

Interim Committee to Study Hospice & Palliative Care
September 1, 2009
Susan Fox, J.D., M.A.

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PROPOSED CHANGES
IN THE EXISTING
MEDICAL DURABLE POWER OF ATTORNEY STATUTE
TO ADDRESS
THE PATIENT'S MENTAL CAPACITY

[CHANGES ARE INDICATED BELOW IN CAPITAL LETTERS]

15-14-506. Medical durable power of attorney.

(1) The authority of an agent to act on behalf of the principal in consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a medical durable power of attorney. A medical durable power of attorney may include any directive, condition, or limitation of an agent's authority.

(2) The agent shall act in accordance with the terms, directives, conditions, or limitations stated in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent. If the medical durable power of attorney contains no directives, conditions, or limitations relating to the principal's medical condition, or if the principal's wishes are not otherwise known to the agent, the agent shall act in accordance with the best interests of the principal as determined by the agent.

(3) An agent appointed in a medical durable power of attorney may provide informed consent to or refusal of medical treatment on behalf of a principal who lacks decisional capacity and shall have the same power to make medical treatment decisions the principal would have if the principal did not lack such decisional capacity. An agent appointed in a medical durable power of attorney shall be considered a designated representative of the patient and shall have the same rights of access to the principal's medical records as the principal. In making medical treatment decisions on behalf of the principal, and subject to the terms of the medical durable power of attorney, the agent shall confer with the principal's attending physician concerning the principal's medical condition.

(3.5) Any medical durable power of attorney executed under sections 15-14-503 to 15-14-509 may also have a document with a written statement as provided in section 12-34-105 (b), C.R.S., or a statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Revised

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Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S. Such a written statement may be in the following form:

I hereby make an anatomical gift, to be effective upon my death, of:

A. _____ Any needed organs/tissues

B. _____ The following organs/tissues:

Donor signature: _____

(4) (a) Nothing in this section or in a medical durable power of attorney shall be construed to abrogate or limit any rights of the principal, including the RIGHT, WHILE IN POSSESSION OF DECISIONAL CAPACITY, TO LIMIT an agent's authority or the right to consent to or refuse any proposed medical treatment, and no agent may consent to or refuse medical treatment over the objection OF A PATIENT WITH DECISIONAL CAPACITY.

(b) Nothing in this article shall be construed to supersede any provision of article 1 of title 25, C.R.S., article 10 of title 27, C.R.S., or article 10.5 of title 27, C.R.S.

(5) (a) Nothing in this part 5 shall have the effect of modifying or changing the standards of the practice of medicine or medical ethics or protocols.

(b) Nothing in this part 5 or in a medical durable power of attorney shall be construed to compel or authorize a health care provider or health care facility to administer medical treatment that is otherwise illegal, medically inappropriate, or contrary to any federal or state law.

(c) Unless otherwise expressly provided in the medical durable power of attorney under which the principal appointed the principal's spouse as the agent, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the principal and spouse appointed as agent automatically revokes such appointment. However, nothing in this paragraph (c) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(d) Unless otherwise specified in the medical durable power of attorney, A PRINCIPAL MAY REVOKE A MEDICAL DURABLE POWER OF ATTORNEY OR THE APPOINTMENT OF AN AGENT IN A MEDICAL DURABLE POWER OF ATTORNEY AT ANY TIME THAT

THE PRINCIPAL IS IN POSSESSION OF DECISIONAL CAPACITY. If a principal revokes the appointment of an agent or the agent is unable or unwilling to serve, the appointment of the agent shall be revoked. However, nothing in this paragraph (d) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(6) (a) This part 5 shall apply to any medical durable power of attorney executed on or after July 1, 1992. Nothing in this part 5 shall be construed to modify or affect the terms of any durable power of attorney executed before such date and which grants medical treatment authority. Any such previously executed durable power of attorney may be amended to conform to the provisions of this part 5. In the event of a conflict between a medical durable power of attorney executed pursuant to this part 5 and a previously executed durable power of attorney, the provisions of the medical durable power of attorney executed pursuant to this part 5 shall prevail.

(b) Unless otherwise specified in a medical durable power of attorney, nothing in this part 5 shall be construed to modify or affect the terms of a declaration executed in accordance with the "Colorado Medical Treatment Decision Act", article 18 of this title.