

15-18-101 Short Title

This article shall be known and may be cited as the "Colorado Medical Treatment Decision Act."

15-18-102 Legislative declaration

(1) The general assembly hereby finds, determines, and declares that::

(a) Colorado law has traditionally recognized the right of an adult to accept or reject medical or surgical treatment.

(b) Recent advances in medical science have made it possible to prolong dying through the use of artificial, extraordinary, extreme, or radical medical or surgical procedures;

(c) The use of such medical or surgical procedures increasingly involves patients who are in a terminal condition, a persistent vegetative state, or otherwise lacking decisional capacity to accept or reject medical or surgical treatment;

(d) The traditional right to accept or reject medical or surgical treatment should be available to an adult while he or she has decisional capacity, notwithstanding the fact that such medical or surgical treatment may be offered or applied when he or she is suffering from a terminal condition and/or is in a persistent vegetative state, or otherwise lacking decisional capacity to accept or reject medical or surgical treatment.

(e) This article affirms the traditional right to accept or reject medical or surgical treatment, and creates a procedure by which an adult with decisional capacity may make such decisions in advance of medical need.;

(f) It is the legislative intent that nothing in this article shall have the effect of modifying or changing currently practiced medical ethics or protocol with respect to any patient in the absence of a declaration as provided for in section 15-18-104;

(g) It is the legislative intent that nothing in this article shall require any person to execute a declaration.

15-18-103 Definitions

As used in this article, unless the context otherwise requires:

(1) "Adult" means any person eighteen years of age or older.

(2) "Artificial nourishment and hydration" means nourishment supplied through a tube inserted into the stomach or intestines or nutrients injected intravenously into the bloodstream.

(3) "Attending physician" means the physician, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of said patient.

(4) "Court" means the district court of the county in which a declarant having a terminal condition is located at the time of commencement of a proceeding pursuant to this article or, in the city and county of Denver, the probate court.

(5) "Declarant" means a mentally competent adult who executes a declaration.

(6) "Declaration" means a written document voluntarily executed by a declarant in accordance with the requirements of section 15-18-104.

(7) "Decisional Capacity" means the ability to provide informed consent to or refusal of medical treatment or the ability to make an informed health care benefit decision.

(8) "Hospital" means an institution holding a license or certificate of compliance as a hospital issued by the department of public health and environment of this state and includes hospitals operated by the federal government in Colorado.

(9) "Life-sustaining procedure" means any medical procedure or intervention that, if administered to a qualified patient, would serve only to prolong the dying process. "Life-sustaining procedure" shall not include any medical procedure or intervention for nourishment of the qualified patient or considered necessary by the attending physician to provide comfort or alleviate pain. However, artificial nourishment and hydration may be withdrawn or withheld pursuant to section 15-18-104(3).

(10) "Persistent Vegetative State" is defined by reference to the criteria and definitions employed by prevailing community medical standards of practice.

(11) "Physician" means a person duly licensed under the provisions of article 36 of title 12, C.R.S.

(12) "Qualified patient" means a patient who has executed a declaration in accordance with this article and who has been certified by the attending physician and one other physician to be in a terminal condition or persistent vegetative state.

(13) "Terminal condition" means an incurable or irreversible condition for which the administration of life sustaining procedures will serve only to postpone the moment of death.

15-18-104 Declaration as to medical treatment

(1) Any adult with decisional capacity may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he or she is in a terminal condition, is in a persistent vegetative state, or otherwise lacking decisional capacity to accept or reject medical or surgical treatment. It shall be the responsibility of the declarant or someone acting for the declarant to provide the declaration to the attending physician for entry in the declarant's medical record.

(2) In the case of a declaration of a qualified patient known to the attending physician to be pregnant, a medical evaluation shall be made as to whether the fetus is viable and could with a reasonable degree of medical certainty develop to live birth with continued application of life-sustaining procedures. If such is the case, the declaration shall be given no force or effect.

(3)(a) The declaration may contain separate written statements as to the declarant's preference concerning life sustaining procedures and artificial nourishment and hydration if the declarant is in a terminal condition or is in a persistent vegetative state.

(b) The declarant may provide in such declaration one of the following actions:

(I) That artificial nourishment and hydration not be continued; or

(II) That artificial nourishment and hydration be continued for a specified period of time ;
or;

(III) That artificial nourishment and hydration be continued.

(c) A declaration executed prior to March 29, 1989 may be amended by a codicil to include the provisions of this subsection (3).

(4) Notwithstanding the provisions of subsection (3) of this section and section 15-18-103(8), when an attending physician has determined that pain results from a discontinuance of artificial nourishment and hydration, the physician may order that such nourishment and hydration be continued to the extent necessary to provide comfort and alleviate such pain.

(5) A declaration executed before two witnesses by any adult with decisional capacity shall be legally effective for the purposes of this article .

(6) Any declaration made pursuant to this article may also have a document with a written statement as provided in section 12-34-105(1)(c) C.R.S. , or a written 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 "Uniform Anatomical Gift Act", article 34 of title 12, C.R.S.

(7) Any declaration made pursuant to this article also may be combined with a document or written statement designating an Agent under Medical Power of Attorney. Such a document shall be executed in accordance with the provisions of the 15-14-503 et seq, C.R.S. Such a document shall be executed in accordance with the provisions of the "Colorado Patient Autonomy Act"

(8) Any declaration made pursuant to this article may also contain a written statement designating individuals to whom the declarant may grant the authority to speak with the attending physician or any other treating physician or other medical professional of the declarant prior to final determination as to the withholding or withdrawal of life sustaining procedures, including artificial nourishment and hydration. The listing of such individuals in the document shall be considered to be consistent with the privacy requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) regarding waiver of confidentiality. This section shall contain language sufficient to constitute a HIPAA release so that medical professionals may discuss medical information with the persons designated by the declarant. The listing of names in such a document shall not constitute appointment of additional Agents under a Medical Power of Attorney.

(9) Any declaration made pursuant to this article also may contain a written statement providing individual medical directives from the declarant to the attending physician or any other treating medical personnel .

15-18-105 Inability of declarant to sign

(1) In the event that the declarant is physically unable to sign the declaration, it may be signed by some other person in the declarant's presence and at his direction. Such other person shall not be:

(a) The attending physician or any other physician; or

(b) An employee of the attending physician or health care facility in which the declarant is a patient; or

(c) A person who has a claim against any portion of the estate of the declarant at his death at the time the declaration is signed; or

(d) A person who knows or believes that he is entitled to any portion of the estate of the declarant upon his death either as a beneficiary of a will in existence at the time the declaration is signed or as an heir at law.

15-18-106 Witnesses

- (1) The declaration shall be signed by the declarant in the presence of two witnesses. Said witnesses shall not include any person specified in section 15-18-105.
- (2) If the declarant is a patient or resident of a health care facility, the witnesses shall not be patients of that facility.
- (3) The declaration may, but need not, be notarized. The absence of notarization shall have no impact on the validity of the declaration.

15-18-107 Withdrawal - withholding of life-sustaining procedures.

In the event that an attending physician is presented with an unrevoked declaration executed by a declarant whom the physician believes has a terminal condition or is in a persistent vegetative state, the attending physician shall cause the declarant to be examined by one other physician. If both physicians find that the declarant has a terminal condition or is in a persistent vegetative state, they shall certify such fact in writing and enter such in the qualified patient's medical record of the hospital in which the withholding or withdrawal of life -sustaining procedures or artificial nourishment and hydration may occur, together with a copy of the declaration. If the attending physician has actual knowledge of the whereabouts of the qualified patient's 1) agent under a medical power of attorney or 2) without regard to order, the patient's spouse, a person designated under the Designated Beneficiary Agreement Act, any of his or her adult children, a parent, sibling or any other person designated in writing by the principal, the attending physician shall immediately make a reasonable effort to notify at least one of said persons that a certificate of terminal condition has been signed. If no action to challenge the validity of a declaration has been filed within forty-eight consecutive hours after the certification is made by the physicians, the attending physician shall then withdraw or withhold all life-sustaining and/or artificial nourishment and hydration pursuant to the terms of the declaration.

15-18-108 Determination of validity

- (1) Any person who is the parent, adult child, spouse, designated beneficiary under the Designated Beneficiary Agreement Act, or attorney -in-fact under a durable power of attorney of the qualified patient may challenge the validity of a declaration in the appropriate court of the county in which the qualified patient is located. Upon the filing of a petition to challenge the validity of a declaration and notification to the attending physician, a temporary restraining order shall be issued until a final determination as to validity is made.
- (2) (a) In proceedings pursuant to this section, the court shall appoint a guardian ad litem for the qualified patient, and the guardian ad litem shall take such action as the

guardian ad litem deems necessary and prudent in the best interest of the qualified patient and shall present to the court a report of his actions, findings, conclusions, and recommendations.

(b) (I) Unless the court for good cause shown provides for a different method or time of notice, the petitioner, at least five days prior to the hearing, shall cause notice of the time and place of hearing to be given as follows:

(A) To the qualified patient's guardian or conservator, if any, and the court-appointed guardian ad litem; and

(B) To the qualified patient's spouse, or beneficiary under the Designated Beneficiary Agreement Act, if the identity and whereabouts of such person is known to the petitioner, or otherwise to an adult child or parent of the qualified patient.

(II) Notice as required in this paragraph (b) shall be made in accordance with the Colorado Rules of Civil Procedure.

(c) The court may require such evidence, including independent medical evidence, as it deems necessary.

(3) Upon a determination of the validity of the declaration, the court shall enter any appropriate order.

(4) Any declaration executed in compliance with the requirements of Colorado law in effect at the time the declaration was made shall continue to be an effective declaration after the effective date of this Act.

(5) Any declaration executed in compliance with the laws of the state in which the declaration was executed in effect at the time the declaration was made shall be considered effective for use within the State of Colorado to the extent that such declaration does not violate any laws of the State of Colorado.

15-18-109 Revocation of declaration

A declaration may be revoked by the declarant orally, in writing, or by burning, tearing, cancelling, obliterating, or destroying said declaration.

15-18-110 Liability

(1) With respect to any declaration which appears on its face to have been executed in accordance with the requirements of this article:

(a) Any physician may act in compliance with such declaration in the absence of actual

notice of revocation, fraud, misrepresentation, or improper execution;

(b) No physician signing a certificate of terminal condition or withholding or withdrawing life-sustaining procedures in compliance with a declaration shall be subject to civil liability, criminal penalty, or licensing sanctions therefor;

(c) No hospital or person acting under the direction of a physician and participating in the withholding or withdrawal of life-sustaining procedures in compliance with a declaration shall be subject to civil liability, criminal penalty, or licensing sanctions therefor.

15-18-111 Determination of suicide or homicide - effect of declaration on insurance

The withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to this article shall not, for any purpose, constitute a suicide or a homicide. The existence of a declaration shall not affect, impair, or modify any contract of life insurance or annuity or be the basis for any delay in issuing or refusing to issue an annuity or policy of life insurance or any increase of the premium therefor. No insurer or provider of health care shall require any person to execute a declaration as a condition of being insured for or receiving health care services; nor shall the failure to execute a declaration be the basis for any increased or additional premium for a contract or policy for medical or health insurance.

15-18-112 Application of article

(1) Nothing in this article shall be construed as altering or amending the standards of the practice of medicine or establishing any presumption, absent a valid declaration, nor as condoning, authorizing, or approving euthanasia or mercy killing, nor as permitting any affirmative or deliberate act or omission to end life, except to permit natural death as provided in this article. Nothing in this Act shall require the provision or continuation of medical treatment contrary to the standards of the practice of medicine.

(2) Diagnosis of persistent vegetative state is preformed by qualified medical professionals according to standards of the practice of medicine. Nothing in this Act, including the definition of persistent vegetative state in 15-18-103 shall be interpreted to define persistent vegetative state in contradiction of standards of the practice of medicine.

(3) In the event of any conflict between the provisions of this article, or a declaration executed under this article, and the provisions of section 15-14-501, the provisions of this article and the declaration shall prevail.

(4) Notwithstanding the provisions of paragraph (3) of this section, the declarant may include within the declaration and/or within any power of attorney executed by the

declarant, a written statement to the effect that the Agent under power of attorney may override the provisions of the declaration .

15-18-113 Penalties

- (1) Any person who willfully conceals, defaces, damages, or destroys a declaration of another, without the knowledge and consent of the declarant, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (2) Any person who falsifies or forges a declaration of another commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.
- (3) Any person who falsifies or forges a declaration of another, and the terms of the declaration are carried out, resulting in the death of the purported declarant, commits a class 2 felony and shall be punished as provided in section 18-1.3-401, C.R.S.
- (4) Any person who willfully withholds information concerning the revocation of the declaration of another commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (5) An attending physician who refuses to comply with the terms of a declaration valid on its face shall transfer the care of the declarant to another physician who is willing to comply with the declaration. Refusal of an attending physician to comply with a declaration and failure to transfer the care of the declarant to another physician shall constitute unprofessional conduct as defined in section 12-36-117, C.R.S.