, or otherwise to an adult child or parent of the qualified patient.

(II) Notice as required in this paragraph (b) shall be made in accordance with the Colorado rules of civil procedure.

(c) The court may require such evidence, including independent medical evidence, as it deems necessary.

(3) Upon a determination of the validity of the declaration, the court shall enter any appropriate order.

15-18-109. Revocation of declaration.

A declaration may be revoked by the declarant orally, in writing, or by burning, tearing, cancelling, obliterating, or destroying said declaration.

15-18-110. Liability.

(1) With respect to any declaration which appears on its face to have been executed in accordance with the requirements of this article:

(a) Any physician may act in compliance with such declaration in the absence of actual notice of revocation, fraud, misrepresentation, or improper execution;

(b) No physician signing a certificate of terminal condition or withholding or withdrawing life-sustaining procedures in compliance with a declaration shall be subject to civil liability, criminal penalty, or licensing sanctions therefor;

(c) No hospital or person acting under the direction of a physician and participating in the withholding or withdrawal of life-sustaining procedures in compliance with a declaration shall be subject to civil liability, criminal penalty, or licensing sanctions therefor.

15-18-111. Determination of suicide or homicide - effect of declaration on insurance.

The withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to this article shall not, for any purpose, constitute a suicide or a homicide. The existence of a declaration shall not affect, impair, or modify any contract of life insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life insurance or any increase of the premium therefor. No insurer or provider of health care shall require any person to execute a declaration as a condition of being insured for or receiving health care services; nor shall the failure to execute a declaration be the basis

for any increased or additional premium for a contract or policy for medical or health insurance.

15-18-112. Application of article.

(1) Nothing in this article shall be construed as altering or amending the standards of the practice of medicine or establishing any presumption, absent a valid declaration, nor as condoning, authorizing, or approving euthanasia or mercy killing, nor as permitting any affirmative or deliberate act or omission to end life, except to permit natural death as provided in this article.

(2) In the event of any conflict between the provisions of this article, or a declaration executed under this article, and the provisions of section 15-14-501, the provisions of this article and the declaration shall prevail.

15-18-113. Penalties.

(1) Any person who willfully conceals, defaces, damages, or destroys a declaration of another, without the knowledge and consent of the declarant, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who falsifies or forges a declaration of another commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) Any person who falsifies or forges a declaration of another, and the terms of the declaration are carried out, resulting in the death of the purported declarant, commits a class 2 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(4) Any person who willfully withholds information concerning the revocation of the declaration of another commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(5) An attending physician who refuses to comply with the terms of a declaration valid on its face shall transfer the care of the declarant to another physician who is willing to comply with the declaration. Refusal of an attending physician to comply with a declaration and failure to transfer the care of the declarant to another physician shall constitute unprofessional conduct as defined in section 12-36-117, C.R.S.

15-18.5-101. Legislative declaration - construction of statute.

(1) The general assembly hereby finds, determines, and declares that:

(a) All adult persons have a fundamental right to make their own medical treatment decisions, including decisions regarding medical treatment and artificial nourishment and hydration;

(b) The lack of decisional capacity to provide informed consent to or refusal of medical treatment should not preclude such decisions from being made on behalf of a person who lacks such decisional capacity and who has no known advance medical directive, or whose wishes are not otherwise known; and

(c) The enactment of legislation to authorize proxy decision-makers to make medical treatment decisions on behalf of persons lacking the decisional capacity to provide informed consent to or refusal of medical treatment is appropriate.

(2) The general assembly does not intend to encourage or discourage any particular medical treatment or to interfere with or affect any method of religious or spiritual healing otherwise permitted by law.

(3) Nothing in this article shall be construed as condoning, authorizing, or approving euthanasia or mercy killing. In addition, the general assembly does not intend that this article 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

15-18.5-102. Definitions applicable to medical durable power of attorney - applicability.

(1) The definitions set forth in section 15-14-505 shall apply to the provisions of this article.

(2) The provisions of sections 15-14-506 to 15-14-509 shall apply to this article. In addition, proxy decision-makers, health care providers, and health care facilities shall be subject to the provisions of this article.

15-18.5-103. Proxy decision-makers for medical treatment authorized.

(1) A health care provider or health care facility may rely, in good faith, upon the medical treatment decision of a proxy decision-maker selected in accordance with subsection (4) of this section if an adult patient's attending physician determines that such patient lacks the decisional capacity to provide informed consent to or refusal of medical treatment and no guardian with medical decision-making authority, agent appointed in a medical durable power of attorney, or other known person has the legal authority to provide such consent or refusal on the patient's behalf.

(2) The determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment may be made by a court or the attending physician, and such determination shall be documented in such patient's medical record. The attending physician shall make specific findings regarding the cause, nature, and projected duration of the patient's lack of decisional capacity, which findings shall be included in the patient's medical record.

(3) Upon a determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, or such

physician'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 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 physician, or such physician'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 make reasonable efforts to reach a consensus as to whom 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 persons may initiate such proceedings with regard to the patient.

(b) Nothing in this section shall be construed to preclude 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).

(5) When an attending physician determines that an adult patient lacks decisional capacity, the attending physician or another health care provider shall make reasonable efforts to advise the patient of such determination, of the identity of the proxy decision-maker, and of the patient's right to object, pursuant to section 15-14-506 (4) (a).

(6) 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.

(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 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.

(8) Except for a court acting on its own motion, no governmental entity, including the state department of human services and the county departments of social services, may petition the court as an interested person pursuant to part 3 of article 14 of this title. In addition, nothing in this article shall be construed to authorize the county director of any county department of social services, or designee of such director, to petition the court pursuant to section 26-3.1-104, C.R.S., in regard to any patient subject to the provisions of this article.

(9) 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.