

Summary of House Bill 16-1101
Concerning medical decisions for unrepresented patients

This is an amendment to the current law for Proxy Decision Makers for Medical Treatment, Colorado Revised Statutes 15-18.5-103. All sections of the existing proxy law which were not amended remain in force. This new amendment received bipartisan support in the House and Senate and was signed into law by Governor Hickenlooper on May 18, 2016. **It goes into effect August 10, 2016.**

Purpose and Summary

The purpose of the amendment is to authorize a physician, other than the attending, to serve as proxy medical decision-maker when no other interested person can be located and the patient lacks decisional capacity. This physician, the "proxy of last resort", is a willing physician who is appointed by the attending physician. The statute further requires ethics committee involvement and consensus when an unrepresented patient is identified. Finally the statute establishes additional protections for decisions at the end-of-life and limits the liability of a physician acting as a proxy of last resort.

What has changed?

- A physician may, on a voluntary basis, be appointed to serve as a proxy decision-maker when no other interested person can be located.
- The physician acting as proxy CANNOT also be the patient's attending physician.
- The appointment of the physician as proxy must be made through consultation and consensus with the medical ethics committee of the facility where the patient is receiving care or by consultation with the ethics committee of another facility. Any facility using this statute must have access to a medical ethics committee.
- An independent determination of capacity must be obtained from another physician or an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically, or by a court.
- The appointment and the termination of the physician acting as proxy are documented in the medical record.
- Statements prohibiting euthanasia have been added consistent with other Colorado statutes.
- A physician acting in good faith in accordance with this article **is not subject to civil or criminal liability or regulatory sanction** for acting as a proxy decision-maker.

What guidelines must be followed for treatment decisions?

- The attending physician may make decisions regarding **routine treatments** and procedures that are low-risk and within broadly accepted standards of medical practice.
- For treatments that otherwise require a written **informed consent**, such as treatments involving anesthesia, significant risk of complication, or invasive procedures, the attending physician must obtain the written consent of the appointed proxy and consensus of the medical ethics committee, both of which are documented in the medical record.
- **For end-of-life treatment** that is considered nonbeneficial and involves withholding or withdrawing specific medical treatments, the attending physician must obtain an independent concurring second opinion from a physician (other than the proxy-decision-maker) and a consensus with the medical ethics committee.

Under what circumstances does the authority of the physician acting as proxy end?

Authority of the physician acting as proxy terminates when:

- An interested person is willing and able to serve as proxy decision-maker
- A guardian is appointed for the patient
- The patient regains decisional capacity
- The proxy decision-maker decides to no longer serve
- The patient is transferred or discharged from the facility – unless the proxy decision maker expresses his/her intention to continue to serve

In what health care facilities does the statute apply?

The statute is applicable in all health care facilities as defined by the original Colorado Patient Autonomy Act at C.R.S. 15-14-505. A “health care facility” includes a hospital, hospice, nursing facility, assisted living, and any entity that provides home and community based services.

What hasn’t changed?

- A health care facility must make the same reasonable effort to locate an interested person, per current statute, who is willing to serve as a proxy decision-maker.
- The process for determining a proxy decision-maker when one or more interested parties are available has not changed.
- Patient rights regarding appeals of capacity or proxy appointment have not changed.
- Appropriate steps should still be taken to obtain a permanent guardian when applicable.
- An attending physician or his/her designee remains responsible for his/her negligent acts or omissions in rendering care to an unrepresented patient.

How should the new law be implemented in our facility?

- Because appointment of a proxy of last resort is voluntary, not mandatory, each facility should determine policies and procedures appropriate to its intended use of the statute.

Are guiding principles available?

- The Colorado Collaborative for Unrepresented Patients* has begun a stakeholder process that will generate best practice guidelines for implementation of the statute. The guidelines will address practical and logistical use of the statute in a variety of settings.
- The guidelines are targeted for release in the fall of 2016 and may assist your facility in developing its own policies and procedure.
- Questions or suggestions for guidelines development can be addressed to CCUP members noted below.

*The Colorado Collaborative for Unrepresented Patients is a group of interested citizens whose work facilitated the drafting and passage of HB 16-1101 on behalf of Colorado’s unrepresented patients.

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