

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 19-0251.01 Shelby Ross x4510

SENATE BILL 19-073

SENATE SPONSORSHIP

Ginal, Court

HOUSE SPONSORSHIP

Landgraf,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A STATEWIDE SYSTEM OF ADVANCE MEDICAL**
102 **DIRECTIVES.**

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://leg.colorado.gov>.)

The bill requires the department of public health and environment (department) to create and administer a statewide electronic system (system) that allows qualified individuals to upload and access advance medical directives.

The bill defines an advance medical directive as a directive concerning medical orders for scope of treatment and requires the

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

department to contract with one or more health information organization networks for the administration and maintenance of the system. The bill also requires the department to promulgate rules to administer the system.

The bill clarifies that it is the responsibility of the adult whose medical treatment is the subject of the advance medical directive, or the authorized surrogate decision-maker, to ensure that the advance medical directive uploaded to the system is current and accurate.

The bill does not allow for any civil or criminal liability or regulatory sanctions for any emergency personnel, health care provider, health care facility, or any other person that complies with a legally executed advance medical directive that is accessed from the system.

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

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

4 **ARTICLE 51**

5 **Statewide System for Advance**

6 **Health Care Directives**

7 **25-51-101. Definitions. AS USED IN THIS ARTICLE 51, UNLESS THE**
8 **CONTEXT OTHERWISE REQUIRES:**

9 **(1) (a) "ADVANCE HEALTH CARE DIRECTIVE" MEANS:**

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

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

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

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

18 **(V) ANY OF THE ADVANCE HEALTH CARE DIRECTIVES LISTED IN**
19 **SUBSECTIONS (1)(a)(I) TO (1)(a)(IV) OF THIS SECTION OR THIS SUBSECTION**

1 (1)(a)(V) THAT HAS BEEN PROPERLY EXECUTED IN ANOTHER STATE.

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

5 (2) "AUTHORIZED SURROGATE DECISION-MAKER" MEANS A
6 GUARDIAN APPOINTED PURSUANT TO ARTICLE 14 OF TITLE 15, AN AGENT
7 APPOINTED PURSUANT TO A MEDICAL DURABLE POWER OF ATTORNEY, A
8 PROXY DECISION-MAKER FOR MEDICAL TREATMENT DECISIONS APPOINTED
9 PURSUANT TO ARTICLE 18.5 OF TITLE 15, OR A SIMILARLY AUTHORIZED
10 SURROGATE, AS DEFINED BY THE LAWS OF ANOTHER STATE, WHO IS
11 AUTHORIZED TO MAKE MEDICAL DECISIONS FOR AN INDIVIDUAL WHO
12 LACKS DECISIONAL CAPACITY.

13 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
14 AND ENVIRONMENT CREATED AND EXISTING PURSUANT TO SECTION
15 24-1-119.

16 (4) "HEALTH INFORMATION ORGANIZATION NETWORK" MEANS A
17 COLORADO ORGANIZATION THAT HAS EXPERIENCE IN OVERSEEING AND
18 GOVERNING THE EXCHANGE OF HEALTH-RELATED INFORMATION AMONG
19 ORGANIZATIONS ACCORDING TO COLORADO LAW AND NATIONALLY
20 RECOGNIZED STANDARDS INCLUDING BUT NOT LIMITED TO THE FEDERAL
21 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
22 PUB.L. 104-191, AS AMENDED.

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

25 (6) "QUALIFIED PROVIDER" MEANS A PERSON OR ENTITY THAT MAY
26 USE OR DISCLOSE PROTECTED HEALTH INFORMATION FOR TREATMENT
27 PURPOSES IN ACCORDANCE WITH GUIDELINES UNDER THE FEDERAL

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

3 **25-51-102. Statewide system for advance directives created -**
4 **rules. (1) THE DEPARTMENT HAS THE FOLLOWING POWERS AND DUTIES**
5 **WITH RESPECT TO THE PROVISION OF A STATEWIDE ELECTRONIC SYSTEM,**
6 **REFERRED TO IN THIS SECTION AS THE "SYSTEM", THAT ALLOWS QUALIFIED**
7 **INDIVIDUALS TO UPLOAD AND ACCESS ADVANCE MEDICAL DIRECTIVES:**

8 **(a) TO ENSURE THAT QUALIFIED INDIVIDUALS MAY ACCESS THE**
9 **SYSTEM FOR TREATMENT PURPOSES THAT ARE ALLOWED UNDER THE**
10 **FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**
11 **OF 1996", PUB.L. 104-191, AS AMENDED;**

12 **(b) TO CONTRACT WITH ONE OR MORE HEALTH INFORMATION**
13 **ORGANIZATION NETWORKS FOR THE CREATION, ADMINISTRATION, AND**
14 **MAINTENANCE OF THE SYSTEM; AND**

15 **(c) TO PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF**
16 **TITLE 24 TO OVERSEE THE PROVISIONS OF THIS ARTICLE 51, INCLUDING BUT**
17 **NOT LIMITED TO RULES ESTABLISHING:**

18 **(I) CRITERIA FOR QUALIFIED INDIVIDUALS TO HAVE ACCESS TO THE**
19 **SYSTEM AND ADVANCE MEDICAL DIRECTIVES;**

20 **(II) PROCEDURES BY WHICH A QUALIFIED INDIVIDUAL MAY ADD OR**
21 **REMOVE AN ADVANCE MEDICAL DIRECTIVE TO OR FROM THE SYSTEM;**

22 **(III) PROCEDURES BY WHICH A QUALIFIED INDIVIDUAL MAY**
23 **ACCESS AND DOWNLOAD AN ADVANCE MEDICAL DIRECTIVE FROM THE**
24 **SYSTEM; AND**

25 **(IV) PROCEDURES AND SAFEGUARDS FOR ENSURING THE**
26 **CONFIDENTIALITY AND SECURE STORAGE OF THE INFORMATION**
27 **CONTAINED IN AN ADVANCE MEDICAL DIRECTIVE THAT IS ADDED TO AND**

1 MAINTAINED IN THE SYSTEM.

2 (2) (a) UPON THE REQUEST OF AN INDIVIDUAL, OR AUTHORIZED
3 SURROGATE DECISION-MAKER, A QUALIFIED PROVIDER THAT HAS AN
4 AGREEMENT WITH THE HEALTH INFORMATION ORGANIZATION NETWORK
5 AS REQUIRED UNDER THE FEDERAL "HEALTH INSURANCE PORTABILITY
6 AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, MAY
7 UPLOAD THE INDIVIDUAL'S ADVANCE HEALTH CARE DIRECTIVE TO THE
8 SYSTEM. THE ADVANCE HEALTH CARE DIRECTIVE SHALL ONLY BE
9 UPLOADED TO THE SYSTEM BY A QUALIFIED PROVIDER AFTER THE
10 INDIVIDUAL OR AUTHORIZED SURROGATE DECISION-MAKER HAS
11 CONSULTED WITH THE QUALIFIED PROVIDER IN PERSON OR THROUGH
12 TELEHEALTH, AS DEFINED IN SECTION 10-16-123 (4)(e)(I). A QUALIFIED
13 PROVIDER WHO UPLOADS AN ADVANCE HEALTH CARE DIRECTIVE TO THE
14 SYSTEM IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR REGULATORY
15 SANCTION FOR ACTION TAKEN IN ACCORDANCE WITH THIS SUBSECTION (2).

16 (b) PRIOR TO THE UPLOAD OF AN ADVANCE HEALTH CARE
17 DIRECTIVE TO THE SYSTEM, THE INDIVIDUAL, OR AUTHORIZED SURROGATE
18 DECISION-MAKER, SHALL SIGN AN ELECTRONIC AFFIDAVIT IN THE
19 PRESENCE OF A QUALIFIED PROVIDER AFFIRMING THE ADVANCE HEALTH
20 CARE DIRECTIVE IS APPROPRIATELY EXECUTED, CURRENT, AND ACCURATE.
21 SIGNING THE ELECTRONIC AFFIDAVIT REVOKES ANY PRIOR ADVANCE
22 HEALTH CARE DIRECTIVES OF THE SAME TYPE PREVIOUSLY UPLOADED TO
23 THE SYSTEM.

24 (c) THE INDIVIDUAL, OR AUTHORIZED SURROGATE
25 DECISION-MAKER, IS RESPONSIBLE FOR ENSURING THAT THE ADVANCE
26 HEALTH CARE DIRECTIVE UPLOADED TO THE SYSTEM IS APPROPRIATELY
27 EXECUTED, CURRENT, AND ACCURATE.

1 (3) EMERGENCY MEDICAL SERVICE PERSONNEL, AN INDIVIDUAL
2 HEALTH CARE PROVIDER, A HEALTH CARE FACILITY, OR ANY OTHER
3 PERSON OR ENTITY THAT COMPLIES WITH AN ADVANCE HEALTH CARE
4 DIRECTIVE ACCESSED FROM THE SYSTEM IS NOT SUBJECT TO CIVIL OR
5 CRIMINAL LIABILITY OR REGULATORY SANCTION FOR ACTION TAKEN IN
6 ACCORDANCE WITH THE ADVANCE HEALTH CARE DIRECTIVE, UNLESS THE
7 PERSON OR ENTITY HAS ACTUAL KNOWLEDGE OF AN ADVANCE HEALTH
8 CARE DIRECTIVE PROPERLY EXECUTED AFTER THE DATE OF THE ADVANCE
9 HEALTH CARE DIRECTIVE THAT IS UPLOADED TO THE SYSTEM.

10 **SECTION 2. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly (August
13 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
14 referendum petition is filed pursuant to section 1 (3) of article V of the
15 state constitution against this act or an item, section, or part of this act
16 within such period, then the act, item, section, or part will not take effect
17 unless approved by the people at the general election to be held in
18 November 2020 and, in such case, will take effect on the date of the
19 official declaration of the vote thereon by the governor.