

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 635, Page 19, Section 376.1235, Line 18,
2 by inserting after all of said section and line the following:

3
4 "404.1100. Sections 404.1100 to 404.1110 shall be known and may be cited as the
5 "Designated Health Care Decision-Maker Act".

6 404.1101. As used in sections 404.1100 to 404.1110, the following terms mean:

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

10 (2) "Best interests":

11 (a) Promoting the incapacitated person's right to enjoy the highest attainable standard of
12 health for that person;

13 (b) Advocating that the person who is incapacitated receive the same range, quality, and
14 standard of health care, care, and comfort as is provided to a similarly situated individual who is not
15 incapacitated; and

16 (c) Advocating against the discriminatory denial of health care, care, or comfort, or food or
17 fluids on the basis that the person who is incapacitated is considered an individual with a disability;

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

23 (4) "Disability" or "disabled" shall have the same meaning as defined in 42 U.S.C. Section
24 12102, the Americans with Disabilities Act of 1990, as amended; provided that the term "this
25 chapter" in that definition shall be deemed to refer to the Missouri health care decision-maker act;

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

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

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

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

33 (6) "Health care facility", any hospital, hospice, inpatient facility, nursing facility, skilled
34 nursing facility, residential care facility, intermediate care facility, dialysis treatment facility,
35 assisted living facility, home health or hospice agency; any entity that provides home or community-
36 based health care services; or any other facility that provides or contracts to provide health care, and

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1 which is licensed, certified, or otherwise authorized or permitted by law to provide health care;

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

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

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

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

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

15 404.1102. The determination that a patient is incapacitated shall be made as set forth in
 16 section 404.825. A health care provider or health care facility may rely in the exercise of good faith
 17 and in accordance with reasonable medical judgment upon the health care decisions made for a
 18 patient by a designated health care decision-maker selected in accordance with section 404.1104,
 19 provided two licensed physicians determine, after reasonable inquiry and in accordance with
 20 reasonable medical judgment, that such patient is incapacitated and has neither a guardian with
 21 medical decision-making authority appointed in accordance with chapter 475, an attorney in fact
 22 appointed in a durable power of attorney for health care in accordance with sections 404.800 to
 23 404.865, is not a child under the jurisdiction of the juvenile court under section 211.031, nor any
 24 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
 28 physician or physician's designee is aware, of the need to appoint a designated health care decision-
 29 maker. Reasonable efforts include, without limitation, identifying potential designated health care
 30 decision makers as set forth in subsection 1 of section 404.1104, a guardian with medical decision-
 31 making authority appointed in accordance with chapter 475, an attorney in fact appointed in a
 32 durable power of attorney for health care in accordance with sections 404.800 to 404.865, the
 33 juvenile court under section 211.031, or any other known person who has the legal authority to
 34 make health care decisions, by examining the patient's personal effects and medical records. If a
 35 family member, attorney in fact for health care or guardian with health care decision-making
 36 authority is identified, a documented attempt to contact that person by telephone, with all known
 37 telephone numbers and other contact information used, shall be made within twenty-four hours after
 38 a determination of incapacity is made as provided in section 404.1102.

39 404.1104. 1. If a patient is incapacitated under the circumstances described in section
 40 404.1102 and is unable to provide consent regarding his or her own health care, and does not have a
 41 legally appointed guardian, an agent under a health care durable power of attorney, is not under the
 42 jurisdiction of the juvenile court, or does not have any other person who has legal authority to
 43 consent for the patient, decisions concerning the patient's health care may be made by the following
 44 competent persons in the following order of priority, with the exception of persons excluded under
 45 subsection 4 of section 404.1104:

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

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

- 1 (b) A signed written property or marital settlement agreement;
2 (c) A permanent order of separate maintenance or support or a permanent order approving a
3 property or marital settlement agreement between the parties;
4 (2) An adult child of the patient;
5 (3) A parent of the patient;
6 (4) An adult sibling of the patient;
7 (5) A person who is a member of the same community of persons as the patient who is
8 bound by vows to a religious life and who conducts or assists in the conducting of religious services
9 and actually and regularly engages in religious, benevolent, charitable, or educational ministry, or
10 performance of health care services;
11 (6) An adult who can demonstrate that he or she has a close personal relationship with the
12 patient and is familiar with the patient's personal values; or
13 (7) Any other person designated by the unanimous mutual agreement of the persons listed
14 above who is involved in the patient's care.

15 2. If a person who is a member of the classes listed in subsection 1 of this section,
16 regardless of priority, or a health care provider or a health care facility involved in the care of the
17 patient, disagrees on whether certain health care should be provided to or withheld or withdrawn
18 from a patient, any such person, provider, or facility, or any other person interested in the welfare of
19 the patient may petition the probate court for an order for the appointment of a temporary or
20 permanent guardian in accordance with subsection 8 of this section to act in the best interest of the
21 patient.

22 3. A person who is a member of the classes listed in subsection 1 of this section shall not be
23 denied priority under this section based solely upon that person's support for, or direction to provide,
24 withhold or withdraw health care to the patient, subject to the rights of other classes of potential
25 designated decision-makers, a healthcare provider, or healthcare facility to petition the probate court
26 for an order for the appointment of a temporary or permanent guardian under subsection 8 of this
27 section to act in the best interests of the patient.

28 4. Priority under this section shall not be given to persons in any of the following
29 circumstances:

30 (1) If a report of abuse or neglect of the patient has been made under section 192.2475,
31 198.070, 208.912, 210.115, 565.188, 630.163 or any other mandatory reporting statutes, and if the
32 health care provider knows of such a report of abuse or neglect, then unless the report has been
33 determined to be unsubstantiated or unfounded, or a determination of abuse was finally reversed
34 after administrative or judicial review, the person reported as the alleged perpetrator of the abuse or
35 neglect shall not be given priority or authority to make health care decisions under subsection 1 of
36 this section, provided that such a report shall not be based on the person's support for, or direction to
37 provide, health care to the patient;

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

43 (3) If a probate court in a proceeding under subsection 8 of this section finds that the
44 involvement of the person in decisions concerning the patient's health care is contrary to instructions
45 that the patient had unambiguously, and without subsequent contradiction or change, expressed
46 before he or she became incapacitated. Such a statement to the patient's physician or other health
47 care provider contemporaneously recorded in the patient's medical record and signed by the patient's
48 physician or other health care provider shall be deemed such an instruction, subject to the ability of

1 a party to a proceeding under subsection 8 of this section to dispute its accuracy, weight, or
 2 interpretation.

3 5. (1) The designated health care decision-maker shall make reasonable efforts to obtain
 4 information regarding the patient's health care preferences from health care providers, family,
 5 friends, or others who may have credible information.

6 (2) The designated health care decision-maker, and the probate court in any proceeding
 7 under subsection 8 of this section, shall always make health care decisions in the patient's best
 8 interests, and if the patient's religious and moral beliefs and health care preferences are known, in
 9 accordance with those beliefs and preferences.

10 6. This section does not authorize the provision or withholding of health care services that
 11 the patient has unambiguously, without subsequent contradiction or change of instruction, expressed
 12 that he or she would or would not want at a time when such patient had capacity. Such a statement
 13 to the patient's physician or other health care provider, contemporaneously recorded in the patient's
 14 medical record and signed by the patient's physician or other health care provider, shall be deemed
 15 such evidence, subject to the ability of a party to a proceeding under subsection 8 of this section to
 16 dispute its accuracy, weight, or interpretation.

17 7. A designated health care decision-maker shall be deemed a personal representative for the
 18 purposes of access to and disclosure of private medical information under the Health Insurance
 19 Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Section 1320d and 45 CFR 160-
 20 164.

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

27 9. Pending the final outcome of proceedings initiated under subsection 8 of this section, the
 28 designated health care decision-maker, health care provider, or health care facility shall not withhold
 29 or withdraw, or direct the withholding or withdrawal, of health care, nutrition, or hydration whose
 30 withholding or withdrawal, in reasonable medical judgment, would result in or hasten the death of
 31 the patient, would jeopardize the health or limb of the patient, or would result in disfigurement or
 32 impairment of the patient's faculties. If a health care provider or a health care facility objects to the
 33 provision of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely
 34 held moral convictions, the provider or facility shall not impede the transfer of the patient to another
 35 health care provider or health care facility willing to provide it, and shall provide such health care,
 36 nutrition, or hydration to the patient pending the completion of the transfer. For purposes of this
 37 section, artificially supplied nutrition and hydration may be withheld or withdrawn during the
 38 pendency of the guardianship proceeding only if, based on reasonable medical judgment, the
 39 patient's physician and a second licensed physician certify that the patient meets the standard set
 40 forth in subdivision (2) of subsection 1 of section 404.1105. If tolerated by the patient and adequate
 41 to supply the patient's needs for nutrition or hydration, natural feeding should be the preferred
 42 method.

43 404.1105. 1. No designated health care decision-maker may, with the intent of hastening or
 44 causing the death of the patient, authorize the withdrawal or withholding of nutrition or hydration
 45 supplied through either natural or artificial means. A designated health care decision-maker may
 46 authorize the withdrawal or withholding of artificially supplied nutrition and hydration only when
 47 the physician and a second licensed physician certify in the patient's medical record based on
 48 reasonable medical judgment that:

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

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

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

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

10 404.1106. If any of the individuals specified in section 404.1104 or the designated health
11 care decision-maker or physician believes the patient is no longer incapacitated, the patient's
12 physician shall reexamine the patient and determine in accordance with reasonable medical
13 judgment whether the patient is no longer incapacitated, shall certify the decision and the basis
14 therefor in the patient's medical record, and shall notify the patient, the designated health care
15 decision-maker, and the person who initiated the redetermination of capacity. Rights of the
16 designated health care decision-maker shall end upon the physician's certification that the patient is
17 no longer incapacitated.

18 404.1107. No health care provider or health care facility that makes good faith and
19 reasonable attempts to identify, locate, and communicate with potential designated health care
20 decision-makers in accordance with sections 404.1100 to 404.1110 shall be subject to civil or
21 criminal liability or regulatory sanction for any act or omission related to his or her or its effort to
22 identify, locate, and communicate with or act upon any decision by or for such actual or potential
23 designated health care decision-makers.

24 404.1108. 1. A health care provider or a health care facility may decline to comply with the
25 health care decision of a patient or a designated health care decision-maker if such decision is
26 contrary to the religious beliefs or sincerely held moral convictions of a health care provider or
27 health care facility.

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

34 3. If a health care provider declines to comply with such health care decision, no health care
35 provider or health care facility shall impede the transfer of the patient to another health care
36 provider or health care facility willing to comply with the health care decision.

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

47 404.1109. No health care decision-maker shall withhold or withdraw health care from a
48 pregnant patient, consistent with existing law, as set forth in section 459.025.

1 404.1110. Nothing in sections 404.1100 to 404.1110 is intended to:
2 (1) Be construed as condoning, authorizing, or approving euthanasia or mercy killing; or
3 (2) Be construed as permitting any affirmative or deliberate act to end a person's life, except
4 to permit natural death as provided by sections 404.1100 to 404.1110."; and
5

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