

SECOND REGULAR SESSION

HOUSE BILL NO. 1886

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VAN SCHOIACK.

4219H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 404, RSMo, by adding thereto eleven new sections relating to health care decision-making procedures.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 404, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 404.1100, 404.1101, 404.1102, 404.1103, 404.1104, 404.1105,
3 404.1106, 404.1107, 404.1108, 404.1109, and 404.1110, to read as follows:

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

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

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

6 **(2) "Best interests":**

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

20 (4) "Disability" or "disabled", the same meaning given to the term in 42 U.S.C.
21 Section 12102, the Americans with Disabilities Act of 1990, as amended, except the term
22 "this chapter" in that definition shall be deemed to refer to sections 404.1100 to
23 404.1110;

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

26 (a) Assisted living services;

27 (b) Intermediate or skilled nursing care provided in a facility licensed under
28 chapter 198;

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

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

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

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

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

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

49 (10) "Physician", a treating, attending, or consulting physician licensed to
50 practice medicine under chapter 334;

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

 404.1102. The determination that a patient is incapacitated shall be made as set
2 forth in section 404.825. A health care provider or health care facility may rely on the
3 exercise of good faith and in accordance with reasonable medical judgment upon the
4 health care decisions made for a patient by a designated health care decision-maker
5 selected in accordance with section 404.1104, provided that:

6 (1) Two licensed physicians determine, after reasonable inquiry and in
7 accordance with reasonable medical judgment, that the patient is incapacitated;

8 (2) The patient has neither a guardian with medical decision-making authority
9 appointed in accordance with chapter 475 or an attorney-in-fact appointed in a durable
10 power of attorney for health care in accordance with sections 404.800 to 404.865;

11 (3) The patient is not a child under the jurisdiction of the juvenile court under
12 section 211.031; and

13 (4) The patient does not have any other known person who has the legal
14 authority to make health care decisions for the patient.

 404.1103. Upon a determination that a patient is incapacitated, the physician or
2 another health care provider acting at the direction of the physician shall make
3 reasonable efforts to inform potential designated health care decision-makers set forth
4 in section 404.1104, of whom the physician or the physician's designee is aware, of the
5 need to appoint a designated health care decision-maker. Reasonable efforts include,
6 without limitation, identifying potential designated health care decision-makers as set
7 forth in subsection 1 of section 404.1104, a guardian with medical decision-making
8 authority appointed in accordance with chapter 475, an attorney-in-fact appointed in a
9 durable power of attorney for health care in accordance with sections 404.800 to
10 404.865, the juvenile court under section 211.031, or any other known person who has
11 the legal authority to make health care decisions for the patient, by examining the
12 patient's personal effects and medical records. If a family member, attorney-in-fact for
13 health care, or guardian with health care decision-making authority is identified, a
14 documented attempt to contact that person by telephone, with all known telephone
15 numbers and other contact information used, shall be made within twenty-four hours
16 after a determination of incapacity is made as provided in section 404.1102.

 404.1104. 1. If a patient is incapacitated under the circumstances described in
2 section 404.1102 and unable to provide consent regarding his or her own health care;
3 does not have a legally appointed guardian or an agent under a health care durable
4 power of attorney; is not under the jurisdiction of the juvenile court; and does not have

5 any other person who has legal authority to consent for the patient, decisions concerning
6 the patient's health care may be made by the following competent persons in the
7 following order of priority, with the exception of persons excluded under subsection 4 of
8 this section:

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

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

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

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

15 (2) An adult child of the patient;

16 (3) A parent of the patient;

17 (4) An adult sibling of the patient;

18 (5) A grandparent of the patient or an adult grandchild of the patient;

19 (6) A niece or nephew or the next nearest other relative of the patient, by
20 consanguinity or affinity;

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

25 (8) Any nonrelative who can demonstrate that he or she has a close personal
26 relationship with the patient and is familiar with the patient's personal values; or

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

29 2. If a person who is a member of any class of persons listed in subsection 1 of
30 this section, regardless of priority, or a health care provider or a health care facility
31 involved in the care of the patient, disagrees on whether certain health care should be
32 provided to or withheld or withdrawn from a patient, any such person, provider, or
33 facility, or any other person interested in the welfare of the patient, may petition the
34 probate court for an order for the appointment of a temporary or permanent guardian
35 in accordance with subsection 8 of this section to act in the best interests of the patient.

36 3. A person who is a member of any class of persons listed in subsection 1 of this
37 section shall not be denied priority under this section based solely upon that person's
38 support for, or direction to provide, withhold, or withdraw, health care to the patient,
39 subject to the rights of any other classes of potential designated health care decision-
40 makers, a health care provider, or a health care facility to petition the probate court for

41 an order for the appointment of a temporary or permanent guardian under subsection 8
42 of this section to act in the best interests of the patient.

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

45 (1) If a report of abuse or neglect of the patient has been made under section
46 192.2475, 198.070, 208.912, 210.115, 565.188, or 630.163, or any other mandatory
47 reporting statutes, and if the health care provider knows of such a report of abuse or
48 neglect, then unless the report has been determined to be unsubstantiated or unfounded,
49 or a determination of abuse was finally reversed after administrative or judicial review,
50 the person reported as the alleged perpetrator of the abuse or neglect shall not be given
51 priority or authority to make health care decisions under subsection 1 of this section,
52 provided that such a report shall not be based on the person's support for, or direction
53 to provide, health care to the patient;

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

59 (3) If a probate court in a proceeding under subsection 8 of this section finds that
60 the involvement of the person in decisions concerning the patient's health care is
61 contrary to instructions that the patient had unambiguously, and without subsequent
62 contradiction or change, expressed before he or she became incapacitated. Such a
63 statement to the patient's physician or other health care provider contemporaneously
64 recorded in the patient's medical record and signed by the patient's physician or other
65 health care provider shall be deemed such an instruction, subject to the ability of a
66 party to a proceeding under subsection 8 of this section to dispute its accuracy, weight,
67 or interpretation.

68 5. (1) The designated health care decision-maker shall make reasonable efforts
69 to obtain information regarding the patient's health care preferences from health care
70 providers, family, friends, or others who may have credible information.

71 (2) The designated health care decision-maker, and the probate court in any
72 proceeding under subsection 8 of this section, shall always make health care decisions in
73 the patient's best interests and, if the patient's religious and moral beliefs and health
74 care preferences are known and not inconsistent with the patient's best interests, in
75 accordance with those beliefs and preferences.

76 6. This section does not authorize the provision or withholding of health care
77 services that the patient has unambiguously, without subsequent contradiction or

78 **change of instruction, expressed to the patient's physician or other health care provider**
79 **that he or she would or would not want at a time when such patient had capacity. Such**
80 **a statement to the patient's physician or other health care provider, contemporaneously**
81 **recorded in the patient's medical record and signed by the patient's physician or other**
82 **health care provider, shall be deemed such an instruction, subject to the ability of a**
83 **party to a proceeding under subsection 8 of this section to dispute its accuracy, weight,**
84 **or interpretation.**

85 **7. A designated health care decision-maker shall be deemed a personal**
86 **representative for the purposes of access to and disclosure of private medical**
87 **information under the Health Insurance Portability and Accountability Act of 1996**
88 **(HIPAA), 42 U.S.C. Section 1320d et seq., and its implementing regulations, 45 CFR**
89 **Parts 160 to 164.**

90 **8. Nothing in sections 404.1100 to 404.1110 shall preclude any person interested**
91 **in the welfare of a patient, including, but not limited to, a designated health care**
92 **decision-maker, a member of any class listed in subsection 1 of this section, regardless of**
93 **priority, or a health care provider or health care facility involved in the care of the**
94 **patient, from petitioning the probate court for the appointment of a temporary or**
95 **permanent guardian for the patient, including for expedited adjudication, as provided**
96 **in chapter 475.**

97 **9. Pending the final outcome of proceedings initiated under subsection 8 of this**
98 **section, the designated health care decision-maker, health care provider, or health care**
99 **facility shall not withhold or withdraw, or direct the withholding or withdrawal of,**
100 **health care, nutrition, or hydration whose withholding or withdrawal, according to**
101 **reasonable medical judgment, would result in or hasten the death of the patient, would**
102 **jeopardize the health or limb of the patient, or would result in disfigurement or**
103 **impairment of the patient's faculties. If a health care provider or a health care facility**
104 **objects to the provision of such health care, nutrition, or hydration on the basis of**
105 **religious beliefs or sincerely held moral convictions, the provider or facility shall not**
106 **impede the transfer of the patient to another health care provider or health care facility**
107 **willing to provide it and shall provide such health care, nutrition, or hydration to the**
108 **patient pending the completion of the transfer. For purposes of this section, artificially**
109 **supplied nutrition and hydration shall be withheld or withdrawn during the pendency**
110 **of the guardianship proceeding only if, based on reasonable medical judgment, the**
111 **patient's physician and a second licensed physician certify that the patient meets the**
112 **standard set forth in subdivision (2) of subsection 1 of section 404.1105. If tolerated by**
113 **the patient and adequate to supply the patient's needs for nutrition or hydration,**
114 **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 shall 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 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 shall be the preferred method.

404.1106. If any individual specified in section 404.1104, the designated health care decision-maker, or the 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 shall end upon the physician's certification that the patient is no longer incapacitated.

404.1107. No 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 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 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 a health care provider or health care facility.

2. If, at any time, a health care provider or health care facility 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

9 convictions of the health care provider or health care facility, such provider or facility
10 shall promptly inform the patient or the patient's designated health care decision-
11 maker.

12 3. If a health care provider or health care facility declines to comply with such
13 health care decision, no health care provider or health care facility shall impede the
14 transfer of the patient to another health care provider or health care facility willing to
15 comply with the health care decision.

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

404.1109. No designated health care decision-maker shall withhold or withdraw
2 health care from a pregnant patient, consistent with existing law, as set forth in section
3 459.025.

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
3 killing; or

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

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