

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 1133, Pages 1 through 9, Sections 404.830, 404.1100, 404.1101, 404.1102,
2 404.1103, 404.1104, 404.1105, 404.1106, 404.1107, 404.1108, 404.1109, and 404.1110, by deleting
3 all of said sections from the bill and inserting in lieu thereof the following:
4

5 "404.1100. Sections 404.1100 to 404.1110 shall be known and may be cited as the
6 "Designated Health Care Decision-Maker Act".

7 404.1101. As used in sections 404.1100 to 404.1110 the following terms mean:

8 (1) "Artificially supplied nutrition and hydration", any medical procedure whereby nutrition
9 or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines,
10 or nutrients or fluids are administered into a person's bloodstream or provided subcutaneously;

11 (2) "Best interests":

12 (a) Overseeing that the incapacitated person has the right to enjoy the highest attainable
13 standard of health for that person;

14 (b) Advocating that the person who is incapacitated receive the same range, quality, and
15 standard of health care, care, and comfort as is provided to an individual without a disability;

16 (c) Monitoring health care providers and health care facilities to ensure that they provide
17 health care, care, and comfort of the same quality to the person who is incapacitated as they provide
18 to other individuals without disabilities; and

19 (d) Ensuring there is no discriminatory denial of health care, care, or comfort, or food or
20 fluids on the basis that the person who is incapacitated is considered an individual with a disability;

21 (3) "Designated health care decision-maker", the person designated to make health care
22 decisions for a patient under section 404.1104, not including a person acting as a guardian or an
23 agent under a durable power of attorney for health care or any other person legally authorized to
24 consent for the patient under any other law to make health care decisions for an incapacitated patient;

25 (4) "Health care", a procedure to diagnose or treat a human disease, ailment, defect,
26 abnormality, or complaint, whether of physical or mental origin and includes:

27 (a) Assisted living services, or intermediate or skilled nursing care provided in a facility
28 licensed under chapter 198;

29 (b) Services for the rehabilitation or treatment of injured, disabled, or sick persons; or

30 (c) Making arrangements for placement in or removal from a health care facility or health
31 care provider that provides such forms of care;

32 (5) "Health care facility", any hospital, hospice, inpatient facility, nursing facility, skilled
33 nursing facility, residential care facility, intermediate care facility, dialysis treatment facility, assisted
34 living facility, home health or hospice agency; any entity that provides home or community-based
35 health care services; or any other facility that provides or contracts to provide medical treatment, and
36 which is licensed, certified, or otherwise authorized or permitted by law to provide medical

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1 treatment;

2 (6) "Health care provider", any individual who provides medical treatment to persons and
 3 who is licensed, certified, registered, or otherwise authorized or permitted by law to provide medical
 4 treatment;

5 (7) "Incapacitated", a person who is unable by reason of any physical or mental condition to
 6 receive and evaluate information or to communicate decisions to such an extent that the person lacks
 7 capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that
 8 serious physical injury, illness, or disease is likely to occur;

9 (8) "Patient", any adult person or any person otherwise authorized to make treatment
 10 decisions for himself or herself under Missouri law;

11 (9) "Physician", a treating, attending, or consulting physician licensed to practice medicine
 12 under Missouri law;

13 (10) "Reasonable medical judgment", a medical judgment that would be made by a
 14 reasonably prudent physician, knowledgeable about the case and the treatment possibilities with
 15 respect to the medical conditions involved.

16 404.1102. The determination that a patient is incapacitated shall be made as set forth in
 17 section 404.825. A health care provider or health care facility may rely in the exercise of good faith
 18 and in accordance with reasonable medical judgment upon the health care decisions made for a
 19 patient by a designated health care decision-maker selected in accordance with section 404.1104,
 20 provided two licensed physicians determine, after reasonable inquiry and in accordance with
 21 reasonable medical judgment, that such patient is incapacitated and has neither a guardian with
 22 medical decision-making authority appointed in accordance with chapter 475, an attorney in fact
 23 appointed in a durable power of attorney for health care in accordance with sections 404.800 to
 24 404.865, nor any other known person who has the legal authority to make health care decisions.

25 404.1103. Upon a determination that a patient is incapacitated, the physician or another
 26 health care provider acting at the direction of the physician shall make reasonable efforts to inform
 27 potential designated health care decision-makers set forth in section 404.1104 of whom the physician
 28 or physician's designee is aware, of the need to appoint a designated health care decision-maker.
 29 Reasonable efforts includes, without limitation, identifying a member of the patient's family, a
 30 guardian with medical decision-making authority appointed in accordance with chapter 475, an
 31 attorney in fact appointed in a durable power of attorney for health care in accordance with sections
 32 404.800 to 404.865, or any other known person who has the legal authority to make health care
 33 decisions, by examining the patient's personal effects and medical records. If a family member,
 34 attorney-in-fact for health care or guardian with health care decision-making authority is identified, a
 35 documented attempt to contact that person by telephone, with all known telephone numbers and
 36 other contact information used, shall be made within twenty-four hours after a determination of
 37 incapacity is made as provided in section 404.1102.

38 404.1104. 1. If a patient is incapacitated under the circumstances described in section
 39 404.1102 and is unable to provide consent regarding his or her own health care, and does not have a
 40 legally appointed guardian, an agent under a health care durable power of attorney, or any other
 41 person who has legal authority to consent for the patient, decisions concerning the patient's health
 42 care may be made by the following competent persons in the following order of priority:

43 (1) The spouse of the patient, unless the spouse and patient are separated under one of the
 44 following:

45 (a) A current dissolution of marriage or separation action;

46 (b) A signed written property or marital settlement agreement;

47 (c) A permanent order of separate maintenance or support or a permanent order approving a
 48 property or marital settlement agreement between the parties;

- 1 (2) An adult child of the patient;
- 2 (3) A parent;
- 3 (4) An adult sibling;
- 4 (5) Grandparent or adult grandchild;
- 5 (6) Niece or nephew or the next nearest other relative of the patient, by consanguinity or
- 6 affinity;
- 7 (7) Any nonrelative who can demonstrate that he or she has a close personal relationship
- 8 with the patient and is familiar with the patient's personal values; or
- 9 (8) Any other person designated by the unanimous mutual agreement of the persons listed
- 10 above who are involved in the patient's care.

11 2. If a person who is a member of the classes listed in subsection 1 of this section, regardless
 12 of priority, or a health care provider or a health care facility involved in the care of the patient,
 13 disagree on whether certain health care should be provided to or withheld or withdrawn from a
 14 patient, any such person, provider, or facility, or any other person interested in the welfare of the
 15 patient may petition the probate court for an order for the appointment of a temporary or permanent
 16 guardian in accordance with subsection 7 of this section to act in the best interest of the patient.

17 3. Priority under this section shall not be given to persons in any of the following
 18 circumstances:

19 (1) If a report of abuse or neglect of the patient has been made under section 198.070,
 20 208.912, 210.115, 565.188, or 660.300 and if the health care provider knows of such a report of
 21 abuse, then unless the report has been determined to be unsubstantiated or unfounded, or a contrary
 22 determination was finally reversed after administrative or judicial review, the person reported as the
 23 alleged perpetrator shall not be given priority or authority to make health care decisions under
 24 subsection 1 of this section, provided that such a report shall not be based on the person's support for,
 25 or direction to provide, health care to the patient;

26 (2) If the patient's physician or the physician's designee reasonably determines, after making
 27 a diligent effort to contact the designated health care decision-maker using known telephone
 28 numbers and other contact information and receiving no response, that such person is not reasonably
 29 available to make medical decisions as needed or is not willing to make health care decisions for the
 30 patient; or

31 (3) If a probate court in a proceeding under subsection 7 of this section finds that the
 32 involvement of the person in decisions concerning the patient's health care is contrary to instructions
 33 that the patient had unambiguously, and without subsequent contradiction or change, expressed
 34 before he or she became incapacitated. Such a statement to the patient's physician or other health
 35 care provider contemporaneously recorded in the patient's medical record and signed by the patient's
 36 physician or other health care provider shall be deemed such an instruction, subject to the ability of a
 37 party to a proceeding under subsection 7 of this section to dispute its accuracy, weight, or
 38 interpretation.

39 4. (1) The designated health care decision-maker shall make reasonable efforts to obtain
 40 information regarding the patient's treatment preferences from health care providers, family, friends,
 41 or others who may have credible information.

42 (2) The designated health care decision-maker, and the probate court in any proceeding
 43 under subsection 7 of this section, shall always make health care decisions in the patient's best
 44 interests, and if the patient's religious and moral beliefs and treatment preferences are known and not
 45 inconsistent with the patient's best interests, in accordance with those beliefs and preferences.

46 5. This section does not authorize the provision or withholding of health care services that
 47 the patient has unambiguously, without subsequent contradiction or change of instruction, expressed
 48 to the patient's physician or other health care provider that he or she would or would not want at a

time when such patient had capacity. Such a statement to the patient's physician or other health care provider, contemporaneously recorded in the patient's medical record and signed by the patient's physician or other health care provider, shall be deemed such evidence, subject to the ability of a party to a proceeding under subsection 7 of this section to dispute its accuracy, weight, or interpretation.

6. A designated health care decision-maker shall be deemed a personal representative for the purposes of access to and disclosure of private medical information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC Section 1320d and 45 CFR 160-164.

7. Nothing in sections 404.1100 to 404.1110 shall preclude any person interested in the welfare of a patient, including but not limited to a designated health care decision-maker, a member of the classes listed in subsection 1 of this section regardless of priority, or a health care provider or health care facility involved in the care of the patient, from petitioning the probate court for the appointment of a temporary or permanent guardian for the patient, including expedited adjudication under chapter 475.

8. Pending the final outcome of proceedings initiated under subsection 7 of this section, the designated health care decision-maker, health care provider, or health care facility shall not withhold or withdraw, or direct the withholding or withdrawal, of health care, nutrition, or hydration whose withholding or withdrawal, in reasonable medical judgment, would result in or hasten the death of the patient, would jeopardize the health or limb of the patient, or would result in disfigurement or impairment of the patient's faculties, except to the extent that all parties to the court proceeding including the person, provider, or facility who or which filed the petition, agree in a written stipulation that certain specified health care may be withheld or withdrawn. No such stipulation shall violate the provisions of section 404.1105. If a health care provider or a health care facility objects to the provision of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely held moral convictions, the provider or facility shall not impede the transfer of the patient to another health care provider or health care facility willing to provide it, and shall provide such health care, nutrition, or hydration to the patient pending the completion of the transfer. For purposes of this section, artificially supplied nutrition and hydration may be withheld or withdrawn during the pendency of the guardianship proceeding only if, based on reasonable medical judgment, the patient's physician and a second licensed physician certify that the patient meets the standard set forth in subdivision (2) of subsection 1 of section 404.1105. If tolerated by the patient and adequate to supply the patient's needs for nutrition or hydration, natural feeding shall be the preferred method.

404.1105. 1. No designated health care decision-maker shall, with the intent of hastening or causing the death of the patient, authorize the withdrawal or withholding of nutrition or hydration supplied through either natural or artificial means. A designated health care decision-maker may authorize the withdrawal or withholding of artificially supplied nutrition and hydration only when the physician and a second licensed physician certify in the patient's medical record based on reasonable medical judgment that:

(1) Artificially supplied nutrition or hydration are not necessary for comfort care or the relief of pain and would serve only to prolong artificially the dying process and where death will occur within a short period of time whether such artificially supplied nutrition or hydration is withheld or withdrawn; or

(2) Artificially supplied nutrition or hydration cannot be physiologically assimilated or tolerated by the patient.

2. When tolerated by the patient and adequate to supply the patient's need for nutrition or hydration, natural feeding shall be the preferred method.

3. The provisions of this section shall not apply to section 459.010.

404.1106. If any of the individuals specified in section 404.1104 or the designated health

care decision-maker or physician believes the patient is no longer incapacitated, the patient's physician shall reexamine the patient and determine in accordance with reasonable medical judgment whether the patient is no longer incapacitated, shall certify the decision and the basis therefor in the patient's medical record, and shall notify the patient, the designated health care decision-maker, and the person who initiated the redetermination of capacity. Rights of the designated health care decision-maker end upon the physician's certification that the patient is no longer incapacitated.

404.1107. Any health care provider or health care facility that makes good faith and reasonable attempts to identify, locate, and communicate with potential designated health care decision-makers in accordance with sections 404.1100 to 404.1110 shall not be subject to civil or criminal liability or regulatory sanction for the effort to identify, locate, and communicate with such potential designated health care decision-makers.

404.1108. 1. A health care provider or a health care facility may decline to comply with the medical treatment decision of a patient or a designated health care decision-maker if such decision is contrary to the religious beliefs or sincerely held moral convictions of a health care provider or health care facility.

2. If at any time, a health care facility or health care provider determines that any known or anticipated treatment preferences expressed by the patient to the health care provider or health care facility, or as expressed through the patient's designated health care decision-maker, are contrary to the religious beliefs or sincerely held moral convictions of the health care provider or health care facility, such provider or facility shall promptly inform the patient or the patient's designated health care decision-maker.

3. If a health care provider declines to comply with such medical treatment decision, the health care provider or health care facility shall not impede the transfer of the patient to another health care provider or health care facility willing to comply with the medical treatment decision.

4. Nothing in this section shall relieve or exonerate a health care provider or a health care facility from the duty to provide for the medical treatment, care, and comfort of a patient pending transfer under this section. If withholding or withdrawing certain health care would, in reasonable medical judgment, result in or hasten the death of the patient, such health care shall be provided pending completion of the transfer. Notwithstanding any other provision of this section, no such health care shall be denied on the basis of a view that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill, or on the basis of the health care provider's or facility's disagreement with how the patient or individual authorized to act on the patient's behalf values the tradeoff between extending the length of the patient's life and the risk of disability.

404.1109. A health care decision-maker shall not withhold or withdraw medical treatment from a pregnant patient, consistent with existing law, as set forth in section 459.025.

404.1110. Nothing in sections 404.1100 to 404.1110 is intended to:

(1) Encourage or discourage any particular medical treatment or to interfere with or affect any method of religious or spiritual healing otherwise permitted by law;

(2) Be construed as condoning, authorizing, or approving euthanasia or mercy killing; or

(3) Be construed as permitting any affirmative or deliberate act to end a person's life, except to permit natural death as provided by sections 404.1100 to 404.1110."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.