

FIRST REGULAR SESSION

# HOUSE BILL NO. 785

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WHITE.

1906H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 404, RSMo, by adding thereto eight new sections relating to the adult health care consent act.

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

Section A. Chapter 404, RSMo, is amended by adding thereto eight new sections, to be  
2 known as sections 404.900, 404.902, 404.904, 404.906, 404.908, 404.910, 404.912, and 404.914,  
3 to read as follows:

**404.900. 1. Sections 404.900 to 404.914 shall be known and may be cited as the**  
2 **"Adult Health Care Consent Act".**

3 **2. As used in sections 404.900 to 404.914, unless otherwise apparent from the**  
4 **context, the following terms shall mean:**

5 **(1) "Health care", a procedure to diagnose or treat a human disease, ailment,**  
6 **defect, abnormality, or complaint, whether of physical or mental origin, and includes the**  
7 **provision of:**

8 **(a) Intermediate or skilled nursing care provided in a facility licensed under**  
9 **chapter 198;**

10 **(b) Services for the rehabilitation of injured, disabled, or sick persons; and**

11 **(c) The placement in or removal from a facility that provides such forms of care;**

12 **(2) "Health care provider" or "provider", a person, health care facility,**  
13 **organization, or corporation licensed, certified, or otherwise authorized or permitted by**  
14 **the laws of this state to administer health care;**

15 **(3) "Health care professional", an individual who is licensed, certified, or otherwise**  
16 **authorized by the laws of this state to provide health care to members of the public;**

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.

17 (4) "Incapacitated person", as defined in subdivision (10) of section 475.010;

18 (5) "Physician", an individual who is licensed to practice medicine or osteopathy  
19 under chapter 334;

20 (6) "Unable to consent", unable to appreciate the nature and implications of the  
21 patient's condition and proposed health care, to make a reasoned decision concerning the  
22 proposed health care, or to communicate such decision in an unambiguous manner.  
23 Unable to consent does not include minors, and sections 404.900 to 404.914 do not affect  
24 the delivery of health care to minors unless they are married or have been determined  
25 judicially to be emancipated. A patient's inability to consent shall be certified by two  
26 licensed physicians, each of whom has examined the patient. However, in an emergency,  
27 the patient's inability to consent may be certified by a health care professional responsible  
28 for the care of the patient if the health care professional states in writing in the patient's  
29 record that the delay occasioned by obtaining certification from two licensed physicians  
30 would be detrimental to the patient's health. A certifying physician or other health care  
31 professional shall give an opinion regarding the cause and nature of the inability to  
32 consent, its extent, and its probable duration. If a patient unable to consent is being  
33 admitted to hospice care pursuant to a physician certification of a terminal illness required  
34 by Medicare, such certification meets the certification requirements of this subdivision.

404.902. 1. If a patient is incapacitated and unable to consent, decisions concerning  
2 the patient's health care may be made by the following persons in the following order of  
3 priority:

4 (1) A guardian appointed by a court of competent jurisdiction under chapter 475  
5 if the decision is within the scope of the guardianship;

6 (2) An attorney-in-fact appointed by the patient in a durable power of attorney for  
7 health care executed under sections 404.800 to 404.872 if the decision is within the scope  
8 of his or her authority;

9 (3) A person given priority to make health care decisions for the patient by another  
10 statutory provision;

11 (4) A spouse of the patient, unless the spouse and the patient are separated under  
12 one of the following:

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

14 (b) A formal signing of a written property or marital settlement agreement; or

15 (c) Entry of a permanent order of separate maintenance and support, or of a  
16 permanent order approving a property or marital settlement agreement between the  
17 parties;

18 (5) A parent or adult child of the patient;

- 19           **(6) An adult sibling, grandparent, or adult grandchild of the patient;**  
20           **(7) Any other relative by blood or marriage who reasonably is believed by the**  
21 **health care professional to have a close personal relationship with the patient;**  
22           **(8) Any nonrelative who reasonably is believed by the health care professional to**  
23 **have a close personal relationship with the patient.**
- 24           **2. A person authorized to make health care decisions under subsection 1 of this**  
25 **section shall base such decisions on the patient's wishes to the extent that the patient's**  
26 **wishes can be determined. Only if the patient's wishes cannot be determined, shall the**  
27 **person base the decision on the patient's best interest. In making any health care decision**  
28 **in accordance with sections 404.900 to 404.914, such person shall seek and consider**  
29 **information concerning the patient's medical diagnosis, the patient's prognosis, and the**  
30 **benefits and burdens of the treatment to the patient. In withdrawing treatment, which**  
31 **withdrawal will allow the preexisting condition to run its natural course, evidence of the**  
32 **medical diagnosis, prognosis, and the benefit and burden of the treatment to the patient**  
33 **to the extent possible within prevailing medical standards shall be sought and considered.**
- 34           **3. Sections 404.900 to 404.914 shall not restrict any person interested in the welfare**  
35 **of a patient from petitioning the probate court for an order determining the care to be**  
36 **provided to the patient or for the appointment of a temporary or permanent guardian for**  
37 **the patient.**
- 38           **4. If persons of equal priority disagree on whether certain health care should be**  
39 **provided to a patient who is unable to consent, an authorized person, a health care**  
40 **provider involved in the care of the patient, or any other person interested in the welfare**  
41 **of the patient may petition the probate court for an order determining what care is to be**  
42 **provided or for the appointment of a temporary or permanent guardian. If an attending**  
43 **physician or other health care professional has reasonable cause to make a report of abuse**  
44 **or neglect of the patient under section 198.070, 208.912, 210.115, 565.188, or 660.300, the**  
45 **individual to be reported as the alleged perpetrator shall not be given priority or authority**  
46 **under subdivisions (1) to (8) of subsection 1 of this section regardless of the purpose of**  
47 **treatment.**
- 48           **5. Priority under this section shall not be given to a person if a health care provider**  
49 **responsible for the care of a patient who is unable to consent determines that the person**  
50 **is not reasonably available, is not willing to make health care decisions for the patient, or**  
51 **is unable to consent as defined in section 404.900.**
- 52           **6. An attending physician or other health care professional responsible for the care**  
53 **of a patient who is unable to consent shall not give priority or authority under subdivisions**  
54 **(4) to (8) of subsection 1 of this section to a person if the attending physician or health care**

55 professional has actual knowledge that, before becoming unable to consent, the patient did  
56 not want such person involved in decisions concerning the patient's care.

57         **7. This section does not authorize a person to make health care decisions on behalf**  
58 **of a patient who is unable to consent if, in the opinion of the certifying physicians, the**  
59 **patient's inability to consent is temporary, and the attending physician or other health care**  
60 **professional responsible for the care of the patient determines that the delay occasioned**  
61 **by postponing treatment until the patient regains the ability to consent will not result in**  
62 **a significant detriment to the patient's health.**

63         **8. A person authorized to make health care decisions under subsection 1 of this**  
64 **section may either consent or withhold consent to health care on behalf of the patient.**

**404.904. 1. In addition to any other instances in which a lack of consent is excused**  
2 **or in which a consent is implied at law, a consent to surgical or medical treatment or**  
3 **procedures shall be implied when an emergency exists if there has been no protest or**  
4 **refusal of consent by a person authorized and empowered to consent, or, if so, there has**  
5 **been a subsequent change in the condition of the person affected that is material and**  
6 **morbid, and there is no one immediately available who is authorized, empowered, willing,**  
7 **and capacitated to consent. For the purposes hereof, an "emergency" is defined as a**  
8 **situation wherein, in competent medical judgment, the proposed surgical or medical**  
9 **treatment or procedures are immediately or imminently necessary and any delay**  
10 **occasioned by an attempt to obtain a consent would reasonably jeopardize the life, health,**  
11 **or limb of the person affected or would reasonably result in disfigurement or impairment**  
12 **of faculties. Health care for the relief of suffering may be provided without consent at any**  
13 **time if an authorized person is unavailable.**

14         **2. Health care decisions on behalf of a patient who is unable to consent may be**  
15 **made by a person named in section 404.902 if no person having higher priority under that**  
16 **section is available immediately and, in the reasonable medical judgment of the attending**  
17 **physician or other health care professional responsible for the care of the patient, the delay**  
18 **occasioned by attempting to locate a person having higher priority presents a substantial**  
19 **risk of death, serious permanent disfigurement, loss or impairment of the functioning of**  
20 **a bodily member or organ, or other serious threat to the health of the patient.**

**404.906. Health care may be provided without consent to a patient who is unable**  
2 **to consent if no person authorized under section 404.902 to make health care decisions for**  
3 **the patient is reasonably available and willing to make the decision and, in the reasonable**  
4 **medical judgment of the attending physician or other health care professional responsible**  
5 **for the care of the patient, the health care is necessary for the relief of suffering, restoration**  
6 **of bodily function, or to preserve the life, health, or bodily integrity of the patient.**

**404.908. 1. Unless the patient, while able to consent, has stated a contrary intent to the attending physician or other health care professional responsible for the care of the patient, sections 404.900 to 404.914 do not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the religious beliefs of the patient.**

**2. Sections 404.900 to 404.914 do not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the patient's unambiguous and uncontradicted instructions expressed at a time when the patient was able to consent and documented in the medical record.**

**3. Sections 404.900 to 404.914 do not limit the evidence on which a court may base a determination of a patient's intent in a judicial proceeding.**

**404.910. 1. A person who in good faith makes a health care decision as provided in section 404.902 shall not be subject to civil or criminal liability on account of the substance of such decision.**

**2. A person who consents to health care as provided in section 404.902 does not by virtue of such consent become liable for the costs of care provided to the patient.**

**3. A health care provider who in good faith relies on a health care decision made by a person authorized under section 404.902 shall not be subject to civil or criminal liability or disciplinary action on account of the provider's reliance on such decision.**

**4. A health care provider who in good faith relies on a health care decision under section 404.906 or 404.908 shall not be subject to civil or criminal liability or disciplinary action on account of the provision of care. However, this section does not affect a health care provider's liability arising from the provision of care in a negligent manner.**

**404.912. No provision of sections 404.900 to 404.914 shall:**

**(1) Limit the ability of individuals to seek a guardianship under chapter 475;**

**(2) Affect the ability of a state agency or health care provider working in conjunction with a state agency to conduct testing or provide treatment which is mandated or allowed by other provisions of law;**

**(3) Affect the ability of the department of mental health from executing its authority as specified in chapters 552, 630, 631, 632, and 633; or**

**(4) Supersede the provisions of sections 404.800 to 404.865 relating to durable powers of attorney for health care, sections 459.010 to 459.055 relating to declarations of life support, or chapter 475 relating to guardianship.**

**404.914. Sections 404.900 to 404.912 do not authorize consent to be given for any**  
**2 treatment, procedure, or other medical action for a pregnant patient that will put the fetus**  
**3 at risk of death or serious physical injury, except to protect the life of the mother.**

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