

HOUSE BILL NO. 2502

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

6163H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 404, RSMo, by adding thereto eleven new sections relating to the designated health care decision-maker act.

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, 404.1106,
3 404.1107, 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 whereby
3 nutrition or hydration is supplied through a tube inserted into a person's nose, mouth,
4 stomach, or intestines, or nutrients or fluids are administered into a person's bloodstream
5 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, quality,
10 and standard of health care, care, and comfort as is provided to a similarly situated
11 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 health
16 care decisions for a patient under section 404.1104, not including a person acting as a
17 guardian or an agent under a durable power of attorney for health care or any other
18 person legally authorized to consent for the patient under any other law to make health
19 care decisions for an incapacitated patient;

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

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, or intermediate or skilled nursing care provided in a
27 facility licensed under chapter 198;

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

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

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

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

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

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

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

50 (11) "Reasonable medical judgment", a medical judgment that would be made by
51 a reasonably prudent physician, knowledgeable about the case and the health care
52 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 in the
3 exercise of good faith and in accordance with reasonable medical judgment upon the health
4 care decisions made for a patient by a designated health care decision-maker selected in
5 accordance with section 404.1104, provided two licensed physicians determine, after
6 reasonable inquiry and in accordance with reasonable medical judgment, that such patient
7 is incapacitated and has neither a guardian with medical decision-making authority
8 appointed in accordance with chapter 475, an attorney in fact appointed in a durable
9 power of attorney for health care in accordance with sections 404.800 to 404.865, nor any
10 other known person who has the legal authority to make health care decisions.

 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 reasonable
3 efforts to inform potential designated health care decision-makers set forth in section
4 404.1104 of whom the physician or physician's designee is aware, of the need to appoint a
5 designated health care decision-maker. Reasonable efforts include, without limitation,
6 identifying potential designated health care decision makers as set forth in subsection 1 of
7 section 404.1104, a guardian with medical decision-making authority appointed in
8 accordance with chapter 475, an attorney in fact appointed in a durable power of attorney
9 for health care in accordance with sections 404.800 to 404.865, or any other known person
10 who has the legal authority to make health care decisions, by examining the patient's
11 personal effects and medical records. If a family member, attorney in fact for health care
12 or guardian with health care decision-making authority is identified, a documented
13 attempt to contact that person by telephone, with all known telephone numbers and other
14 contact information used, shall be made within twenty-four hours after a determination
15 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 is unable to provide consent regarding his or her own health care, and
3 does not have a legally appointed guardian, an agent under a health care durable power
4 of attorney, or any other person who has legal authority to consent for the patient,
5 decisions concerning the patient's health care may be made by the following competent
6 persons in the following order of priority, with the exception of persons excluded under
7 subsection 4 of section 404.1104:

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

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

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

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

14 **(2) An adult child of the patient;**

15 **(3) A parent of the patient;**

16 **(4) An adult sibling of the patient;**

17 **(5) Grandparent or adult grandchild;**

18 **(6) Niece or nephew or the next nearest other relative of the patient, by**
19 **consanguinity or affinity;**

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

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

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

28 **2. If a person who is a member of the classes listed in subsection 1 of this section,**
29 **regardless of priority, or a health care provider or a health care facility involved in the care**
30 **of the patient, disagrees on whether certain health care should be provided to or withheld**
31 **or withdrawn from a patient, any such person, provider, or facility, or any other person**
32 **interested in the welfare of the patient may petition the probate court for an order for the**
33 **appointment of a temporary or permanent guardian in accordance with subsection 7 of this**
34 **section to act in the best interest of the patient.**

35 **3. A person who is a member of the classes listed in subsection 1 of this section shall**
36 **not be denied priority under this section based solely upon that person's support for, or**
37 **direction to provide, withhold or withdraw health care to the patient, subject to the rights**
38 **of other classes of potential designated decision-makers, a healthcare provider, or**
39 **healthcare facility to petition the probate court for an order for the appointment of a**
40 **temporary or permanent guardian under subsection 7 of this section to act in the best**
41 **interests of the patient.**

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

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

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

58 (3) If a probate court in a proceeding under subsection 7 of this section finds that
59 the involvement of the person in decisions concerning the patient's health care is contrary
60 to instructions that the patient had unambiguously, and without subsequent contradiction
61 or change, expressed before he or she became incapacitated. Such a statement to the
62 patient's physician or other health care provider contemporaneously recorded in the
63 patient's medical record and signed by the patient's physician or other health care provider
64 shall be deemed such an instruction, subject to the ability of a party to a proceeding under
65 subsection 7 of this section to dispute its accuracy, weight, or interpretation.

66 5. (1) The designated health care decision-maker shall make reasonable efforts to
67 obtain information regarding the patient's health care preferences from health care
68 providers, family, friends, or others who may have credible information.

69 (2) The designated health care decision-maker, and the probate court in any
70 proceeding under subsection 7 of this section, shall always make health care decisions in
71 the patient's best interests, and if the patient's religious and moral beliefs and health care
72 preferences are known and not inconsistent with the patient's best interests, in accordance
73 with those beliefs and preferences.

74 6. This section does not authorize the provision or withholding of health care
75 services that the patient has unambiguously, without subsequent contradiction or change
76 of instruction, expressed to the patient's physician or other health care provider that he or
77 she would or would not want at a time when such patient had capacity. Such a statement
78 to the patient's physician or other health care provider, contemporaneously recorded in
79 the patient's medical record and signed by the patient's physician or other health care

80 provider, shall be deemed such evidence, subject to the ability of a party to a proceeding
81 under subsection 7 of this section to dispute its accuracy, weight, or interpretation.

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

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

92 9. Pending the final outcome of proceedings initiated under subsection 7 of this
93 section, the designated health care decision-maker, health care provider, or health care
94 facility shall not withhold or withdraw, or direct the withholding or withdrawal, of health
95 care, nutrition, or hydration whose withholding or withdrawal, in reasonable medical
96 judgment, would result in or hasten the death of the patient, would jeopardize the health
97 or limb of the patient, or would result in disfigurement or impairment of the patient's
98 faculties. If a health care provider or a health care facility objects to the provision of such
99 health care, nutrition, or hydration on the basis of religious beliefs or sincerely held moral
100 convictions, the provider or facility shall not impede the transfer of the patient to another
101 health care provider or health care facility willing to provide it, and shall provide such
102 health care, nutrition, or hydration to the patient pending the completion of the transfer.
103 For purposes of this section, artificially supplied nutrition and hydration may be withheld
104 or withdrawn during the pendency of the guardianship proceeding only if, based on
105 reasonable medical judgment, the patient's physician and a second licensed physician
106 certify that the patient meets the standard set forth in subdivision (2) of subsection 1 of
107 section 404.1105. If tolerated by the patient and adequate to supply the patient's needs for
108 nutrition or hydration, natural feeding shall be the preferred method.

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

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

11 **(2) Artificially supplied nutrition or hydration cannot be physiologically**
12 **assimilated or tolerated by the patient.**

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

15 **3. The provisions of this section shall not apply to section 459.010.**

404.1106. If any of the individuals specified in section 404.1104 or the designated
2 **health care decision-maker or physician believes the patient is no longer incapacitated, the**
3 **patient's physician shall reexamine the patient and determine in accordance with**
4 **reasonable medical judgment whether the patient is no longer incapacitated, shall certify**
5 **the decision and the basis therefor in the patient's medical record, and shall notify the**
6 **patient, the designated health care decision-maker, and the person who initiated the**
7 **redetermination of capacity. Rights of the designated health care decision-maker shall end**
8 **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
2 **reasonable attempts to identify, locate, and communicate with potential designated health**
3 **care decision-makers in accordance with sections 404.1100 to 404.1110 shall be subject to**
4 **civil or criminal liability or regulatory sanction for the effort to identify, locate, and**
5 **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
2 **with the health care decision of a patient or a designated health care decision-maker if such**
3 **decision is contrary to the religious beliefs or sincerely held moral convictions of a health**
4 **care provider or health care facility.**

5 **2. If at any time, a health care facility or health care provider determines that any**
6 **known or anticipated health care preferences expressed by the patient to the health care**
7 **provider or health care facility, or as expressed through the patient's designated health**
8 **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 shall**
10 **promptly inform the patient or the patient's designated health care decision-maker.**

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

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

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