

TITLE 15
PROBATE, TRUSTS, AND FIDUCIARIES

ARTICLE 18.5
PROXY DECISION-MAKERS FOR MEDICAL TREATMENT

15-18.5-101. Legislative declaration - construction of statute.

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

(a) All adult persons have a fundamental right to make their own medical treatment decisions, including decisions regarding medical treatment and artificial nourishment and hydration;

(b) The lack of decisional capacity to provide informed consent to or refusal of medical treatment should not preclude such decisions from being made on behalf of a person who lacks such decisional capacity and who has no known advance medical directive, or whose wishes are not otherwise known; and

(c) The enactment of legislation to authorize proxy decision-makers to make medical treatment decisions on behalf of persons lacking the decisional capacity to provide informed consent to or refusal of medical treatment is appropriate.

(2) The general assembly does not intend to encourage or discourage any particular medical treatment or to interfere with or affect any method of religious or spiritual healing otherwise permitted by law.

(3) Nothing in this article shall be construed as condoning, authorizing, or approving euthanasia or mercy killing. In addition, the general assembly does not intend that this article be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by this article.

15-18.5-102. Definitions applicable to medical durable power of attorney - applicability.

(1) The definitions set forth in section 15-14-505 shall apply to the provisions of this article.

(2) The provisions of sections 15-14-506 to 15-14-509 shall apply to this article. In addition, proxy decision-makers, health care providers, and health care facilities shall be subject to the provisions of this article.

15-18.5-103. Proxy decision-makers for medical treatment authorized.

(1) A health care provider or health care facility may rely, in good faith, upon the medical treatment decision of a proxy decision-maker selected in accordance with subsection (4) of this section if an adult patient's attending physician determines that such patient lacks the decisional capacity to provide informed consent to or refusal of medical treatment and no guardian with medical decision-making authority, agent appointed in a medical durable power of attorney, or other known person has the legal authority to provide such consent or refusal on the patient's behalf.

(2) The determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment may be made by a court or the attending physician, and such determination shall be documented in such patient's medical record. The attending physician shall make specific findings regarding the cause, nature, and projected duration of the patient's lack of decisional capacity, which findings shall be included in the patient's medical record.

(3) Upon a determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, or such physician's designee, shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity. In addition, the attending physician, or such physician's designee, shall make reasonable efforts to locate as many interested persons as defined in this subsection (3) as practicable and the attending physician may rely on such individuals to notify other family members or interested persons. For the purposes of this section, "interested persons" means the patient's spouse, either parent of the patient, any adult child, sibling, or grandchild of the patient, or any close friend of the patient. Upon locating an interested person, the attending physician, or such physician's designee, shall inform such person of the patient's lack of decisional capacity and that a proxy decision-maker should be selected for the patient.

(4) (a) It shall be the responsibility of the interested persons specified in subsection (3) of this section to make reasonable efforts to reach a consensus as to whom among them shall make medical treatment decisions on behalf of the patient. The person selected to act as the patient's proxy decision-maker should be the person who has a close relationship with the patient and who is most likely to be currently informed of the patient's wishes regarding medical treatment decisions. If any of the interested persons specified in subsection (3) of this section disagrees with the selection or the decision of the proxy decision-maker or, if, after reasonable efforts, the interested persons specified in subsection (3) of this section are unable to reach a consensus as to who should act as the proxy decision-maker, then any of the interested persons specified in subsection (3) of this section may seek guardianship of the patient by initiating guardianship proceedings pursuant to part 3 of article 14 of this title. Only said persons may initiate such proceedings with regard to the patient.

(b) Nothing in this section shall be construed to preclude any interested person described in subsection (3) of this section from initiating a guardianship proceeding

pursuant to part 3 of article 14 of this title for any reason any time after said persons have conformed with paragraph (a) of this subsection (4).

(5) When an attending physician determines that an adult patient lacks decisional capacity, the attending physician or another health care provider shall make reasonable efforts to advise the patient of such determination, of the identity of the proxy decision-maker, and of the patient's right to object, pursuant to section 15-14-506 (4) (a).

(6) Artificial nourishment and hydration may be withheld or withdrawn from a patient upon a decision of a proxy only when the attending physician and a second independent physician trained in neurology or neurosurgery certify in the patient's medical record that the provision or continuation of artificial nourishment or hydration is merely prolonging the act of dying and is unlikely to result in the restoration of the patient to independent neurological functioning.

(6.5) The assistance of a health care facility's medical ethics committee shall be provided upon the request of a proxy decision-maker or any other interested person specified in subsection (3) of this section whenever the proxy decision-maker is considering or has made a decision to withhold or withdraw medical treatment. If there is no medical ethics committee for a health care facility, such facility may provide an outside referral for such assistance or consultation.

(7) If any of the interested persons specified in subsection (3) of this section or the guardian or the attending physician believes the patient has regained decisional capacity, then the attending physician shall reexamine the patient and determine whether or not the patient has regained such decisional capacity and shall enter the decision and the basis therefore into the patient's medical record and shall notify the patient, the proxy decision-maker, and the person who initiated the redetermination of decisional capacity.

(8) Except for a court acting on its own motion, no governmental entity, including the state department of human services and the county departments of social services, may petition the court as an interested person pursuant to part 3 of article 14 of this title. In addition, nothing in this article shall be construed to authorize the county director of any county department of social services, or designee of such director, to petition the court pursuant to section 26-3.1-104, C.R.S., in regard to any patient subject to the provisions of this article.

(9) Any attending physician, health care provider, or health care facility that makes reasonable attempts to locate and communicate with a proxy decision-maker shall not be subject to civil or criminal liability or regulatory sanction therefor.