

Recognition of Health-Care Advance Directives Across State Lines
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Americans are more mobile than ever before. Whether it is for business, vacation, to be near our children or to seek specialized medical care, we often travel around the country. But when we cross state lines, do our wishes regarding medical care and treatment travel with us?

Sometimes there can be problems ensuring that out-of-state advance directives are recognized and implemented. Although all 50 states and the District of Columbia have laws recognizing the use of advance directives, such as a Medical Durable Power of Attorney and a Living Will, there is no unified system for recognizing out-of-state directives. While many states may grant recognition to directives from another state, other states, for a variety of reasons, may question the document's validity. This is because the laws, content, requirements and formalities surrounding advance directives vary widely from state to state.

So what can you do to help ensure your wishes are honored? Make sure you complete as many of the legal formalities as possible, including: written acknowledgements from the agent and alternates, witnessing and notarization. While the documents are necessary and important, the conversation is critical. Expressing one's wishes to our loved ones ultimately is the key to having our family, friends and medical providers understand what treatment we want and do not want.

For further reading see a recent article from *Bifocal*, "Can My Advance Directives Travel Across State Lines? An Essay on Portability" Volume: 38, Issue: 1 by: Charles Sabatino. Available online at www.americanbar.org

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

Article 14. Persons Under Disability - Protection

Part 5. POWERS OF ATTORNEY

Current through Chapter 421 of the 2017 Legislative Session

§ 15-14-509. Interstate effect of medical durable power of attorney

- (1) Unless otherwise stated in a medical durable power of attorney, it shall be presumed that the principal intends to have a medical durable power of attorney executed pursuant to this part 5 recognized to the fullest extent possible by the courts of any other state.
- (2) Unless otherwise provided therein, any medical durable power of attorney or similar instrument executed in another state shall be presumed to comply with the provisions of this part 5 and may, in good faith, be relied upon by a health care provider or health care facility in this state.

Cite as C.R.S. § 15-14-509

History. L. 92: Entire section added, p. 1979, § 2, effective June 4

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

DECLARATIONS - FUTURE MEDICAL TREATMENT

Article 18. Colorado Medical Treatment Decision Act

Current through Chapter 421 of the 2017 Legislative Session

§ 15-18-108. Determination of validity

- (1) Any person who is the parent, adult child, spouse, designated beneficiary under the "Colorado Designated Beneficiary Agreement Act", 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 actions as he or she deems necessary and prudent in the best interests of the qualified patient and shall present to the court a report of his or her 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 seven 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 or beneficiary under the "Colorado Designated Beneficiary Agreement Act", article **22** of this title, if the identity and whereabouts of such person is 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 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.

- (4) If the court determines that any proceedings pursuant to this section or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and costs, including reasonable attorney fees, incurred by the affected parties in responding to the proceedings or pleadings, against a party that brought or defended the proceedings or filed the pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction, or surcharge provided by law.
- (5) Any declaration executed in compliance with the requirements of Colorado law in effect at the time the declaration was made shall continue to be an effective declaration after August 11, 2010.
- (6) Any declaration executed in compliance with the laws of the state in which the declaration was executed shall be considered effective for use within the state of Colorado to the extent that such declaration does not violate any laws of the state of Colorado.

Cite as C.R.S. § 15-18-108

History. L. 2010: Entire article R&RE, [\(HB10-1025\)](#), [ch. 113](#), [p. 380](#), [§1](#), effective August 11. L. 2012: IP(2)(b)(I) amended, [\(SB12-175\)](#), [ch. 208](#), [p. 842](#), [§56](#), effective July 1.