

CHAPTER 186

HEALTH AND ENVIRONMENT

SENATE BILL 19-073

BY SENATOR(S) Ginal, Court, Bridges, Fields, Lee, Moreno, Pettersen, Priola, Story, Tate, Todd, Garcia;
 also REPRESENTATIVE(S) Landgraf and Roberts, Arndt, Bird, Duran, Esgar, Galindo, Gray, Herod, Hooton, Jackson, Kennedy,
 Kipp, Kraft-Tharp, Lontine, McCluskie, Michaelson Jenet, Singer, Snyder, Titone, Valdez A., Becker.

AN ACT

CONCERNING A STATEWIDE SYSTEM OF ADVANCE MEDICAL DIRECTIVES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** article 54 to title 25 as follows:

ARTICLE 54
Statewide System for Advance
Health Care Directives

25-54-101. Definitions. AS USED IN THIS ARTICLE 54, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(V) ANY OF THE ADVANCE HEALTH CARE DIRECTIVES LISTED IN SUBSECTIONS (1)(a)(I) TO (1)(a)(IV) OF THIS SECTION OR THIS SUBSECTION (1)(a)(V) THAT HAS BEEN PROPERLY EXECUTED IN ANOTHER STATE.

(b) A POWER OF ATTORNEY FORM EXECUTED PURSUANT TO SECTION 15-14-741 IS NOT AN ADVANCE HEALTH CARE DIRECTIVE FOR THE PURPOSES OF THIS ARTICLE 54.

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

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

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

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

(6) "QUALIFIED PROVIDER" MEANS A PERSON OR ENTITY THAT MAY USE OR DISCLOSE PROTECTED HEALTH INFORMATION FOR TREATMENT PURPOSES IN ACCORDANCE WITH GUIDELINES UNDER THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

25-54-102. Statewide system for advance directives created - rules. (1) THE DEPARTMENT HAS THE FOLLOWING POWERS AND DUTIES WITH RESPECT TO THE PROVISION OF A STATEWIDE ELECTRONIC SYSTEM, REFERRED TO IN THIS SECTION AS THE "SYSTEM", THAT ALLOWS QUALIFIED INDIVIDUALS TO UPLOAD AND ACCESS ADVANCE MEDICAL DIRECTIVES:

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

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

(c) TO PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO OVERSEE THE PROVISIONS OF THIS ARTICLE 54, INCLUDING BUT NOT LIMITED TO

RULES ESTABLISHING:

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

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

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

(IV) PROCEDURES AND SAFEGUARDS FOR ENSURING THE CONFIDENTIALITY AND SECURE STORAGE OF THE INFORMATION CONTAINED IN AN ADVANCE MEDICAL DIRECTIVE THAT IS ADDED TO AND MAINTAINED IN THE SYSTEM.

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

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

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

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

SECTION 2. Appropriation. (1) For the 2019-20 state fiscal year, \$993,147 is appropriated to the department of public health and environment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$32,100 for use by the center for health and environmental information for personal services related to health statistics and vital records, which amount is based on an assumption that the center will require an additional 0.5 FTE;

(b) \$211,047 for use by the center for health and environmental information for operating expenses related to health statistics and vital records; and

(c) \$750,000 for the purchase of information technology services.

(2) For the 2019-20 state fiscal year, \$750,000 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1)(c) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of public health and environment.

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

Approved: May 16, 2019