

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0515.01 Jane Ritter x4342

HOUSE BILL 22-1167

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HOUSE SPONSORSHIP

Bradfield,

SENATE SPONSORSHIP

(None),

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House Committees

Public & Behavioral Health & Human Services

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING TEMPORARY PROXY DECISION-MAKERS FOR MEDICAL  
102 TREATMENT.

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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 grants a supervising health-care provider or health-care facility the authority to identify and select a temporary proxy decision-maker (temporary proxy) to make emergency medical treatment decisions for an adult patient who has been determined, by the patient's attending physician, to lack decisional capacity to make informed consent to or refusal of medical treatments. The temporary proxy is to be utilized

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.

only in emergency circumstances when an otherwise legally authorized proxy decision-maker cannot be located. The bill outlines guidelines for selecting the temporary proxy and when the authority of the temporary proxy terminates.

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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) and (4)(a) as follows:

4 **15-18.5-103. Proxy decision-makers for medical treatment**  
5 **authorized - definitions.** (3) Upon a determination that an adult patient  
6 lacks decisional capacity to provide informed consent to or refusal of  
7 medical treatment, the attending physician, the advanced practice nurse,  
8 or such physician's or nurse's designee, OR HEALTH-CARE FACILITY shall  
9 make reasonable efforts to notify the patient of the patient's lack of  
10 decisional capacity. In addition, the attending physician, or such  
11 physician's designee, OR HEALTH-CARE FACILITY shall make reasonable  
12 efforts to locate as many interested persons OR PERSONS WITH LEGAL  
13 MEDICAL DECISION-MAKING AUTHORITY as practicable, and the attending  
14 physician, ~~or~~ advanced practice nurse, OR HEALTH-CARE FACILITY may  
15 rely on such individuals to notify other family members or interested  
16 persons. Upon locating an interested person OR PERSON WITH LEGAL  
17 MEDICAL DECISION-MAKING AUTHORITY, the attending physician,  
18 advanced practice nurse, ~~or~~ such physician's or nurse's designee, OR  
19 HEALTH-CARE FACILITY shall inform ~~such~~ THE person of the patient's lack  
20 of decisional capacity and that a proxy decision-maker should be selected  
21 for the patient.

22 (4) (a) (I) Interested persons who are informed of the patient's lack  
23 of decisional capacity shall make reasonable efforts to reach a consensus

1 as to who among them shall make medical treatment decisions on behalf  
2 of the patient. The person selected to act as the patient's proxy  
3 decision-maker PURSUANT TO THIS SECTION should be the person who has  
4 a close relationship with the patient and who is most likely to be currently  
5 informed of the patient's wishes regarding medical treatment decisions.

6 ~~(II) If any of the interested persons disagrees with the selection or~~  
7 ~~the decision of the proxy decision-maker or, if, after reasonable efforts,~~  
8 ~~the interested persons are unable to reach a consensus as to who should~~  
9 ~~act as the proxy decision-maker,~~ FURTHERMORE, IF THE INTERESTED  
10 PARTIES CANNOT REACH A TIMELY CONSENSUS REGARDING WHO SHOULD  
11 TAKE ON THE ROLE OF A PROXY DECISION-MAKER, OR IT IS UNCLEAR  
12 WHICH INTERESTED PARTY IS MOST INFORMED ON THE PATIENT'S VALUES  
13 AND BEST INTERESTS, then:

14 (A) Any of the interested persons may seek guardianship of the  
15 patient by initiating guardianship proceedings pursuant to part 3 of article  
16 14 of this ~~title~~ TITLE 15. Only said interested persons may initiate such  
17 proceedings with regard to the patient; OR

18 (B) THE ATTENDING PHYSICIAN OR THE ATTENDING PHYSICIAN'S  
19 DESIGNEE OR THE HEALTH-CARE FACILITY MAY BEGIN THE PROCESS TO  
20 ASSIGN A TEMPORARY PROXY DECISION-MAKER FOR MEDICAL TREATMENT  
21 PURSUANT TO SECTION 15-18.5-103.2.

22 **SECTION 2.** In Colorado Revised Statutes, **add** 15-18.5-103.2  
23 as follows:

24 **15-18.5-103.2. Temporary proxy decision-maker for medical**  
25 **treatment - appointment - termination - legislative declaration -**  
26 **definitions.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

27 (a) (I) IN MANY INSTANCES, INDIVIDUALS WITH EMERGENCY

1 MEDICAL NEEDS LACK THE DECISIONAL CAPACITY TO PROVIDE TIMELY  
2 INFORMED CONSENT TO OR REFUSAL OF TREATMENT;

3 (II) ALTHOUGH CURRENT LAW ALLOWS FOR PREVIOUSLY ASSIGNED  
4 DESIGNEES TO TAKE OVER THE ROLE OF PROXY DECISION-MAKER FOR  
5 MEDICAL TREATMENT, OFTEN THE INDIVIDUAL NEEDING EMERGENCY  
6 MEDICAL TREATMENT HAS NOT PREVIOUSLY DESIGNATED SUCH A PROXY  
7 DECISION-MAKER;

8 (III) FURTHERMORE, IF THE INDIVIDUAL'S FAMILY CANNOT REACH  
9 A TIMELY CONSENSUS REGARDING WHO SHOULD TAKE ON THE ROLE OF A  
10 PROXY DECISION-MAKER FOR MEDICAL TREATMENT, THE ONLY AVENUE  
11 LEFT IS FOR THE HEALTH-CARE PROVIDER OR FACILITY OR FAMILY TO TAKE  
12 THE MATTER TO COURT FOR A DECISION. THIS AVENUE IS TIME  
13 CONSUMING, EXPENSIVE, AND OFTEN SIMPLY TOO LATE FOR THE  
14 INDIVIDUAL NEEDING EMERGENCY MEDICAL TREATMENT.

15 (IV) IN ADDITION, HEALTH-CARE PROVIDERS AND HEALTH-CARE  
16 FACILITIES SOMETIMES EXPERIENCE CONFLICTS WITH INTERESTED PARTIES  
17 WHO MAY NOT BE WILLING AND ABLE TO COMMUNICATE DECISIONS TO  
18 HEALTH-CARE TEAMS, OR WHO MAY NOT DEMONSTRATE APPROPRIATE  
19 CARE AND CONCERN FOR THE PATIENT.

20 (b) THEREFORE, THE GENERAL ASSEMBLY DECLARES IT IS  
21 IMPORTANT FOR THE HEALTH AND WELL-BEING OF THE PEOPLE OF  
22 COLORADO TO ESTABLISH A METHOD BY WHICH HEALTH-CARE PROVIDERS  
23 AND FACILITIES CAN ASSIGN A TEMPORARY PROXY DECISION-MAKER FOR  
24 MEDICAL TREATMENT UNDER SPECIFIC SITUATIONS.

25 (2) AS USED IN THIS SECTION ONLY:

26 (a) "PATIENT" MEANS AN ADULT PATIENT WHO HAS BEEN  
27 DETERMINED, BY THE PATIENT'S ATTENDING PHYSICIAN, TO LACK

1 DECISIONAL CAPACITY TO PROVIDE INFORMED CONSENT TO OR REFUSAL OF  
2 MEDICAL TREATMENT.

3 (b) "TEMPORARY PROXY DECISION-MAKER" MEANS A PERSON  
4 AUTHORIZED PURSUANT TO THIS SECTION TO MAKE EMERGENCY MEDICAL  
5 DECISIONS UNTIL SUCH TIME AS AN OTHERWISE AUTHORIZED INTERESTED  
6 PERSON CAN BE LOCATED BY THE SUPERVISING HEALTH-CARE FACILITY OR  
7 HEALTH-CARE PROVIDER OR A PERMANENT GUARDIAN OR PROXY CAN BE  
8 APPOINTED BY THE COURT.

9 (3) A SUPERVISING HEALTH-CARE PROVIDER OR HEALTH-CARE  
10 FACILITY MAY SELECT AND RELY UPON, IN GOOD FAITH, THE MEDICAL  
11 TREATMENT DECISIONS OF A TEMPORARY PROXY DECISION-MAKER  
12 SELECTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION IF THE  
13 ATTENDING PHYSICIAN, HEALTH-CARE PROVIDER, OR HEALTH-CARE  
14 FACILITY IS UNABLE TO LOCATE:

15 (a) A GUARDIAN WITH MEDICAL DECISION-MAKING AUTHORITY;

16 (b) AN AGENT APPOINTED IN A MEDICAL DURABLE POWER OF  
17 ATTORNEY;

18 (c) A PERSON WITH THE RIGHT TO ACT AS A PROXY  
19 DECISION-MAKER IN A DESIGNATED BENEFICIARY AGREEMENT MADE  
20 PURSUANT TO ARTICLE 22 OF THIS TITLE 15; OR

21 (d) A PERSON SELECTED TO MAKE MEDICAL TREATMENT DECISIONS  
22 ON BEHALF OF THE PATIENT PURSUANT TO SECTION 15-18.5-103.

23 (4) (a) IN ADDITION TO THE GUIDELINES SET FORTH IN SUBSECTION  
24 (5) OF THIS SECTION, WHEN IDENTIFYING AND SELECTING THE PERSON BEST  
25 QUALIFIED TO SERVE AS THE TEMPORARY PROXY DECISION-MAKER FOR A  
26 PATIENT, THE SUPERVISING HEALTH-CARE PROVIDER OR HEALTH-CARE  
27 FACILITY SHALL SELECT THE TEMPORARY PROXY DECISION-MAKER IN THE

1 FOLLOWING ORDER OF DESCENDING PREFERENCE, ASSUMING THE PERSON  
2 IS WILLING AND ABLE TO TAKE ON THE RESPONSIBILITIES OF A TEMPORARY  
3 PROXY DECISION-MAKER:

4 (I) THE PATIENT'S SPOUSE, CIVIL UNION PARTNER, OR DOMESTIC  
5 PARTNER, UNLESS LEGALLY SEPARATED;

6 (II) ANY ADULT CHILD OF THE PATIENT;

7 (III) EITHER OF THE PATIENT'S PARENTS;

8 (IV) ANY ADULT SIBLING OF THE PATIENT, IF ONE EXISTS;

9 (V) ANY OTHER ADULT RELATIVE OF THE PATIENT; OR

10 (VI) ANY OTHER ADULT PERSON WHO SATISFIES THE  
11 REQUIREMENTS OF THIS SECTION.

12 (b) IF NONE OF THE PERSONS IDENTIFIED IN SUBSECTION (4)(a) OF  
13 THIS SECTION CAN BE LOCATED OR, IF LOCATED, IS NEITHER WILLING NOR  
14 ABLE TO SERVE AS THE TEMPORARY PROXY DECISION-MAKER FOR THE  
15 PATIENT, THEN THE HEALTH-CARE PROVIDER OR HEALTH-CARE FACILITY  
16 SHALL SELECT A PERSON WHO SATISFIES THE REQUIREMENTS SET FORTH IN  
17 SUBSECTION (5) OF THIS SECTION AND WHO IS WILLING AND ABLE TO  
18 PERFORM THE DUTIES OF TEMPORARY PROXY DECISION-MAKER.

19 (5) (a) IN SELECTING A TEMPORARY PROXY DECISION-MAKER FOR  
20 A PATIENT, THE SUPERVISING HEALTH-CARE PROVIDER OR HEALTH-CARE  
21 FACILITY SHALL CONSIDER THE FOLLOWING FACTORS:

22 (I) THE PERSON IS WILLING AND ABLE TO SERVE AS TEMPORARY  
23 PROXY DECISION-MAKER;

24 (II) THE ABILITY TO MAKE DECISIONS EITHER IN ACCORDANCE  
25 WITH THE PATIENT'S KNOWN WISHES OR IN ACCORDANCE WITH THE  
26 PATIENT'S BEST INTERESTS;

27 (III) THE FREQUENCY OF CONTACT WITH THE PATIENT BEFORE AND

1 DURING THE INCAPACITATING ILLNESS;

2 (IV) DEMONSTRATED CARE AND CONCERN; AND

3 (V) THE AVAILABILITY TO FULLY PARTICIPATE IN THE PROXY  
4 DECISION-MAKING PROCESS FOR MEDICAL TREATMENT FOR THE PATIENT.

5 (b) A SUPERVISING HEALTH-CARE PROVIDER OR HEALTH-CARE  
6 FACILITY SHALL NOT SELECT AS A TEMPORARY PROXY DECISION-MAKER  
7 A PERSON WHO IS THE SUBJECT OF A PROTECTIVE ORDER OR OTHER COURT  
8 ORDER THAT DIRECTS THAT THE PERSON SHALL AVOID CONTACT WITH THE  
9 PATIENT.

10 (6) THE AUTHORITY OF THE TEMPORARY PROXY DECISION-MAKER  
11 TERMINATES IN THE EVENT THAT:

12 (a) A PROXY DECISION-MAKER IS SELECTED PURSUANT TO SECTION  
13 15-18.5-103;

14 (b) A GUARDIAN IS APPOINTED BY THE COURT;

15 (c) THE PATIENT REGAINS DECISIONAL CAPACITY;

16 (d) THE TEMPORARY PROXY DECISION-MAKER DECIDES TO NO  
17 LONGER SERVE IN SUCH CAPACITY; OR

18 (e) THE PATIENT IS TRANSFERRED OR DISCHARGED FROM THE  
19 HEALTH-CARE FACILITY WHERE THE PATIENT WAS RECEIVING CARE.

20 **SECTION 3. 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; except  
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
24 of the state constitution against this act or an item, section, or part of this  
25 act within such period, then the act, item, section, or part will not take  
26 effect unless approved by the people at the general election to be held in

1 November 2022 and, in such case, will take effect on the date of the  
2 official declaration of the vote thereon by the governor.