

The Iris Project

Revisions to the Colorado “Living Will”

In 2010, the Colorado “Declaration as to Medical and Surgical Treatment” (or “Living Will”) was entirely repealed and replaced by a new statute, effective August 11, 2010.

The new statute differs from the previous in a number of areas:

- Persistent vegetative state (PVS) is now a qualifying condition, along with terminal illness, for the execution of a Living Will.
- For a Living Will to go into effect, a person must be in PVS **or** terminal condition **and** lacking decisional capacity (not “unconscious, comatose, or otherwise incompetent”). Two physicians must still certify terminal illness or PVS.
- The requirement that artificial nutrition and hydration be “the only procedure that is being provided” before it can be discontinued has been removed.
- The person signing the Living Will (the “declarant”) may include other instructions for care following certification of terminal illness/PVS.
- The declarant may include a list of persons to be notified of that certification, as well as a list of persons with whom healthcare providers may discuss the declarant’s condition and care.
- The Living Will may be combined with a document appointing a Healthcare Agent (Medical Durable Power of Attorney).
- The declarant may specifically grant to his or her Healthcare Agent the power to override some or all of the instructions in the Living Will—for instance in unanticipated circumstances where the instructions in the Living Will actually work against the known preferences and goals of the declarant.
- The Living Will must still be witnessed by 2 witnesses (notary is optional), but residents/patients in the facility where the declarant resides may now be witnesses.
- The recommended form for the Living Will has been removed from the statute, along with its confusing requirement that the declarant be unconscious, comatose, or otherwise incompetent for a period of 7 consecutive days prior to the withdrawal of life-sustaining treatment. (This was never a statutory requirement.)