A BILL FOR AN ACT

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/billsummaries.)

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
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.

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

SECTION 1. In Colorado Revised Statutes, 15-18.5-103, amend (3), (4), (6.5), (7), and (9); and add (1.5) as follows:

15-18.5-103. Proxy decision-makers for medical treatment authorized. (1.5) AS USED WITHIN THIS SECTION, "INTERESTED PERSON" MEANS A PATIENT'S SPOUSE, EITHER PARENT OF THE PATIENT, ANY ADULT CHILD, SIBLING, OR GRANDCHILD OF THE PATIENT, OR ANY CLOSE FRIEND OF THE PATIENT.

(3) Upon a determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, the advanced practice nurse, or such physician's or nurse'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 or advanced practice nurse 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, advanced practice nurse, or such physician's or nurse'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 whom the patient's lack of decisional capacity shall 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 interested 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).

(c) (I) AN ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE MAY
MAKE HEALTH CARE TREATMENT DECISIONS AS A PATIENT'S PROXY
DECISION-MAKER IF:

(A) AFTER MAKING REASONABLE EFFORTS, THE ATTENDING
PHYSICIAN OR HIS OR HER DESIGNEE CANNOT LOCATE ANY INTERESTED
PERSONS, OR NO INTERESTED PERSON IS WILLING AND ABLE TO SERVE AS
PROXY DECISION-MAKER;

(B) THE ATTENDING PHYSICIAN HAS OBTAINED AN INDEPENDENT
ASSESSMENT OF DECISIONAL CAPACITY BY ANOTHER HEALTH CARE
PROVIDER; AND

(C) THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE HAS
CONSULTED WITH AND OBTAINED AN AGREEMENT WITH THE MEDICAL
ETHICS COMMITTEE OF THE HEALTH CARE FACILITY WHERE THE PATIENT
IS RECEIVING CARE.

(II) FOR THE PURPOSE OF SUB-SUBPARAGRAPH (B) OF
SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), IF THE HEALTH CARE FACILITY
DOES NOT HAVE A MEDICAL ETHICS COMMITTEE, THE FACILITY SHALL
REFER THE ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE TO A PARTY
THAT CAN PROVIDE CONSULTATION AND RECOMMENDATIONS.

(III) THE AUTHORITY OF THE ATTENDING PHYSICIAN OR HIS OR HER
DESIGNEE 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.

(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 PERSON 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.

(9) (a) Any attending physician, health care provider, or health care facility that makes reasonable attempts to locate and communicate with a proxy decision-maker shall AND IN GOOD FAITH RELIES UPON THE DECISIONS OF THE PROXY DECISION-MAKER IS not be subject to civil or criminal liability or regulatory sanction therefor.

(b) WHEN ACTING IN GOOD FAITH AS THE PROXY DECISION-MAKER IN ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION, AN ATTENDING PHYSICIAN OR HIS OR HER DESIGNEE IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION THEREFOR.

SECTION 2. 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
10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.