

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 139, Page 6,  
2 Section 338.710, Line 21, by inserting immediately after said section and line the following:

3  
4 "404.1100. 1. Sections 404.1100 to 404.1110 shall be known and may be cited as the "Designated  
5 Health Care Decision-Maker Act".

6 2. The provisions of sections 404.1100 to 404.1110 shall not be applicable to situations in which a  
7 patient has capacity to make health care decisions, a guardian with medical decision-making authority is  
8 appointed under chapter 475, an attorney-in-fact is appointed in a durable power of attorney for health care in  
9 accordance with sections 404.800 to 404.865, or if the patient is under jurisdiction of the juvenile court.

10 404.1101. As used in sections 404.1100 to 404.1110, the following terms mean:

11 (1) "Adult", a person eighteen years of age or older;

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

15 (3) "Best interests":

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

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

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

22 (4) "Designated health care decision-maker", the person designated to make health care decisions for  
23 a patient under section 404.1104;

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

27 (6) "Health care", services to diagnose or treat a human disease, ailment, defect, abnormality, or  
28 complaint, whether of physical or mental origin, and includes making arrangements for placement in or  
29 transfer to or from a health care facility or health care provider that provides such forms of care;

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

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

37 (9) "Incapacitated", as such term is defined and determined by sections 404.800 to 404.865;

38 (10) "Patient", any adult who:

39 (a) Is authorized to make health care decisions for himself or herself under Missouri law but is

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1 incapacitated; and

2 (b) Does not have anyone with legal authority to make health care decisions for such person  
 3 including, but not limited to, a guardian with medical decision-making authority appointed under chapter  
 4 475, or an attorney-in-fact appointed in a durable power of attorney for health care in accordance with  
 5 sections 404.800 to 404.865, or persons under the jurisdiction of the juvenile court;

6 (11) "Patient with capacity", a patient who is determined to no longer be incapacitated under section  
 7 404.1106;

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

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

13 404.1103. The physician or another health care provider acting at the direction of the physician shall  
 14 make reasonable efforts to inform potential designated health care decision-makers set forth under section  
 15 404.1104 of whom the physician or physician's designee is aware of the need to appoint a designated health  
 16 care decision-maker for the patient.

17 404.1104. 1. Decisions concerning the patient's health care may be made by the following persons  
 18 with capacity in the following order of priority, with the exception of persons excluded under subsection 5 of  
 19 this section:

20 (1) The spouse of the patient, unless the spouse and patient are separated under one of the following:  
 21 (a) A current dissolution of marriage or separation action;  
 22 (b) A signed written property or marital settlement agreement; or  
 23 (c) A permanent order of separate maintenance or support or a permanent order approving a property  
 24 or marital settlement agreement between the parties;

25 (2) An adult child of the patient;

26 (3) A parent of the patient;

27 (4) An adult sibling of the patient;

28 (5) Grandparent or adult grandchild of the patient;

29 (6) Any other adult relative or nonrelative who can demonstrate that he or she has a close personal  
 30 relationship with the patient and is familiar with the patient's personal values;

31 (7) A person who is a member of the same community of persons as the patient who is bound by  
 32 vows to a religious life and who conducts or assists in the conducting of religious services and actually and  
 33 regularly engages in religious, benevolent, charitable, or educational ministry, or performance of health care  
 34 services; or

35 (8) Any other person designated by the unanimous mutual agreement of the persons listed above  
 36 who is involved in the patient's care.

37 2. Reasonable efforts include, without limitation, identifying potential designated health care  
 38 decision-makers as set forth under this section by examining the patient's personal effects and medical  
 39 records. If a person with potential health care decision-making authority is identified, attempts to contact  
 40 that person shall be made within a reasonable time consistent with the patient's medical needs after a  
 41 determination of incapacity. Contact attempts, including name of the person and known telephone numbers  
 42 and other contact information, shall be documented in the patient's medical record. The health care facility  
 43 or health care provider shall look to the health care decision-maker highest in priority who is available and  
 44 willing to act at the time a health care decision shall be made for the patient.

45 3. Any person or entity interested in the welfare of the patient, including a health care provider or  
 46 health care facility, who disagrees on whether certain health care should be provided to or withheld or  
 47 withdrawn from a patient may petition the probate court for an order for the appointment of a temporary or  
 48 permanent guardian in accordance with chapter 475 to act in the best interests of the patient.

49 4. A person who is a member of the classes listed under subsection 1 of this section shall not be  
 50 denied priority under this section based solely upon that person's support for, or direction to provide,  
 51 withhold or withdraw health care to the patient, subject to the rights of other classes of potential designated  
 52 decision-makers, a health care provider, or health care facility to petition the probate court for an order for  
 53 the appointment of a temporary or permanent guardian under chapter 475 to act in the best interests of the

1 patient.

2 5. Notwithstanding the provisions of subsection 1 of this section, priority under this section shall not  
 3 be given to persons in any of the following circumstances:

4 (1) If a health care provider knows the person has been reported under any mandatory reporting  
 5 statute for abuse or neglect of the patient including, but not limited to, section 192.2475, 198.070, 208.912,  
 6 210.115, 565.188, 630.162, or 630.165 or any other mandatory reporting statute and a finding of abuse or  
 7 neglect has been substantiated. If the health care provider is aware of a report where a finding has not yet  
 8 been made, such person shall not be given priority until the investigating agency either makes a finding that  
 9 the allegations are unsubstantiated or, after investigation, closes the case without making a finding; provided  
 10 that, such a report shall not be based on the person's support for, or direction to provide, health care to the  
 11 patient;

12 (2) If the health care provider determines, after making a reasonable effort to contact the designated  
 13 health care decision-maker using known telephone numbers and other contact information and receiving no  
 14 response, that such person is unable to be found, not reasonably available, or is unwilling to make health care  
 15 decisions as needed for the patient;

16 (3) If a probate court in a proceeding under chapter 475 finds that the involvement of the person in  
 17 decisions concerning the patient's health care is contrary to instructions that the patient had unambiguously,  
 18 and without subsequent contradiction or change, expressed before he or she became incapacitated. Such a  
 19 statement to the patient's physician or other health care provider contemporaneously recorded in the patient's  
 20 medical record and signed by the patient's physician or other health care provider shall be deemed such an  
 21 instruction, subject to the ability of a party to a proceeding under chapter 475 to dispute its accuracy, weight,  
 22 or interpretation; or

23 (4) If the person is the subject of a protective order or other court order that directs that person to  
 24 avoid contact with the patient or if such person has been found guilty of abuse under section 565.180,  
 25 565.182, or 565.184.

26 6. (1) The designated health care decision-maker shall make reasonable efforts to obtain  
 27 information regarding the patient's health care preferences from health care providers, family, friends, or  
 28 others who may have credible information.

29 (2) The designated health care decision-maker shall make health care decisions in the patient's best  
 30 interests, taking into consideration evidence of the patient's known health care preferences and religious and  
 31 moral beliefs.

32 7. This section does not authorize the provision or withholding of health care services that the  
 33 patient has unambiguously at a time when the patient had capacity, without subsequent contradiction or  
 34 change of instruction of what he or she would or would not want, expressed either in a valid living will  
 35 created under sections 459.010 to 459.055 or to the patient's physician or other health care provider. Such a  
 36 statement to the patient's physician or other health care provider, contemporaneously recorded in the patient's  
 37 medical record and signed by the patient's physician or other health care provider, shall be deemed such  
 38 evidence, subject to the ability of a party to a proceeding under chapter 475 to dispute its accuracy, weight, or  
 39 interpretation.

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

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

48 10. Pending the final outcome of proceedings initiated under chapter 475, the designated health care  
 49 decision-maker, health care provider, or health care facility shall not withhold or withdraw or direct the  
 50 withholding or withdrawal of health care, nutrition, or hydration if withholding or withdrawal, in reasonable  
 51 medical judgment, would result in or hasten the death of the patient, would jeopardize the health or limb of  
 52 the patient, or would result in disfigurement or impairment of the patient's faculties. If a health care provider  
 53 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 under 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 should be the preferred method.

404.1105. 1. No designated health care decision-maker may, 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 if 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 is not necessary for comfort care or the relief of pain and would serve only to prolong artificially the dying process and when death will occur within a short period of time regardless of 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 should be the preferred method.

404.1106. If any of the individuals specified under 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 with capacity, the designated health care decision-maker, and the person who initiated the redetermination of capacity. Rights of the designated health care decision-maker shall end upon the physician's certification that the patient is no longer incapacitated.

404.1107. 1. No health care provider or health care facility that in good faith makes reasonable efforts to identify, locate, and communicate with potential designated health care decision-makers in accordance with sections 404.1100 to 404.1110 shall 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.

2. No health care provider or health care facility or employee thereof that makes good faith efforts to comply with the provisions in sections 404.1101 to 404.1110 and acts upon decisions, which are not otherwise unlawful, made by a health care decision-maker shall, as a result thereof, be subject to criminal or civil liability or regulatory sanction.

3. No health care decision-maker acting in accordance with sections 404.1101 to 404.1110 who in good faith makes decisions that are not otherwise unlawful shall not, as a result thereof, be subject to criminal or civil liability.

404.1108. 1. A health care provider or a health care facility may decline to comply with the health care 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 the 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 health care 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 health care decision, no health care provider or health care facility shall impede the transfer of the patient to another health care provider or health care facility willing to comply with the health care 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 health care, care, and comfort of a patient pending transfer under this

1 section. If withholding or withdrawing certain health care would, in reasonable medical judgment, result in  
2 or hasten the death of the patient, such health care shall be provided pending completion of the transfer.  
3 Notwithstanding any other provision of this section, no such health care shall be denied on the basis of a  
4 view that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than  
5 extending the life of an individual who is younger, nondisabled, or not terminally ill, or on the basis of the  
6 health care provider's or facility's disagreement with how the patient or individual authorized to act on the  
7 patient's behalf values the tradeoff between extending the length of the patient's life and the risk of disability.

8 404.1109. No health care decision-maker shall withhold or withdraw health care from a pregnant  
9 patient, consistent with existing law, as set forth under section 459.025.

10 404.1110. Nothing under sections 404.1100 to 404.1110 is intended to:

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

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

14  
15 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.