

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 16, 2009
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB09-1260 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 6, strike lines 2 and 3 and substitute the
2 following:

3 (h) A BENEFICIARY DESIGNATION FOR A DEPOSIT OR ACCOUNT,
4 INCLUDING BUT NOT LIMITED TO DEMAND, SAVINGS, AND TIME DEPOSIT
5 ACCOUNTS;

6 (i) A DECLARATION AS TO MEDICAL TREATMENT EXECUTED
7 PURSUANT TO ARTICLE 18 OF THIS TITLE;

8 (j) A DECLARATION AS TO DISPOSITION OF LAST REMAINS
9 EXECUTED PURSUANT TO ARTICLE 19 OF THIS TITLE; OR".

10 Reletter succeeding paragraph accordingly.

11 Page 6, line 18, after the period, add "FOR PURPOSES OF THIS ARTICLE,
12 "SUBSTANTIAL COMPLIANCE" SHALL MEAN THAT THE AGREEMENT
13 INCLUDES THE DISCLAIMER CONTAINED IN SECTION 15-22-106, THE
14 INSTRUCTIONS AND HEADINGS ABOUT HOW TO GRANT OR WITHHOLD A
15 RIGHT OR PROTECTION, THE STATEMENTS ABOUT THE EFFECTIVE DATE OF
16 THE AGREEMENT AND HOW TO RECORD THE AGREEMENT, THE SIGNATURES
17 FOR THE TWO PARTIES, AND THE ACKNOWLEDGMENTS FOR THE NOTARY
18 PUBLIC.";

1 strike line 23 and substitute "SECTION 15-22-106 (1) AND THE FORM IS IN
2 COMPLIANCE WITH THE REQUIREMENTS OF SECTION 30-10-406 (3),
3 C.R.S.;"

4 Page 7, line 1, strike "FILED" and substitute "RECORDED";

5 line 9, strike "FILED" and substitute "RECORDED";

6 strike lines 23 through 25 and substitute the following:

7 "(c) FOR PURPOSES OF THE FOLLOWING BENEFITS, THE RIGHT TO BE
8 DESIGNATED AS A BENEFICIARY AND RECOGNIZED AS A DEPENDENT SO
9 LONG AS NOTICE IS GIVEN IN ACCORDANCE WITH ANY APPLICABLE
10 STATUTE, RULE, CONTRACT, POLICY, PROCEDURE, OR OTHER GOVERNMENT
11 DOCUMENT OF THE FOLLOWING BENEFITS:"

12 Page 8, strike line 10 and substitute the following:

13 "BENEFICIARY IN A HOSPITAL, NURSING HOME, HOSPICE, OR SIMILAR
14 HEALTH CARE FACILITY IN WHICH A PARTY TO A DESIGNATED BENEFICIARY
15 RESIDES OR IS RECEIVING CARE, INCLUDING THE RIGHT TO INITIATE A
16 FORMAL COMPLAINT ALLEGING A VIOLATION OF THE RIGHTS OF NURSING
17 HOME PATIENTS SPECIFIED IN SECTION 25-1-120, C.R.S.;"

18 line 13, after "BENEFICIARY", insert "AS IF SELECTED".

19 Page 9, line 18, strike "OTHER SUPERSEDING LEGAL DOCUMENTS." and
20 substitute "SUPERSEDING LEGAL DOCUMENTS OR OTHER CONTRACTS OR
21 INSTRUMENTS.";

22 after line 26, insert the following:

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"DISCLAIMER

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**WARNING: WHILE THIS DOCUMENT MAY INDICATE YOUR
25 WISHES, CERTAIN ADDITIONAL DOCUMENTS MAY BE NEEDED TO
26 PROTECT THESE RIGHTS.**

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**THIS DESIGNATED BENEFICIARY AGREEMENT IS OPERATIVE IN
28 THE ABSENCE OF OTHER ESTATE PLANNING DOCUMENTS AND**

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**WILL BE SUPERSEDED AND SET ASIDE TO THE EXTENT IT
CONFLICTS WITH VALID INSTRUMENTS SUCH AS A WILL, POWER
OF ATTORNEY, OR BENEFICIARY DESIGNATION ON AN INSURANCE
POLICY OR PENSION PLAN. THIS DESIGNATED BENEFICIARY
AGREEMENT IS SUPERSEDED BY SUCH OTHER DOCUMENTS AND
DOES NOT CAUSE ANY CHANGES TO BE MADE TO THOSE
DOCUMENTS OR DESIGNATIONS. THE PARTIES UNDERSTAND THAT
EXECUTING AND SIGNING THIS AGREEMENT IS NOT SUFFICIENT TO
DESIGNATE THE OTHER PARTY FOR PURPOSES OF ANY INSURANCE
POLICY, PENSION PLAN, PAYABLE UPON DEATH DESIGNATION OR
MANNER IN WHICH TITLE TO PROPERTY IS HELD AND THAT
ADDITIONAL ACTION WILL BE REQUIRED TO MAKE OR CHANGE
SUCH DESIGNATIONS. THE PARTIES UNDERSTAND THAT THIS
DESIGNATED BENEFICIARY AGREEMENT MAY BE ONE COMPONENT
OF ESTATE PLANNING INSTRUCTIONS AND THAT THEY ARE
ENCOURAGED TO CONSULT AN ATTORNEY TO ENSURE THEIR
ESTATE PLANNING WISHES ARE ACCOMPLISHED."**

18 Page 11, line 17, strike "HOSPITAL OR IN A" and substitute "HOSPITAL,
19 NURSING HOME, HOSPICE, OR SIMILAR HEALTH CARE FACILITY IN WHICH A
20 PARTY TO A DESIGNATED BENEFICIARY RESIDES OR IS RECEIVING CARE;"

21 strike line 18 and substitute the following:

22 " ____ THE RIGHT TO INITIATE A FORMAL ____
23 COMPLAINT REGARDING ALLEGED
24 VIOLATIONS OF MY RIGHTS AS A NURSING
25 HOME PATIENT AS PROVIDED IN SECTION
26 25-1-120, COLORADO REVISED STATUTES;"

27 Page 13, line 1, strike "UPON FILING AND REGISTRATION WITH"
28 and substitute "WHEN RECEIVED FOR RECORDING BY";

29 line 6, strike "FILING" and substitute "RECORDING";

30 line 9, strike "FILED" and substitute "RECORDED";

31 after line 22, insert the following:

32 "(2) THE INSTRUCTIONS TO EACH PARTY REGARDING HOW TO
33 GRANT OR WITHHOLD A RIGHT OR PROTECTION BY INITIALING AND THE

1 WORDS "PARTY A" AND "PARTY B" SHALL APPEAR AT THE TOP OF EACH
2 PAGE OF THE STATUTORY FORM ABOVE THE COLUMNS FOR THE INITIALS OF
3 THE DESIGNATED BENEFICIARIES."

4 Renumber succeeding subsections accordingly.

5 Page 14, line 5, strike "**Filing**" and substitute "**Recording**";

6 line 7, strike "FILED" and substitute "RECORDED";

7 strike lines 10 and 11 and substitute the following:

8 "DATE AND TIME AS RECEIVED FOR RECORDING BY THE COUNTY CLERK
9 AND RECORDER. THE COUNTY";

10 line 12, strike "FILING FEE OF THIRTY DOLLARS, AS" and substitute
11 "RECORDING FEE";

12 line 13, strike "PROVIDED IN SECTION 30-1-103, C.R.S.";

13 line 14, strike "COUNTY AND" and substitute "COUNTY, A FEE";

14 line 16, strike "FILING WITH THE COUNTY." and substitute "RECORDING
15 WITH THE COUNTY, AND A FEE FOR TAKING ACKNOWLEDGMENTS, IF
16 APPLICABLE, AS PROVIDED IN SECTION 30-1-103, C.R.S.";

17 strike lines 19 through 25 and substitute the following:

18 "30-1-119, C.R.S. THE COUNTY CLERK AND RECORDER MAY REQUIRE THE
19 PERSON RECORDING THE DESIGNATED BENEFICIARY AGREEMENT TO
20 INDICATE THE MAILING ADDRESS TO WHICH THE ORIGINAL DOCUMENT
21 SHOULD BE RETURNED AFTER RECORDING.

22 (2) THE CLERK AND RECORDER OF THE COUNTY IS ENCOURAGED TO
23 MAKE AVAILABLE COPIES OF THE STATUTORY FORMS AS PRESCRIBED IN
24 SECTIONS 15-22-106 AND 15-22-111.

25 (3) THE CLERK AND RECORDER OF THE COUNTY SHALL HAVE THE
26 FOLLOWING DUTIES:

27 (a) TO INDICATE ON THE DESIGNATED BENEFICIARY AGREEMENT";

- 1 line 27, strike "FILED" and substitute "RECORDED".
- 2 Page 15, line 1, strike "(c)" and substitute "(b)" and strike "FILED" and
3 substitute "RECORDED";
- 4 line 3, strike "FILING;" and substitute "RECORDING;";
- 5 line 4, strike "(d)" and substitute "(c)";
- 6 line 7, strike "(3)" and substitute "(4)";
- 7 line 26, strike "FILED" and substitute "RECORDED".
- 8 Page 16, line 1, strike "FILING" and substitute "RECORDING";
- 9 line 3, strike "FILED." and substitute "RECORDED.";
- 10 strike lines 4 and 5 and substitute the following:
- 11 "THE REVOCATION SHALL BE EFFECTIVE ON THE DATE AND TIME THE
12 REVOCATION IS RECEIVED FOR RECORDING BY THE COUNTY CLERK AND
13 RECORDER. THE CLERK AND RECORDER SHALL ISSUE A";
- 14 line 6, strike "FILING" and substitute "RECORDING";
- 15 strike lines 9 and 10 and substitute the following:
- 16 "(2) THE COUNTY CLERK AND RECORDER SHALL ASSESS FEES, AS
17 PROVIDED IN SECTION 30-1-103, C.R.S., FOR RECORDING A";
- 18 line 12, strike "AGREEMENT." and substitute "AGREEMENT, PLUS AN
19 ADDITIONAL AMOUNT TO COVER THE COST OF FIRST CLASS POSTAGE FOR
20 MAILING A CERTIFIED COPY OF THE REVOKED DESIGNATED BENEFICIARY
21 AGREEMENT TO THE OTHER PARTY.".
- 22 Page 17, line 3, strike "FILED" and substitute "RECORDED";
- 23 line 4, after the period, insert "THE INDEXING FILE NUMBER OF THE
24 DESIGNATED BENEFICIARY AGREEMENT IS _____.";
- 25 strike line 6 and substitute the following:

1 "TIME THAT THIS REVOCATION IS RECEIVED FOR RECORDING BY THE CLERK
2 AND RECORDER";

3 line 20, strike "FILED" and substitute "RECORDED".

4 Page 25, line 23, strike "FILED" and substitute "RECORDED".

5 Page 33, strike lines 8 through 17 and substitute the following:

6 "SECTION 17. 30-10-406, Colorado Revised Statutes, is
7 amended BY THE ADDITION OF A NEW SUBSECTION to read:

8 **30-10-406. County clerk and recorder - duties - filing**
9 **requirements.** (4) THE COUNTY CLERK AND RECORDER SHALL PERFORM
10 THE DUTIES PRESCRIBED IN ARTICLE 22 OF TITLE 15, C.R.S., WITH RESPECT
11 TO THE RECORDING AND PROCESSING OF DESIGNATED BENEFICIARY
12 AGREEMENTS AND REVOCATIONS OF SUCH AGREEMENTS.

13 **SECTION 18.** 25-1-120 (1) (1) and (3) (a), Colorado Revised
14 Statutes, are amended to read:

15 **25-1-120. Nursing facilities - rights of patients.** (1) The
16 department shall require all skilled nursing facilities and intermediate care
17 facilities to adopt and make public a statement of the rights and
18 responsibilities of the patients who are receiving treatment in such
19 facilities and to treat their patients in accordance with the provisions of
20 said statement. The statement shall ensure each patient the following:

21 (1) The right to devolution of his OR HER rights and responsibilities
22 upon a sponsor, ~~or~~ guardian, OR PERSON EXERCISING RIGHTS CONTAINED
23 IN A DESIGNATED BENEFICIARY AGREEMENT EXECUTED PURSUANT TO
24 ARTICLE 22 OF TITLE 15, C.R.S., who shall see that he OR SHE is provided
25 with adequate, appropriate, and respectful medical treatment and care and
26 all rights which he OR SHE is capable of exercising should he OR SHE be
27 determined to be incompetent pursuant to law and not be restored to legal
28 capacity;

29 (3) Each skilled nursing facility or intermediate care facility shall
30 prepare a written plan and provide appropriate facilities to ensure that the
31 rights guaranteed by subsection (1) of this section are enforced by a
32 grievance procedure which contains the following procedures and rights:

1 (a) A resident of any facility, the residents' advisory council, or the
2 sibling, child, spouse, ~~or~~ parent, OR PERSON EXERCISING RIGHTS
3 CONTAINED IN A DESIGNATED BENEFICIARY AGREEMENT EXECUTED
4 PURSUANT TO ARTICLE 22 OF TITLE 15, C.R.S., of any resident may
5 formally complain in the manner described in this subsection (3) about
6 any conditions, treatment, or violations of his OR HER rights by the facility
7 or its staff or about any treatment, conditions, or violations of the rights
8 of any other resident, regardless of the consent of the victim of the alleged
9 improper treatment, condition, or violation of rights by the facility or its
10 staff."

11 Renumber succeeding sections accordingly.

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