

**SUMMARY/COMPARISON OF ADVANCE DIRECTIVES AND
SURROGATE HEALTH CARE DECISION MAKING PROCESSES FOR COLORADO (as of 1/10)
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GENERAL RULES OF ADVANCE DIRECTIVES AND SURROGATE DECISION MAKING

- 1) Adult (18+) Principal/Declarant (person executing the advance directive for him or herself) is considered competent (having decision making capacity) unless judged by physician or Court otherwise.
- 2) Capacity is a legal determination made by a Judge or a clinical determination made by a doctor. Both refer to the ability of a person to understand information, weigh risks and benefits, consider consequences, make *and communicate* decisions. The term competence is often used interchangeably with capacity.
- 3) Capacity is decision-specific; the same individual may have capacity (be competent) to make certain decisions and not others.
- 4) Principals/Wards (persons subject to Guardianship—see below) must always be consulted on health care decisions and appointment of surrogates; objections must be taken into careful consideration and honored if deemed competent.
- 5) Surrogate decision makers (authorized persons making decisions on behalf of a Principal or Ward) must always act first in accordance with known wishes of Principal/Ward and second according to Principal/Ward’s best interests—not on wishes of surrogate decision maker.

	What It Does	What Else It Does	What It Doesn't Do	Who Can/Must Sign	When It Takes Effect	When It Expires	Who Can Revoke / Override
Living Will CRS 15-18.101-113 "Colorado Medical Treatment Decision Act"	Directs that life-sustaining treatment be withdrawn or withheld when Declarant (person executing the form) (a) has an incurable or irreversible condition which 2 doctors or advanced practice nurses (APNs) consider to be terminal, and (b) unconscious, or otherwise incompetent.	Allows Declarant to indicate desire for continuation or termination of artificial "nourishment" when only procedure being provided. May be amended with additional health care treatment preferences and instructions. Provides process by which the validity of the document may be challenged in Court.	Does not appoint a surrogate decision maker. Does not address conditions that are incurable or irreversible but NOT terminal.* Does not address artificial hydration. Does not address any treatment other than "life sustaining." *Whether PVS is included in this statute's definition of "terminal" is controversial and likely open to legal & medical interpretation.	Declarant, at least 18 and having decisional capacity, and 2 witnesses who are NOT any of the following: patients in the facility where Principal is being treated, any doctor or employee of Principal's doctor, any employee of the facility or agency providing Principal's care, creditors or heirs. Notary seal and signature optional.	Only under the conditions stated in column 1	At death of or revocation by Declarant	The Declarant. Agents under Medical Durable Power of Attorney (MDPOA) may ONLY override or revoke a Living Will if express authority to do so is granted in the Living Will or MDPOA. Proxies by Statute, DBs (see p. 6), and Guardians may NOT override a Living Will. A spouse, parent, or adult child; Agent, DB, Proxy, or Guardian may challenge the Living Will's validity in Court within 48 hours after doctors have signed certification of terminal illness.
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. NOTE: The Living Will is the only one of the various instruments that includes penalties.							

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<p>Medical Durable Power of Attorney</p> <p>CRS 15-14-503-509</p> <p>"Colorado Patient Autonomy Act"</p>	<p>Appoints person(s) (<i>Agent</i>) to make health care decisions for Principal either (a) right away or (b) when Principal lacks capacity to make decisions or speak for him/herself.</p> <p>Agent is a fully empowered surrogate for Principal—able to consult with physicians, view medical records, make all decisions related to health care of Principal.</p> <p>Agent is bound to make decisions according to wishes of the Principal, if known, or in Principal's best interests.</p>	<p>Principal may include in MDPOA specific instructions to Agent concerning particular treatment choices or preferences.</p> <p>NOTE: "Interstate" provisions encourage but do not mandate recognition of and reliance on Colorado MDPOA in other states; also state that MDPOAs executed in other states may "be presumed to comply" with the Colorado statute and "may, in good faith, be relied upon" by health care providers in Colorado.</p>	<p>Does not vacate the rights of the Principal to express preferences, make decisions when able, or "fire" the Agent.</p> <p>Does not authorize Agent to make any decisions other than those directly related to health care.</p> <p>Does not grant authority to Agent to override valid Living Will executed by Principal unless specifically granted in the Living Will.</p> <p>Does not grant authority to Agent to override CPR directive executed by Principal.</p>	<p>Principal only must sign.</p> <p>Principal must be 18 and have decisional capacity.</p> <p>Agent must be 18,* have decisional capacity, and be willing to serve. If Agent is spouse and couple later divorces, legally separates, or annuls marriage, Agent is automatically removed unless expressly stated in document.</p> <p>Two witnesses and/or notary seal are optional but recommended to assist in interstate validity.</p> <p>* NEW: There is some disagreement about whether Agent must be 18 or 21. Advance Directives Coalition "Yellow booklet" says 18; agency statutes say 21. Probably best to select agent 21 or older.</p>	<p>Can take effect immediately on signing or only when Principal is not able to make his/her own decisions (temporarily or long term).</p>	<p>At death of or revocation by Principal, or, if in effect only when Principal incapacitated, when Principal regains capacity.</p>	<p>The Principal, if competent.</p> <p>NO ONE BUT THE PRINCIPAL may override the decisions of a duly appointed Agent without a Court judgment.</p> <p>Others may challenge capacity of Principal or performance/appropriateness of Agent in Court.</p> <p>Agent under MDPOA "trumps" DB (see p. 6).</p>

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<p>CPR Directive</p> <p>CRS 15-18.6-101-108</p>	<p>Instructs emergency medical service personnel, health care providers, and health care facilities as to the administration of cardiopulmonary resuscitation in the event the person's (Declarant's) heart or breathing malfunction or stop. Typically this instruction is a refusal of CPR; in the absence of a CPR directive, consent is presumed.</p>	<p>Holds health care professionals harmless from prosecution or civil suits in event of Declarant's death from withheld CPR.</p>	<p>Does not have any effect on the administration of any other health care interventions in any other circumstances.</p>	<p>See important NOTE below.</p> <p>Declarant (at least 18 and having decisional capacity), Agent under MDPOA, DB (see p. 6), Proxy by Statute, or Guardian, and, if Colorado Board of Health form used, attending physician.</p> <p>Parents may sign a CPR directive for a minor child only AFTER attending physician has signed a "Do Not Resuscitate" (DNR) order.</p>	<p>On signature by Declarant (or Agent, Proxy, DB, or Guardian) and, if Colorado Board of Health form used, attending physician.</p>	<p>At death or revocation by the Declarant.</p> <p>Upon admission to a hospital, valid CPR directives are translated into a physician's DNR order for the duration of the person's stay in the hospital.</p> <p>CPR directives remain in effect following the Declarant's discharge from the hospital. Physician's DNR orders do not.</p> <p>Under some circumstances, CPR directives and DNR orders are suspended during surgery.</p>	<p>The Declarant</p> <p>The Agent, DB, Proxy by Statute, or Guardian may revoke/override a CPR directive ONLY IF the Agent, DB, Proxy, or Guardian executed the CPR directive on behalf of the Declarant.</p> <p>NEW: If the Declarant or any person authorized to make an anatomical gift for the Declarant expresses desire to donate Declarant's organ or tissue, and if the Declarant has a CPR directive or any other AD refusing life-sustaining treatment, the conflict must be resolved by the physician and Declarant or Declarant's authorized surrogate decision maker. If the conflict cannot be resolved ahead of time, CPR or other LSTs must be provided in order to preserve organs/tissues until conflict is resolved.</p>
<p>NOTE: The Colorado Board of Health prints and distributes special carbonless CPR directive forms on blue "security" paper. Some Emergency personnel and other advisors will claim that <i>only</i> this "blue form" is valid for refusal of CPR and that it must be the original (not a photocopy, etc.) and must have original signatures, NONE of which is required by statute. For instance, refusal of CPR may be included in instructions to a health care agent or in another advance directive, and many health care facilities may have their own proprietary forms indicating refusal of CPR. Forms other than the BOH "blue form" may be signed by advanced practice nurses as well as physicians. These matters are clarified in proposed revisions to the CPR directive regulations. However, until the revisions are adopted and widespread education of EMTs accomplished, the BOH "blue" form is recommended because Emergency personnel are trained to recognize it without delay or undue scrutiny. Whatever form is used, it should clearly identify the individual to whom the directive applies and should, for practical but not legal reasons, be signed by both the Declarant and attending physician.</p>							

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<p>Proxy Health Care Decision Maker Process ("Proxy by Statute")</p> <p>CRS 15-18.5-101-105</p> <p>"Proxy Decision-makers for Medical Treatment Act"</p>	<p>When patient is, as determined by attending physician or APN, incapacitated and has no legally designated surrogate decision maker (i.e., Agent under MDPOA, DB [see p. 6]*, or Guardian), physician, APN, or physician's designee, must make efforts to gather "interested persons" to appoint, by consensus, one of the group to be the Proxy decision maker (or "Proxy by Statute").</p> <p>Interested persons include spouse, either parent, adult child, sibling, grandchild or any close friend of the patient. Selected Proxy should be one who knows the patient and his/her wishes best.</p> <p>Proxy selected by this process has full powers and responsibilities of medical decision making on behalf of the patient while he/she lacks decisional capacity except as noted in column 3.</p>	<p>Provides process by which, if the interested persons cannot reach a consensus as to the appointment of the Proxy or any of the parties disagrees with a decision of the Proxy, the party(ies) may petition the Court for Guardianship of the patient.</p> <p>Advises that the assistance of a health care facility's ethics committee shall be provided on request of the Proxy or any of the other interested persons for decisions to withhold or withdraw medical treatment.</p> <p>*DB, or designated beneficiary, may be granted right to act as Proxy for corresponding DB. At this writing it is unclear whether said DB is to be automatically appointed Proxy without a consensus process, or given priority in selection process, or simply granted standing as candidate.</p>	<p>Does not grant authority to Proxy to withhold or withdraw artificial nutrition or hydration from patient unless 2 physicians (1 trained in neurology) certify that such provision will only prolong dying and will not contribute to patient's recovery of neurological functioning.</p>	<p>Patient must be advised of both state of incapacity and identity of Proxy and right to object.</p> <p>No signatures required, but documentation in patient's medical record of the patient's decisional incapacity and, if applicable, recovery of such capacity is required.</p> <p>If provision of artificial nutrition/hydration will only prolong dying, documentation of this fact in the medical record is also required.</p>	<p>When Court or physician or APN determines patient lacks capacity to make his/her own decisions</p>	<p>When Court or physician or APN determines patient has regained capacity, or at death of patient</p>	<p>Patient may object to Proxy designation or decisions and, if considered competent for that decision, patient's wishes will be followed.</p> <p>Any interested party may challenge Proxy designation or decisions and initiate Guardianship process. Only when Proxy removed by completed Guardianship process can his/her decisions be revoked or reversed.</p>

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<p>NEW</p> <p>Designated Beneficiary with Power to Act as Proxy Decision Maker</p> <p>C.R.S. 15-22-101-111</p> <p>Colorado Designated Beneficiary Agreement Act</p> <p>Effective July 1, 2009</p>	<p>Allows for two parties to designate each other as beneficiaries of a number of items and instruments related to health care, medical emergencies, incapacity, death, and administration of estates.</p> <p>All rights and duties enumerated in agreement are assumed to be granted unless specifically excluded. (Although the model agreement requires that each right be specifically granted or excluded.)</p>	<p>Among possible rights to be assigned to designated beneficiary (DB) are:</p> <ul style="list-style-type: none"> • rights to petition for and have priority (over Agent) for appt as conservator, guardian, or personal rep for other DB; • to act as proxy decision maker for other DB pursuant to Proxy statute; • to receive notice of withdrawal/ withholding of LST for other DB; • to challenge validity of Living Will of other DB; • to act as agent for anatomical gifts 	<p>Does not clarify exact standing and powers of DB as "proxy" decision maker. Unclear whether a DB = agent under MDPOA, or = Proxy by Statute, or if DB given priority in selection of Proxy, or only granted standing as interested person.</p> <p>Appears that DB = Proxy by Statute, without requiring consensus of interested persons.</p>	<p>Two competent adults (18 years+) who are not married to each other or anyone else nor party to any other DB agreement.</p>	<p>When signed by both parties AND received for recording by County Clerk and Recorder of the county in which one of the DB's resides.</p>	<p>On death of one or both parties to the agreement; however, certain rights granted to DB may survive the death of the other DB (e.g., right to dispose of remains, etc.)</p>	<p>May be revoked by either party unilaterally but a formal revocation must be recorded with County Clerk and Recorder; also revoked on marriage of either party.</p> <p>If either party to DB has previously designated or in future designates an Agent for health care by MDPOA, Agent has authority.</p>

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<p>MOST: Medical Orders for Scope of Treatment</p> <p>Legislation pending, 2010 Colorado session</p>	<p>Medical Orders for Scope of Treatment. A summary of advance directives / current instructions with respect to key areas of medical treatment.</p> <p>On signature of MD, DO, APN, or PA, the MOST becomes medical orders, rather than just patient preferences. It is intended to stay with person/patient as he/she moves into and out of various health care facilities and settings (e.g., nursing home, hospital, hospice).</p>	<p>Documents orders for administration or not of CPR; full treatment, limited treatment, comfort measures only; transfer or not to hospital; use of antibiotics; and use of artificial nutrition/hydration (ANH).</p> <p>Provides prompts for frequent review of orders and documentation of any changes as person's condition or circumstances change.</p>	<p>Does not replace or obviate the need to complete other advance directives.</p> <p>Does not appoint an Agent (simply names Agent in place, if any).</p> <p>Does not provide context or opportunity for detail or directives on treatment options not specifically named on the form.</p>	<p>Declarant, at least 18 and having decisional capacity, Agent under MDPOA, Proxy by Statute, or Guardian, DB, <i>and</i> MD, DO, APN, or physician assistant (PA) must sign.</p> <p>NOTE: if Declarant is incapacitated and only surrogate in place is Proxy by Statute (see below), Proxy may not decline use of ANH unless 2 physicians (1 trained in neurology) certify that ANH would only prolong dying and not contribute to functional recovery.</p>	<p>On signature by Declarant or Agent under MDPOA, DB (see p. 6), Proxy by Statute, or Guardian <i>and</i> MD, DO, APN, PA</p>	<p>At death of Declarant, revocation, or replacement</p>	<p>Declarant or Agent under MDPOA, DB, Proxy by Statute, or Guardian. However, provisions of a Living Will executed by the Declarant may not be overridden by any surrogate unless specifically authorized in the Living Will.</p>

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Guardianship CRS Title 15 (Probate, Trusts, Fiduciaries), Article 14 (Persons Under Disability – Protection), Part 3 (Guardianship of Incapacitated Person)	<p>Legal (Court) process whereby a person is determined to lack capacity to make decisions in every area of personal/ life management or in certain areas (financial, medical, residential).</p> <p>Person subject to Guardianship is called a "Ward."</p> <p>Guardian(s) must be at least 21.</p> <p>Guardians may be financially compensated out of Ward's assets.</p>	May include specific limitations or conditions on Guardian's scope of authority.	<p>Does not revoke all rights of Ward to be consulted on decisions.</p> <p>Depending on scope of Guardianship, decision making authority may be limited to particular arena or by time.</p>	Guardianship is a process that must be undertaken in Court; may take up to several months to accomplish.	On decision of Court.	At death of Ward, removal of Guardian by Court.	Interested parties may challenge Guardianship appointment or decisions in Court. Only Court can appoint or remove Guardian.

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