

**ARTICLE 18. COLORADO MEDICAL TREATMENT DECISION ACT
C.R.S. 15-18-102 (2014)**

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 the dying process through the use of medical or surgical procedures;
- (c) The use of such medical or surgical procedures increasingly involves patients who have a terminal condition or are in a persistent vegetative state, and lack 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 has a terminal condition or is in a persistent vegetative state, and lacks 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 intent of the general assembly 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 intent of the general assembly that nothing in this article shall require any adult 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) "Advanced practice nurse" means a nurse who is included in the advanced practice registry pursuant to [section 12-38-111.5, C.R.S.](#)
- (3) "Artificial nutrition and hydration" means:
 - (a) Nutrition or hydration supplied through a tube inserted into the stomach or intestines; or
 - (b) Nutrients or fluids injected intravenously into the bloodstream.
- (4) "Attending physician" means the physician, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
- (5) "Court" means the district court of the county in which a declarant having a terminal condition or in a persistent vegetative state is located at the time of commencement of a proceeding pursuant to this article or, if in the city and county of Denver, the probate court.
- (6) "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.
- (7) "Declarant" means an adult possessing decisional capacity who executes a declaration.
- (8) "Declaration" means a written document voluntarily executed by a declarant in accordance with the requirements of [section 15-18-104](#).
- (9) "Hospital" means an institution holding a license or certificate of compliance as a hospital issued by the department of public health and environment and includes hospitals operated by the federal government in Colorado.
- (10) "Life-sustaining procedure" means any medical procedure or intervention that, if administered to a qualified patient, would serve only to prolong the dying process, and shall not include any medical procedure or intervention for nourishment of the qualified patient or considered necessary by the attending physician or advanced practice nurse to provide comfort or alleviate pain.
- (11) "Persistent vegetative state" is defined by reference to the criteria and definitions employed by prevailing community medical standards of practice.
- (12) "Physician" means a person duly licensed under the provisions of article 36 of title 12, C.R.S.
- (13) "Qualified patient" means a patient who has executed a declaration in accordance with this article and who has been certified by his or her attending physician and one other physician to have a terminal condition or be in a persistent vegetative state.
- (14) "Terminal condition" means an incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to prolong the dying process.

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 has a terminal condition or is in a persistent vegetative state, and lacks 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 or advanced practice nurse 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. If the fetus is viable, the declaration shall be given no force or effect until the patient is no longer pregnant.

(3)

(a) A declaration may contain separate written statements regarding the declarant's preference concerning life-sustaining procedures and artificial nutrition and hydration if the declarant has a terminal condition or is in a persistent vegetative state.

(b) The declarant may provide in his or her declaration one of the following actions

(I) That artificial nutrition and hydration not be continued;

(II) That artificial nutrition and hydration be continued for a specified period; or

(III) That artificial nutrition and hydration be continued.

(4) Notwithstanding the provisions of subsection (3) of this section and [section 15-18-103 \(10\)](#), when an attending physician or advanced practice nurse has determined that pain results from a discontinuance of artificial nutrition and hydration, the physician or advanced practice nurse may order that artificial nutrition and hydration be continued to the extent necessary to provide comfort and alleviate 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) A declaration executed pursuant to this article may include a document with a written statement as provided in [section 12-34-105 \(a\), 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 "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S.

(7) A declaration executed pursuant to this article may be combined with a medical power of attorney to create a single document. Such a document shall comply with all requirements of this title and in accordance with the provisions of the "Colorado Patient Autonomy Act", [sections 15-14-503 to 15-14-509](#).

(8) A declaration executed pursuant to this article may include a written statement in which

the declarant designates individuals with whom the declarant's attending physician, any other treating physician, or another medical professional may speak concerning the declarant's medical condition prior to a final determination as to the withholding or withdrawal of life-sustaining procedures, including artificial nutrition and hydration. The designation 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", 42 U.S.C. sec. 1320d to 1320d-8, as amended, referred to in this section as "HIPAA", regarding waiver of confidentiality.

(9) A declaration executed pursuant to this article may include 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 the declarant's direction. The other person shall not be:

- (a) The attending physician or any other physician;
- (b) An employee of the attending physician or health care facility in which the declarant is a patient;
- (c) A person who has a claim against any portion of the estate of the declarant at his or her death at the time the declaration is signed; or
- (d) A person who knows or believes that he or she is entitled to any portion of the estate of the declarant upon the declarant's 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) Except as otherwise provided in [section 15-18-105](#), a declaration shall be signed by the declarant in the presence of two witnesses. The witnesses shall not include any person specified in [section 15-18-105](#).

(2) A declaration may be notarized. The absence of notarization shall have no impact on the validity of a 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, and lacks decisional capacity to accept or reject medical or

surgical treatment, the attending physician shall order 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, and lacks decisional capacity to accept or reject medical or surgical treatment, 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 nutrition and hydration may occur, together with a copy of the declaration. If the attending physician has actual knowledge of the whereabouts of either the qualified patient's agent under a medical power of attorney or, without regard to order, the patient's spouse, a person designated under the "Colorado Designated Beneficiary Agreement Act", as described in article 22 of this title, any of his or her adult children, a parent, sibling, or any other person designated in writing by the qualified patient, the attending physician shall immediately make a reasonable effort to notify at least one of said persons that a certificate has been signed. If no action to challenge the validity of a declaration has been filed within forty-eight hours after the certification is made by the physicians, the attending physician shall then withdraw or withhold all life-sustaining procedures or artificial nutrition 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 "Colorado Designated Beneficiary Agreement Act", article 22 of this title, 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 actions as he or she deems necessary and prudent in the best interests of the qualified patient and shall present to the court a report of his or her 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 seven 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 "Colorado Designated Beneficiary Agreement Act", article 22 of this title, 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 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) If the court determines that any proceedings pursuant to this section or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and costs, including reasonable attorney fees, incurred by the affected parties in responding to the proceedings or pleadings, against a party that brought or defended the proceedings or filed the pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction, or surcharge provided by law.

(5) 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 August 11, 2010.

(6) Any declaration executed in compliance with the laws of the state in which the declaration was executed 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 that appears on its face to have been executed in accordance with the requirements of this article:

(a) Any physician or advanced practice nurse may act in compliance with such declaration in the absence of actual notice of revocation, fraud, misrepresentation, or improper execution;

(b) A physician who signs a certificate withholding or withdrawing life-sustaining procedures in compliance with a declaration shall not be subject to civil liability, criminal penalty, or licensing sanctions therefor;

(c) A 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 not be subject to civil liability, criminal penalty, or licensing sanctions therefor; and

(d) An advanced practice nurse who withholds or withdraws life-sustaining procedures in compliance with a declaration shall not 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 nursing 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 article shall require the provision or continuation of medical treatment contrary to the standards of the practice of medicine.

(2) A diagnosis of persistent vegetative state shall be performed by a qualified medical professional according to standards of the practice of medicine. Nothing in this article 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 subsection (3) of this section, a declarant may include within the declaration 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 - refusal - transfer

(1) A person who willfully conceals, defaces, damages, or destroys a declaration of another person, 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) A person who falsifies or forges a declaration of another person commits a class 5 felony and shall be punished as provided in [section 18-1.3-401, C.R.S.](#)

(3) If a person falsifies or forges a declaration of another person and the terms of the declaration are carried out, resulting in the death of the purported declarant, the person commits a class 2 felony and shall be punished as provided in [section 18-1.3-401, C.R.S.](#)

(4) A person who willfully withholds information concerning the revocation of a declaration of another person commits a class 1 misdemeanor and shall be punished as provided in [section 18-1.3-501, C.R.S.](#)

(5) An attending physician or advanced practice nurse who refuses to comply with the terms of a declaration valid on its face shall transfer the care of the declarant to another physician or advanced practice nurse who is willing to comply with the declaration. Refusal of an attending physician or advanced practice nurse to comply with a declaration and failure to transfer the care of the declarant to another physician or advanced practice nurse shall constitute unprofessional conduct as defined in [section 12-36-117, C.R.S.](#), or grounds for discipline pursuant to [section 12-38-117, C.R.S.](#)