

**75-2a-115 Notification to health care provider -- Obligations of health care providers -- Liability.**

- (1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility is not assigned to a health care provider or health care facility by state or federal law, to notify or provide for notification to a health care provider and a health care facility of:
  - (a) the existence of a health care directive;
  - (b) the revocation of a health care directive;
  - (c) the existence or revocation of appointment of an agent or default surrogate;
  - (d) the disqualification of a default surrogate; or
  - (e) the appointment or revocation of appointment of a guardian.
- (2)
  - (a) A health care provider or health care facility is not subject to civil or criminal liability or to claims of unprofessional conduct for failing to act upon a health care directive, a revocation of a health care directive, or a disqualification of a surrogate until the health care provider or health care facility has received an oral directive from an adult or a copy of a written directive or revocation of the health care directive, or the disqualification of the surrogate.
  - (b) A health care provider and health care facility that is notified under Subsection (1) shall include in the adult patient's medical record:
    - (i) the health care directive or a copy of it, a revocation of a health care directive, or a disqualification of a surrogate; and
    - (ii) the date, time, and place in which any written or oral notice of the document described in this Subsection (2)(b) is received.
- (3) A health care provider or health care facility acting in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
  - (a) complying with a health care decision made by an adult with health care decision making capacity;
  - (b) complying with a health care decision made by a surrogate apparently having authority to make a health care decision for a person, including a decision to withhold or withdraw health care;
  - (c) declining to comply with a health care decision of a surrogate based on a belief that the surrogate then lacked authority;
  - (d) declining to comply with a health care decision of an adult who lacks decision making capacity;
  - (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial determination, under Section 75-2a-120 of:
    - (i) the validity of a health care directive;
    - (ii) the validity of directions from a surrogate or guardian;
    - (iii) the decision making capacity of an adult who challenges a physician's finding of incapacity; or
    - (iv) the authority of a guardian or surrogate; or
  - (f) complying with an advance health care directive and assuming that the directive was valid when made, and has not been revoked or terminated.
- (4)
  - (a) Health care providers and health care facilities shall:
    - (i) cooperate with a person authorized under this chapter to make written directives concerning health care;
    - (ii) unless the provisions of Subsection (4)(b) apply, comply with:

- (A) a health care decision of an adult; and
- (B) a health care decision made by the highest ranking surrogate then authorized to make health care decisions for an adult, to the same extent as if the decision had been made by the adult;
- (iii) before implementing a health care decision made by a surrogate, make a reasonable attempt to communicate to the adult on whose behalf the decision is made:
  - (A) the decision made; and
  - (B) the identity of the surrogate making the decision.
- (b) A health care provider or health care facility may decline to comply with a health care decision if:
  - (i) in the opinion of the health care provider:
    - (A) the adult who made the decision lacks health care decision making capacity;
    - (B) the surrogate who made the decision lacks health care decision making capacity;
    - (C) the health care provider has evidence that the surrogate's instructions are inconsistent with the adult's health care instructions, or, for a person who has always lacked health care decision making capacity, that the surrogate's instructions are inconsistent with the best interest of the adult; or
    - (D) there is reasonable doubt regarding the status of a person claiming the right to act as a default surrogate, in which case the health care provider shall comply with Subsection 75-2a-108(6); or
  - (ii) the health care provider declines to comply for reasons of conscience.
- (c) A health care provider or health care facility that declines to comply with a health care decision in accordance with Subsection (4)(b) must:
  - (i) promptly inform the adult and any acting surrogate of the reason for refusing to comply with the health care decision;
  - (ii) make a good faith attempt to resolve the conflict; and
  - (iii) provide continuing care to the patient until the issue is resolved or until a transfer can be made to a health care provider or health care facility that will implement the requested instruction or decision.
- (d) A health care provider or health care facility that declines to comply with a health care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the adult to a health care provider or health care facility that will carry out the requested health care decisions.
- (e) A health care facility may decline to follow a health care decision for reasons of conscience under Subsection (4)(b)(ii) if:
  - (i) the health care decision is contrary to a policy of the facility that is expressly based on reasons of conscience;
  - (ii) the policy was timely communicated to the adult and an adult's surrogate;
  - (iii) the facility promptly informs the adult, if possible, and any surrogate then authorized to make decisions for the adult;
  - (iv) the facility provides continuing care to the adult until a transfer can be made to a health care facility that will implement the requested instruction or decision; and
  - (v) unless an adult or surrogate then authorized to make health care decisions for the adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the adult to another health care facility that will carry out the instructions or decisions.
- (5) A health care provider and health care facility:
  - (a) may not require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care; and

(b) shall comply with all state and federal laws and regulations governing advance health care directives.

Amended by Chapter 107, 2008 General Session