Summary of House Bill 16-1101
Concerning medical decisions for unrepresented patients

This is an amendment to the current "Proxy Law": Colorado Revised Statutes 15-18.5-103 – Proxy Decision Makers for Medical Treatment Authorized. All sections of the existing proxy law that were not amended remain in force. This new amendment received bipartisan support in the House and Senate and was signed into law by Governor Hickenlooper on May 18, 2016. **It went into effect August 10, 2016.**

Purpose and Summary

The purpose of the amendment is to enable a proxy decision-maker of last resort; that is, when no other interested person can be located and the patient lacks decisional capacity. The proxy of last resort is a willing physician who is appointed by the attending physician. The appointment of the physician proxy and certain treatment decisions also require involvement and consensus of an ethics committee when an unrepresented patient is identified. Finally, the statute establishes additional protections for decisions at the end of life and limits the liability of a physician acting as a proxy of last resort.

What has changed?

- When no other interested person can be located for a patient who lacks decisional capacity, a physician may, on a voluntary basis, be appointed to serve as a proxy decision maker.
- The physician acting as proxy CANNOT also be the patient's attending physician.
- The appointment of the physician as proxy must be made through consultation and consensus with the medical ethics committee of the facility where the patient is receiving care or by consultation with the ethics committee of another facility. Any facility using this statute must have access to a medical ethics committee. (NOTE: Selection of a proxy from among interested persons, in the manner prescribed in the original proxy statute, *does not* require involvement or consensus of the ethics committee.)
- An independent determination of capacity must be obtained from (a) another physician or an advanced practice nurse who has collaborated about the patient with a licensed physician either in person, by telephone, or electronically, or (b) from a court.
- The appointment and the termination of the physician acting as proxy must be documented in the patient's medical record.
- Statements prohibiting euthanasia have been added, consistent with other Colorado statutes.
- A physician acting in good faith as a proxy decision maker in accordance with this article **is not subject to civil or criminal liability or regulatory sanction** for acting as a proxy decision maker.

What guidelines must be followed for treatment decisions?

- The attending physician may make decisions regarding **routine treatments** and procedures that are low-risk and within broadly accepted standards of medical practice.
- For treatments that otherwise require a written **informed consent**, such as treatments involving anesthesia, significant risk of complication, or invasive procedures, the attending physician must obtain the written consent of the appointed physician proxy and consensus of the medical ethics committee, both of which are documented in the medical record.
- **For end-of-life treatment** that is considered nonbeneficial and involves withholding or withdrawing specific medical treatments, the attending physician must obtain an independent, concurring second

opinion from a physician (other than the proxy decision maker) and a consensus with the medical ethics committee.

Under what circumstances does the authority of the physician acting as proxy end?
Authority of the physician acting as proxy terminates when:

- An interested person is willing to serve as proxy decision maker,
- A guardian is appointed,
- The patient regains decisional capacity,
- The proxy decision-maker decides to no longer serve, or
- The patient is transferred or discharged from the facility – unless the proxy decision maker expresses his/her intention to continue to serve.

In what healthcare facilities does the statute apply?
The statute is applicable in all healthcare facilities as defined by the original medical POA statute C.R.S. 15-14-505. A "healthcare facility" includes a hospital, hospice, nursing facility, assisted living, and any entity that provides home and community-based services.

What hasn't changed?

- An incapacitated patient's physician (or designee) must make the same reasonable effort to locate interested persons, per current statute, who are willing to select a proxy decision maker.
- The process for determining a proxy decision maker when one or more interested parties are available has not changed. (Specifically, selection of the proxy and decisions regarding treatment do not require involvement or consensus of an ethics committee.)
- Patient rights regarding appeals of capacity or proxy appointment have not changed.
- Appropriate steps should still be taken to obtain a permanent guardian when applicable.
- An attending physician or his/her designee remains responsible for his/her negligent acts or omissions in rendering care to an unrepresented patient.

How should the new law be implemented in our facility?

- Because appointment of a proxy of last resort is voluntary, not mandatory, each facility should determine policies and procedures appropriate to its intended use of the statute.
- The Colorado Collaborative for Unrepresented Patients***** has begun a stakeholder process that will generate best practice guidelines for implementation of the statute. The guidelines will address practical and logistical use of the statute in a variety of settings.
- The guidelines are targeted for release in the fall of 2016.
- Questions or suggestions for guidelines development can be address to CCUP members noted below.

*****The Colorado Collaborative for Unrepresented Patients is a group of interested citizens whose work facilitated the drafting and passage of HB 16-1101 on behalf of Colorado's unrepresented patients.

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Colorado Collaborative for Unrepresented Patients, June 13, 2016