

HB 1133 with HCA 1 -- HEALTH CARE DECISION-MAKER

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Health and Mental Health Policy by a vote of 8 to 0.

This bill establishes the Designated Health Care Decision-Maker Act. In its main provisions, the bill:

- (1) Prohibits current religious or moral objection laws from relieving a health care provider or health care facility of the duty to provide health care, care, and comfort for a patient pending transfer and prohibits the denial of life-preserving medical treatment, nutrition or hydration based on specified religious or moral objections;
- (2) Limits the determination of incapacity of a patient to a specific process and permits a health care provider or facility to rely upon the health care decisions made by a designated health care decision-maker if certain procedures are followed;
- (3) Requires a physician or other provider to make reasonable efforts to inform potential designated health care decision-makers of a determination that a patient is incapacitated as specified in the bill;
- (4) Delineates a list of priority of persons who may make health care decisions for an incapacitated patient as specified in the bill and excludes certain persons from the list if specified circumstances exist;
- (5) Permits any person interested in the welfare of an incapacitated patient to petition the probate court for an order determining the care to be provided to the patient;
- (6) Prohibits a designated health care decision-maker from withdrawing or withholding nutrition or hydration that is ingested through natural means and permits a designated health care decision-maker to withdraw or withhold artificially supplied nutrition or hydration if specified requirements are met;
- (7) Requires the patient's physician to reexamine the patient if the designated health care decision-maker, physician, or anyone in the priority list believes the patient is no longer incapacitated;
- (8) Prohibits any facility or provider who makes good faith and reasonable efforts to identify, locate, and communicate with potential designated health care decision-makers from being subject

to civil or criminal liability or regulatory sanctions for such actions;

(9) Permits a provider or facility to decline to comply with a medical treatment decision of a patient or designated health care decision-maker if the provider or facility has a moral or religious objection to the decision so long as the facility or provider takes certain actions as specified in the bill;

(10) Permits a provider or facility to defend his, her, or its denial of treatment if a patient or designated health care decision-maker pleads a prima facie case to enforce the provisions enumerated in paragraph (6); and

(11) Prohibits a provider or facility from withholding or withdrawing medical treatment from a pregnant patient.

HCA 1: Replaces every line in the bill and makes slight changes to current language

PROPONENTS: Supporters say that the bill language was approved by Missouri Bar Board of Governors. Missouri is desperately in need of this type of law. The bill is intended to allow routine medical decisions to be made, not just end of life decisions. Coalitions involved in the process have been collaborating for a while to ensure this bill addresses the concerns of all stakeholders. The bill includes numerous viewpoints and there should be no need to go to court when individuals listed in the hierarchy are available to make health care decisions. Guardianship cases are very time consuming, can be expensive, and can lead to other legal issues. Under the bill, end of life decisions regarding removal of hydration and nutrition require multiple physicians to be involved and extra steps to be taken. Missouri is one of seven states that lack a decision maker hierarchy in law. Clarity in this murky area of the law is very needed. The bill has been a labor of love and will have direct and significant impact on long-term care consumers.

Testifying for the bill were Representative McGaugh; Leadingage Missouri; Missouri Hospice & Palliative Care Association; BJC Health Care Systems; Missouri Association of Area Agencies on Aging; Alzheimer's Association; Missouri Alliance For Home Care; SSM Health Care; Sheri Bilderback, Voyce; Missouri Right to Life; Missouri Hospital Association; and Debra Schuster, The Board of Governors of The Missouri Bar.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say they would like to see

some tweaks but the current language is a great start and they are grateful to those involved. Others testifying on the bill are concerned about requiring a hierarchy and not taking into consideration the many issues that do not neatly fall into the hierarchy. There is no urgency because these types of decisions are made daily and with consensus among providers and families of patients.

Testifying on the bill were Campaign Life Missouri; and Missouri Catholic Conference.