

**CHANGES TO THE DESIGNATED BENEFICIARY ACT, C.R.S. 15-22-101 *et seq*  
AND STATUTES EFFECTED BY THAT ACT**

**C.R.S. 15-22-106(1) Statutory form of a designated beneficiary agreement.** (1) The following statutory form shall be the standard form for a designated beneficiary agreement.

**DESIGNATED BENEFICIARY AGREEMENT**

**DISCLAIMER**

**Warning:** While this document may indicate your wishes, certain additional documents may be needed to protect these rights.

**This designated beneficiary agreement is operative in the absence of other estate planning documents and will be superseded and set aside to the extent it conflicts with valid instruments such as a will, power of attorney, or beneficiary designation on an insurance policy or pension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 This designated beneficiary agreement is superseded by such other documents and does not cause any changes to be made to those documents or designations.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.**

We, \_\_\_\_\_, (insert full name and address) referred to as party A, and \_\_\_\_\_, (insert full name and address) referred to as Party B, hereby designated each other as the other's designated beneficiary with the following rights and protections, granted or withheld as indicated by our initials.:

TO GRANT ONE OR MORE OF THE RIGHTS OR PROTECTIONS SPECIFIED IN THIS FORM, INITIAL THE LINE TO THE LEFT OF EACH RIGHT OR PROTECTION YOU ARE GRANTING. TO WITHHOLD A RIGHT OR PROTECTION, INITIAL THE LINE TO THE RIGHT OF EACH RIGHT OR PROTECTION YOU ARE WITHHOLDING.

**A DESIGNATED BENEFICIARY AGREEMENT SHALL BE PRESUMED TO EXTEND ALL OF THE RIGHTS AND PROTECTIONS LISTED IN THIS FORM UNLESS THE PARTIES WITHHOLD A RIGHT OR PROTECTION IN THE MANNER SET FORTH IMMEDIATELY ABOVE.**

TO GRANT A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

TO WITHHOLD A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

\_\_\_\_\_      \_\_\_\_\_      The right to acquire, hold title to, own jointly, or transfer inter vivos or at death real or personal property as a joint tenant with me with right of survivorship or as a tenant in common with me;

TO GRANT A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

TO WITHHOLD A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

—	—	The right to be designated by me as a beneficiary, payee, or owner as a trustee named in an inter vivos or testamentary trust for the purposes of a nonprobate transfer on death;	—	—
—	—	The right to be designated by me as a beneficiary and recognized as a dependent in an insurance policy for life insurance;	—	—
—	—	The right to be designated by me as a beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries;	—	—
—	—	The right to be designated by me as a beneficiary in a retirement or pension plan;	—	—
—	—	The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for me;	—	—
—	—	The right to visit me in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary agreement resides or is receiving care;	—	—
—	—	The right to initiate a formal complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes;	—	—
—	—	The right to act as a proxy decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes;	—	—
—	—	The right to notice of the withholding or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes;	—	—
—	—	The right to challenge the validity of a declaration as to medical or surgical treatment of me pursuant to section 15-18- <del>107</del> <sup>108</sup> , Colorado Revised Statutes;	—	—
—	—	The right to act as my agent to make, revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, Colorado Revised Statutes;	—	—
—	—	The right to inherit real or personal property from me through intestate succession;	—	—
—	—	The right to have standing to receive benefits pursuant to the "Workers' Compensation Act of Colorado", article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job;	—	—

TO GRANT A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

TO WITHHOLD A RIGHT  
OR PROTECTION  
INITIAL  
Party A Party B

\_\_\_\_ The right to have standing to sue for wrongful death in the event of my death; and

\_\_\_\_ The right to direct the disposition of my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.

THIS DESIGNATED BENEFICIARY AGREEMENT IS EFFECTIVE WHEN RECEIVED FOR RECORDING BY THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH ONE OF THE DESIGNATED BENEFICIARIES RESIDES. THIS DESIGNATED BENEFICIARY AGREEMENT WILL CONTINUE IN EFFECT UNTIL ONE OF THE DESIGNATED BENEFICIARIES REVOKES THIS AGREEMENT BY RECORDING A REVOCATION OF DESIGNATED BENEFICIARY FORM WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THIS AGREEMENT WAS RECORDED OR UNTIL THIS AGREEMENT IS SUPERSEDED IN PART OR IN WHOLE BY A SUPERSEDING LEGAL DOCUMENT.

\_\_\_\_\_  
Signature of designated beneficiary

\_\_\_\_\_  
Signature of designated beneficiary

STATE OF COLORADO

County of \_\_\_\_\_ This document was subscribed, sworn to, and acknowledged before me on \_\_\_\_\_ date by \_\_\_\_\_.

My commission expires \_\_\_\_\_  
[Seal]

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

- (2) The instructions to each party regarding how to grant or withhold a right or protection by initialing and the words "Party A" and "Party B" shall appear at the top of each page of the statutory form above the columns for the initials of the designated beneficiaries.
- (3) A designated beneficiary agreement shall be presumed to extend all of the rights and protections listed in the statutory form unless the parties to the agreement explicitly exclude a right or protection.
- (4) A party to a designated beneficiary agreement may limit the scope of a designated beneficiary agreement by the terms of the agreement or by executing a superseding legal document that controls and supersedes part or all of the designated beneficiary agreement.

**Source: L. 2009:** Entire article added, (HB 09-1260), ch. 107, p. 433, § 1, effective July 1.

**C.R.S. 15-22-107 Recording - duties of the county clerk and recorder - fee.** (1) A signed and acknowledged designated beneficiary agreement shall be recorded with the county clerk and recorder in the county in which one of the parties resides. The designated beneficiary agreement shall be effective as of the date and time as received for recording by the county clerk and recorder. The county clerk and recorder shall assess a recording fee for recording the designated beneficiary agreement in that county, a fee for issuing two certified copies of the designated beneficiary agreement that indicate the date and

time of recording with the county, and a fee for taking acknowledgments, if applicable as provided in section 30-1-103, C.R.S. All fees collected by the county clerk and recorder shall be deposited in the county clerk's fee fund maintained as required in section 30-1-119, C.R.S. The county clerk and recorder may require the person recording the designated beneficiary agreement to indicate the mailing address to which the original document should be returned after recording.

- (2) The clerk and recorder of the county is encouraged to make available copies of the statutory forms as prescribed in sections 15-22-106 and 15-22-111.
- (3) The clerk and recorder of the county shall have the following duties:
  - (a) To indicate on the designated beneficiary agreement or a revocation of a designated beneficiary agreement the date and time that it is recorded with the clerk and recorder;
  - (b) To issue two certified copies of the recorded designated beneficiary agreement that indicate the date and time of the recording;
  - (c) To issue replacement certified copies of a designated beneficiary agreement or a revocation of a designated beneficiary agreement upon payment of a replacement fee.
  - (d) Upon receipt and recording of a designated beneficiary agreement, the county clerk and recorder shall ensure, at the earliest practicable time, that a true copy of the recorded designated beneficiary agreement is delivered to the office of the secretary of state in a medium that is retrievable by the public from the office of the secretary of state. [CURRENTLY BEING REVIEWED BY SARAH STEINBECK/SECRETARY OF STATE'S OFFICE - NEEDS A MECHANISM TO TRANSFER EXISTING RECORDED DESIGNATED BENEFICIARY AGREEMENTS TO THE SECRETARY OF STATE'S OFFICE.]
- (4) Designated beneficiary agreements and revocations of designated beneficiary agreements shall be considered open records for purposes of part 2 of articles 72 of title 24, C.R.S.

**Source: L. 2009:** Entire article added, (HB 09-1260), ch. 107, p. 436, § 1, effective July 1.

**C.R.S. 15-12-203 Priority among persons seeking appointment as personal representative. (1)**

Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (b) The surviving spouse of the decedent who is a devisee of the decedent;
- (b.5) A person ~~nominated~~ given priority to be a personal representative ~~by a power conferred~~ in a designated beneficiary agreement made pursuant to article 22 of this title;
- (c) Other devisees of the decedent;
- (d) The surviving spouse of the decedent;
- (e) Other heirs of the decedent;

- (f) Forty-five days after the death of the decedent, any creditor.
- (2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (1) of this section apply, except that:
- (a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
  - (b) In case of objection to appointment of a person, other than one whose priority is determined by will, by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.
- (3) A person entitled to letters under paragraphs (b) to (e) of subsection (1) of this section and a person between the ages of eighteen and twenty-one who would be entitled to letters but for his age may nominate a qualified person to act as personal representative. Any person eighteen years of age or older may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.
- (4) Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.
- (5) Appointment of a person with priority, a person who is nominated pursuant to subsection (3) of this section, or a person whose entitlement to appointment results from renunciation by another person with priority may be made in an informal proceeding. Before formal appointment of one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.
- (6) No person is qualified to serve as a personal representative who is:
- (a) Under the age of twenty-one;
  - (b) A person whom the court finds unsuitable in formal proceedings.
- (7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.
- (8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.
- (9) If there be more than one fiduciary of an estate, and one of such fiduciaries shall die, resign, or be removed, the court may in its discretion appoint a successor fiduciary to act

in place and instead of the former fiduciary, together with the remaining fiduciary or fiduciaries, or the court may permit the remaining fiduciary or fiduciaries to serve without any new or additional fiduciary; except that, if there be a will providing for the fiduciaries, the provisions of the will shall control when applicable.

**Source:** L. 73: R&RE, p. 1567, § 1. C.R.S. 1963: § 153-3-203. L. 91: (5) amended, p. 1449, § 10, effective July 1. L. 93: (2)(b) and (5) amended, p. 513, § 2, effective July 1. L. 2009: (1) amended, (HB 09-1260), ch. 107, p. 444. § 10, effective July 1.

**C.R.S. 15-14-310 Who may be guardian - priorities - prohibition of dual roles.** (1) Subject to subsection (4) of this section, the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

- (a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;
  - (b) A person nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney or **given priority to be a guardian** in a designated beneficiary agreement made pursuant to article 22 of this title;
  - (c) An agent appointed by the respondent under a medical durable power of attorney pursuant to section 15-14-506;
  - (d) An agent appointed by the respondent under a general durable power of attorney;
  - (e) The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;
  - (f) An adult child of the respondent;
  - (g) A parent of the respondent or an individual nominated by will or other signed writing of a deceased parent; and
  - (h) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.
- (2) A respondent's nomination or appointment of a guardian shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.
  - (3) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause shown, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.
  - (4) An owner, operator, or employee of a long-term-care provider from which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.
  - (5)
    - (a) Unless the court makes specific findings for good cause shown, the same professional may not act as an incapacitated person's or a protected person's:
      - (I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

- (b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person.

**Source: L. 2000:** Entire part R&RE, p. 1796, § 1, effective January 1, 2001 (see § 15-17-103). **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 445 § 11, effective July 1.

**C.R.S. 15-14-413 Who may be conservator - priorities - prohibition of dual roles.** (1) Except as otherwise provided in subsection (4) of this section, the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

- (a) A conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;
  - (b) A person nominated as conservator by the respondent, including the respondent's specific nomination of a conservator made in a durable power of attorney or **given priority to be conservator** in a designated beneficiary agreement **made** pursuant to article 22 of this title, if the respondent has attained twelve years of age;
  - (c) An agent appointed by the respondent to manage the respondent's property under a durable power of attorney;
  - (d) The spouse of the respondent;
  - (e) An adult child of the respondent;
  - (f) A parent of the respondent; and
  - (g) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.
- (2) A respondent's nomination or appointment of a conservator shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.
- (3) A person having priority under paragraph (a), (d), (e), or (f) of subsection (1) of this section may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.
- (4) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.
- (5) An owner, operator, or employee of a long-term care provider from which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.
- (6) (a) Unless the court makes specific findings for good cause shown, the same professional may not act as an incapacitated person's or a protected person's:

- (I) Guardian and conservator; or
- (II) Guardian and direct service provider; or
- (III) Conservator and direct service provider.

- (b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person.

**Source: L. 2000:** Entire part R&RE, p. 1815 § 1, effective January 1, 2001 (see § 15-17-103). **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 445, § 12, effective July 1.

**C.R.S. 15-18-107 Withdrawal - withholding of life-sustaining procedures.** In the event 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, **designated beneficiary in a designated beneficiary agreement made pursuant to article 22 of this title**, 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.

**Source: L. 85:** Entire article added, p. 611, § 1, effective May 9.

**C.R.S. 15-18-108 Determination of validity.** (1) Any person who is the parent, adult child, spouse, **designated beneficiary in a designated beneficiary agreement made pursuant to 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 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.

**Source: L. 85:** Entire article added, p. 612, § 1, effective May 9.

**C.R.S. 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, person ~~designated as a designated beneficiary~~ with the right to act as a proxy decision-maker **in a designated beneficiary agreement made** pursuant to article 22 of this title, 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 the determination shall be documented in such patient's medical record. The determination may also be made by an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically. The advanced practice nurse shall document in the patient's record the name of the physician with whom the advanced practice nurse collaborated. 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 determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the attending physician, the advanced practice nurse, or such physician's or nurse'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 or advanced practice nurse 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, advanced practice nurse, or such physician's or nurse'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 the 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.

**Source: L. 92:** Entire article added, p. 1985 § 3, effective June 4, **L. 94:** (8) amended, p. 2647, § 115, effective July 1, **L. 2008:** (2) and (3) amended, p. 125, § 5, effective January 1, 2009. **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 446, § 13, effective July 1.

**C.R.S. 15-18.5-104 Surrogate decision-makers for health care benefits.** (1) A proxy decision-maker for medical treatment selected in accordance with section 15-18.5-103 or a person ~~designated as a designated beneficiary~~ with the right to act as a surrogate decision-maker **in a designated beneficiary agreement made** pursuant to article 22 of this title shall have authority to make health care benefit decisions on behalf of an adult patient and may be known additionally as a surrogate decision-maker for health care benefits.

- (2) A court or the attending physician may make the determination that a person lacks the decisional capacity to make health care benefit decisions. The determination shall be documented in such patient's medical record. The determination may also be made by an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically. The advanced practice nurse shall document in the patient's record the name of the physician with whom the advanced practice nurse collaborated. The attending physician or nurse shall make specific findings regarding the cause, nature, and projected duration of the person's lack of decisional capacity regarding health care benefit decisions. Such determination and findings shall be documented in the person's medical record.
- (3) Upon a determination that an adult patient lacks decisional capacity to make health care benefit decisions, the attending physician, advanced practice nurse, or the physician's or nurse's designee shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity. In addition, the attending physician or advanced practice nurse or the physician's or nurse's designee shall make reasonable efforts to locate as many interested persons as defined in this subsection (3) as practicable, and the attending physician or advanced practice nurse 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 advanced practice nurse or the physician's or nurse's designee shall inform such person of the patient's lack of decisional capacity and determine whether such interested person is available, willing, and has the capability to act as a surrogate decision-maker for health care benefits for the patient.
- (4) If a proxy decision-maker for medical treatment or an interested person, as defined in subsection (3) of this section, is unavailable, unwilling, or does not have the capability to make a health care benefit decision on behalf of a person lacking the decisional capacity to make a health care benefit decision pursuant to this section, then the attending physician or his or her designee may appoint a surrogate decision-maker for health care benefits as described in subsection (5) of this section.
- (5) The surrogate decision-maker for health care benefits appointed by an attending physician or his or her designee may be a private individual or an individual acting on behalf of an organization, including an employee of the organization, willing to voluntarily assume the fiduciary responsibility to make health care benefit decisions in the best interests of the person who lacks the decisional capacity to make health care benefit decisions. The appointed surrogate decision-maker for health care benefits shall be free of conflicts specified in subsection (9) of this section.
- (6) Community and charitable organizations may provide volunteers or employees to serve as surrogate decision-makers for health care benefits. The division of insurance, established in section 10-1-103, C.R.S., shall be available to provide assistance to surrogate decision-makers for health care benefits regarding medicare benefits. A physician or his or her designee may contact nonprofit entities that serve the elderly or disability communities for assistance in locating an appropriate surrogate decision-maker

for health care benefits.

- (7) After a physician or his or her designee locates an individual willing to act as the surrogate decision-maker for health care benefits pursuant to subsection (3) of this section, the physician shall certify the appointment in writing on the form set forth in section 15-18.5-105.
- (8) If the surrogate decision-maker for health care benefits, a proxy decision-maker for medical treatment, an interested person, the person's 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 therefor into the patient's medical record and shall notify the patient, the surrogate decision-maker for health care benefits, and the person who initiated the redetermination of decisional capacity.
- (9) A surrogate decision-maker for health care benefits may not be an employee, a contractor, or an official representative of, or receive any remuneration of any kind from, a health care provider, medical benefit provider, pharmaceutical company, pharmacy benefit management company, pharmacy, or any person or entity engaged in the sale of insurance.
- (10) A surrogate decision-maker for health care benefits shall have access to all necessary information, including but not limited to:
  - (a) Personal health information as defined by the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d-7 (a) (2); and
  - (b) Financial information needed to make appropriate health care benefit decisions; except that any bank, trust company, savings and loan association, credit union, or insurance company regulated under any laws of this state or the United States and any officer, employee, agent, or affiliate of any of the foregoing entities shall be exempt from any requirement to provide financial information to a surrogate decision-maker under the provisions of this section.
- (11) A surrogate decision-maker for health care benefits shall make decisions that are in the best interests of the person on whose behalf the decisions are made.
- (12) Any entity, including a financial entity, that relies in good faith on a certificate of appointment of a surrogate decision-maker for health care benefits received directly from the attending physician or his or her designee shall be immune from liability for actions taken on the basis of said certificate.
- (13) A surrogate decision-maker for health care benefits shall be immune from liability for decisions made in good faith.
- (14) An attending physician, health care provider, or health care facility that acts in substantial compliance with this section shall not be subject to civil or criminal liability or regulatory sanction relating to the selection or actions of a surrogate decision-maker for health care benefits.
- (15) Nothing in this section shall be construed as requiring a surrogate decision-maker for health care benefits to make a decision or from prohibiting an individual from consulting another person or entity to obtain assistance in making a health care benefit decision.

**Source: L. 2006:** Entire section added, p. 841, § 5, effective May 4. **L. 2008:** (2) and (3) amended, p. 125, § 6, effective January 1, 2009. **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 446, § 14, effective July 1.

**C.R.S. 15-19-106 Right to dispose of remains.** (1) Subject to section 15-19-105(2), the right to control disposition of the last remains or ceremonial arrangements of a decedent vests in and devolves upon the following persons, at the time of the decedent's death, in the following order:

- (a) The decedent if acting through a declaration pursuant to section 15-19-104;
  - (b)
    - (I) Either the appointed personal representative or special administrator of the decedent's estate if such person has been appointed; or
    - (II) The nominee for appointment as personal representative under the decedent's will if a personal representative or special administrator has not been appointed;
  - (c) The surviving spouse of the decedent, if not legally separated from the decedent;
  - (c.5) ~~A designated beneficiary who was designated in a designated beneficiary agreement pursuant to article 22 of this title as having~~ **person with** the right to direct the disposition of the decedent's last remains **in a designated beneficiary agreement made pursuant to article 22 of this title;**
  - (d) A majority of the surviving adult children of the decedent;
  - (e) A majority of the surviving parents or legal guardians of the decedent, who shall act in writing;
  - (f) A majority of the surviving adult siblings of the decedent;
  - (g) (Deleted by amendment, L. 2006, p. 900, 5, effective August 7, 2006.)
  - (h) Any person who is willing to assume legal and financial responsibility for the final disposition of the decedent's last remains.
- (2) (Deleted by amendment, L. 2006, p. 900, §5, effective August 7, 2006.)
- (3) Disputes among the persons listed under subsection (1) of this section shall be resolved by the probate court. A third party shall not be liable for refusing to accept the decedent's remains or dispose of the decedent's remains until the party receives a court order or other reasonable confirmation that the dispute has been resolved or settled.
- (4)
  - (a) If the person with the right to control disposition is unable or unwilling to make such disposition, or if the person's whereabouts cannot be reasonably ascertained, then that person's rights shall terminate and pass to the following, in the following order:
    - (I) The rest of the persons in the class with the same degree of relationship granting the same priority of control over the disposition pursuant to subsection (1) of this section;
    - (II) The next class of persons in the order listed in subsection (1) of this section if no one else with the same degree of relationship granting the same priority of control over the disposition of this section exists or possesses the right of final disposition pursuant to subsection (1) of this

section.

- (b) (I) The person with the right to control disposition shall be presumed to be unable or unwilling to provide for such disposition, or the person's whereabouts shall be presumed unknown, if the person has failed to make or appoint another person to make final arrangements for the disposition of the decedent within five days after receiving notice of the decedent's death or within ten days after the decedent's death, whichever is earlier.
- (II) Any member or veteran of the armed forces of the United States or of an organization supporting members or veterans of the armed forces of the United States shall have the right to access the human remains and records thereof in order to identify the remains if no person with the right of final disposition has provided for final disposition for at least one hundred eighty days after death. If the remains are those of a veteran of the armed forces of the United States, the person who possesses the remains shall make arrangements for the remains to be transferred to the closest United States military cemetery. This subparagraph (II) shall not be construed to authorize the exhumation of dead human bodies nor the possession of dead human bodies by any person seeking to identify the identity of the remains.
- (c) If a person is unable or unwilling to make a disposition under this subsection (4), such person shall not be counted as a member of the class with the same degree of relationship granting the same priority of control over the disposition pursuant to subsection (1) of this section when determining the number that makes a majority of such class.
- (5) If the persons enumerated in subsection (1) of this section are not willing or able to provide for the final disposition of a decedent's remains, or if the persons' whereabouts cannot be reasonably ascertained, then the public administrator responsible for the decedent's estate or the person who controls indigent burials in the county in which the death occurred shall make arrangements for the final disposition of the decedent's remains.
- (6) A third party who provides for the final disposition of a decedent's remains upon authorization from a person who claimed to have the right to control the final disposition shall be immune from civil liability and administrative discipline.

**Source: L. 2003:** Entire article added, p. 1351, § 1, effective August 6, **L. 2006:** Entire section amended, p. 900, § 5, effective August 7. **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 447, § 16, effective July 1; (4)(b) amended, (HB 09-1058), ch. 241, p. 1093, § 1, effective August 5.