

TITLE 15  
PROBATE, TRUSTS, AND FIDUCIARIES

ARTICLE 18  
COLORADO MEDICAL TREATMENT DECISION ACT

**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 a competent adult to accept or reject medical or surgical treatment affecting his person;

(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 unconscious or otherwise incompetent to accept or reject medical or surgical treatment affecting their persons;

(d) The traditional right to accept or reject medical or surgical treatment should be available to an adult while he is competent, notwithstanding the fact that such medical or surgical treatment may be offered or applied when he is suffering from a terminal condition and is either unconscious or otherwise incompetent to decide whether such medical or surgical treatment should be accepted or rejected;

(e) This article affirms the traditional right to accept or reject medical or surgical treatment affecting one's person, and creates a procedure by which a competent adult may make such decisions in advance, before he becomes unconscious or otherwise incompetent to do so;

(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.
- (1.5) "Artificial nourishment" means nourishment supplied through a tube inserted into the stomach or intestines or nutrients injected intravenously into the bloodstream.
- (2) "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.
- (3) "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.
- (4) "Declarant" means a mentally competent adult who executes a declaration.
- (5) "Declaration" means a written document voluntarily executed by a declarant in accordance with the requirements of section 15-18-104.
- (6) "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.
- (7) "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 may be withdrawn or withheld pursuant to section 15-18-104 (2.5).
- (8) "Physician" means a person duly licensed under the provisions of article 36 of title 12, C.R.S.
- (9) "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.
- (10) "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 competent adult may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he is in a terminal condition and either unconscious or otherwise incompetent to decide whether any medical procedure or intervention should be accepted or rejected. It shall be the responsibility of the declarant or someone acting for him to submit 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.

(2.5) (a) The declarant may provide in his declaration that, in the event that the only procedure being provided is artificial nourishment, one of the following actions shall be taken:

(I) That artificial nourishment not be continued when it is the only procedure being provided; or

(II) That artificial nourishment be continued for a specified period of time when it is the only procedure being provided; or

(III) That artificial nourishment be continued when it is the only procedure being provided.

(b) A declaration executed prior to March 29, 1989, may be amended by a codicil to include the provisions of this subsection (2.5).

(2.6) Notwithstanding the provisions of subsection (2.5) of this section and section 15-18-103 (7), when an attending physician has determined that pain results from a discontinuance of artificial nourishment, he may order that such nourishment be provided but only to the extent necessary to provide comfort and alleviate such pain.

(3) A declaration executed before two witnesses by any competent adult shall be legally effective for the purposes of this article and may, but need not, be in the following form:

#### **DECLARATION AS TO MEDICAL OR SURGICAL TREATMENT**

I, (name of declarant), being of sound mind and at least eighteen years of age, direct that my life shall not be artificially prolonged under the circumstances set forth below and hereby declare that:

1. If at any time my attending physician and one other qualified physician certify in writing that:

a. I have an injury, disease, or illness which is not curable or reversible and which, in their judgment, is a terminal condition, and

b. For a period of seven consecutive days or more, I have been unconscious, comatose, or otherwise incompetent so as to be unable to make or communicate responsible decisions concerning my person, then

I direct that, in accordance with Colorado law, life-sustaining procedures shall be withdrawn and withheld pursuant to the terms of this declaration, it being understood that life-sustaining procedures shall not include any medical procedure or intervention for nourishment considered necessary by the attending physician to provide comfort or alleviate pain. However, I may specifically direct, in accordance with Colorado law, that artificial nourishment be withdrawn or withheld pursuant to the terms of this declaration.

2. In the event that the only procedure I am being provided is artificial nourishment, I direct that one of the following actions be taken:

(initials of declarant) a. Artificial nourishment shall not be continued when it is the only procedure being provided; or

(initials of declarant) b. Artificial nourishment shall be continued for \_\_\_\_\_ days when it is the only procedure being provided; or

(initials of declarant) c. Artificial nourishment shall be continued when it is the only procedure being provided.

3. I execute this declaration, as my free and voluntary act, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_  
Declarant

The foregoing instrument was signed and declared by \_\_\_\_\_ to be his declaration, in the presence of us, who, in his presence, in the presence of each other, and at his request, have signed our names below as witnesses, and we declare that, at the time of the execution of this instrument, the declarant, according to our best knowledge and belief, was of sound mind and under no constraint or undue influence.

Dated at \_\_\_\_\_, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name and Address

\_\_\_\_\_  
Name and Address  
STATE OF COLORADO            )  
  ) ss.

County of \_\_\_\_\_)

SUBSCRIBED and sworn to before me by \_\_\_\_\_, the declarant, and \_\_\_\_\_ and \_\_\_\_\_, witnesses, as the voluntary act and deed of the declarant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public

(4) Any declaration made pursuant to subsection (3) of this section 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. 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: \_\_\_\_\_

**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.

**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, 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, 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 may occur, together with a copy of the declaration. If the attending physician has actual knowledge of the whereabouts of the qualified patient's spouse, any of his adult children, a parent, or attorney-in-fact under a durable power of attorney, the attending physician shall immediately make a reasonable effort to notify at least one of said persons, in the order named, 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 procedures pursuant to the terms of the declaration.

**15-18-108. Determination of validity.**

(1) Any person who is the parent, adult child, spouse, 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 he 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, if the identity and whereabouts of the spouse are 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.

#### **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.

(2) 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.

### **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.