ISSUE BRIEF | HOUSE BILL 16-1101

Medical Decisions for Unrepresented Patients

Background

House Bill 16-1101 (HB 1101) outlines new procedures that allow willing physicians to act as proxy decision makers for incapacitated, unrepresented patients. Hospitals in Colorado regularly face barriers to providing timely, appropriate care for unrepresented patients – this law aims to improve the flexibility of providers treating such individuals. This process is optional for hospitals and physicians and only takes effect when a physician elects to serve as a proxy decision maker and is approved by the attending physician in a participating facility.

What You Need to Know

If a patient lacks medical decision-making capacity and a proxy decision maker for a patient cannot be located after a reasonable effort, a physician other than the attending physician may be designated as the patient's proxy decision maker. Before a willing physician may be a designated proxy decision maker by the attending physician, the following must occur:

- The attending physician must obtain an independent determination of patient's lack of decision-making capacity via consult with another physician, advanced practice nurse or via court order;
- The attending physician or designee must consult with the treating facility's medical ethics committee, or, if the treating facility has no medical ethics committee, the ethics committee of a similar facility; and
- The identity of the physician who has consented to serve as a proxy decision maker must be documented in the patient's chart.

The authority of the proxy decision maker terminates when:

- A guardian is appointed or an interested person is willing to serve as a proxy decision maker;
- The patient regains decisional capacity;
- The proxy decision maker no longer wishes to serve as the proxy; or
- The patient is transferred or discharged, unless the proxy expresses intention to continue as proxy.

The physician proxy may generally make medical decisions for non-emergent medical care. Emergency and low-risk procedures that comport with accepted standards of medical practice may be decided by the attending physician. Decisions pertaining to medical treatments that require written informed consent (e.g., those involving anesthesia, high risks or invasive procedures) require affirmative consensus from a medical ethics committee and written consent from the proxy decision maker. Non-beneficial end-of-life care such as palliative care requires a third, independent physician (not the attending or the proxy) to concur with a treatment plan and affirmative consensus from a medical ethics committee. The reason for termination of care must be documented in the patient's medical record.

The law does not grant permission for affirmative acts that would end a person's life, but does allow for decisions that may lead to natural death. Additionally, a physician acting in good faith as proxy decision maker is not subject to criminal or civil liability or regulatory sanctions for acting as proxy. Attending physicians are still accountable for the minimum standard of care provided to unrepresented patients.

Additional Resources

- HB 1101 Fiscal Note
- HB 1101 took effect on Aug. 10, 2016.

For questions or more information, contact Amber Burkhart, CHA policy analyst, at 720.330.6028.

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