

HCS HB 2502 -- HEALTH CARE DECISION-MAKER ACT

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 8 to 2. Voted "HCS Do Pass" by the Select Committee on Judiciary by a vote of 9 to 1.

This bill establishes the Designated Health Care Decision-Maker Act. In its main provisions, the bill:

- (1) Limits the determination of incapacity of a patient to a specific process and permits a health care provider or facility to rely upon the health care decisions made by a designated health care decision-maker if certain procedures are followed;
- (2) Requires a physician or other provider to make reasonable efforts to inform potential designated health care decision-makers of a determination that a patient is incapacitated as specified in the bill;
- (3) Delineates a list of priority of persons who may make health care decisions for an incapacitated patient as specified in the bill and excludes certain persons from the list if specified circumstances exist;
- (4) Permits any person interested in the welfare of an incapacitated patient to petition the probate court for an order determining the care to be provided to the patient;
- (5) Prohibits a designated health care decision-maker from withdrawing or withholding nutrition or hydration that is ingested through natural means and permits a designated health care decision-maker to withdraw or withhold artificially supplied nutrition or hydration if specified requirements are met;
- (6) Requires the patient's physician to reexamine the patient if the designated health care decision-maker, physician, or anyone in the priority list believes the patient is no longer incapacitated;
- (7) Prohibits any facility or provider who makes good faith and reasonable efforts to identify, locate, and communicate with potential designated health care decision-makers from being subject to civil or criminal liability or regulatory sanctions for such actions;
- (8) Permits a provider or facility to decline to comply with a health care decision of a patient or designated health care

decision-maker if the provider or facility has a moral or religious objection to the decision so long as the facility or provider takes certain actions as specified in the bill;

(9) Prohibits health care from being denied based on the view that extending the life of certain individuals is of a lower value than extending the life of other specified individuals or on the basis that the provider or facility disagrees with how the patient or decision-maker values extension of life versus the risk of disability; and

(10) Prohibits a provider or facility from withholding or withdrawing medical treatment from a pregnant patient.

This bill is similar to HB 1133 (2015).

PROPOSERS: Supporters say that Missouri is one of the only states in the union to not have a hierarchy for decision making when a family member is incapacitated. The only way to establish the decision-maker is to go through the probate process. This bill would codify a hierarchy of family members who, when in the best interests of the incapacitated person, would be named the decision-maker. Under current law, a spouse cannot make these decisions without a durable power of attorney. People assume a spouse automatically can make these decisions, but they cannot. When the family members cannot agree, the hospital must go to court and get a guardian appointed

Testifying for the bill were Representative McGaugh; Debra Schuster; Kathy Butler; Missouri Hospital Association; Missouri Right To Life; Wayne Lee; Missouri Catholic Conference; Kathy Butler; and Sherri Bilderback.

OPPOSERS: Those who oppose the bill say that they disagree with the objectives of the bill.

Testifying against the bill was the Missouri Family Policy Council.