

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

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

1 AMEND House Committee Substitute for House Bill No. 381, Page 3, Section 191.227, Line 70, by  
2 inserting after all of said section and line the following:

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

5 2. The provisions of sections 404.1100 to 404.1110 shall not be applicable to situations in  
6 which a patient has capacity to make health care decisions, a guardian with medical decision-  
7 making authority is appointed under chapter 475, an attorney-in-fact is appointed in a durable power  
8 of attorney for health care in accordance with sections 404.800 to 404.865, or if the patient is under  
9 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  
13 or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines,  
14 or nutrients 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  
17 health for that person;

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

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

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

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

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

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

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- 1       (8) "Health care provider", any individual who provides health care to persons and who is  
2 licensed, certified, registered, or otherwise authorized or permitted by law to provide health care;  
3       (9) "Incapacitated", as such term is defined and determined by sections 404.800 to 404.865;  
4       (10) "Patient", any adult who:  
5       (a) Is authorized to make health care decisions for himself or herself under Missouri law but  
6 is incapacitated; and  
7       (b) Does not have anyone with legal authority to make health care decisions for such person  
8 including, but not limited to, a guardian with medical decision-making authority appointed under  
9 chapter 475, or an attorney-in-fact appointed in a durable power of attorney for health care in  
10 accordance with sections 404.800 to 404.865, or persons under the jurisdiction of the juvenile court;  
11       (11) "Patient with capacity", a patient who is determined to no longer be incapacitated under  
12 section 404.1106;  
13       (12) "Physician", a treating, attending, or consulting physician licensed to practice medicine  
14 under Missouri law;  
15       (13) "Reasonable medical judgment", a medical judgment that would be made by a  
16 reasonably prudent physician knowledgeable about the case and the health care possibilities with  
17 respect to the medical conditions involved.  
18       404.1103. The physician or another health care provider acting at the direction of the  
19 physician shall make reasonable efforts to inform potential designated health care decision-makers  
20 set forth under section 404.1104 of whom the physician or physician's designee is aware of the need  
21 to appoint a designated health care decision-maker for the patient.  
22       404.1104. 1. Decisions concerning the patient's health care may be made by the following  
23 persons with capacity in the following order of priority, with the exception of persons excluded  
24 under subsection 5 of this section:  
25       (1) The spouse of the patient, unless the spouse and patient are separated under one of the  
26 following:  
27       (a) A current dissolution of marriage or separation action;  
28       (b) A signed written property or marital settlement agreement; or  
29       (c) A permanent order of separate maintenance or support or a permanent order approving a  
30 property or marital settlement agreement between the parties;  
31       (2) An adult child of the patient;  
32       (3) A parent of the patient;  
33       (4) An adult sibling of the patient;  
34       (5) Grandparent or adult grandchild of the patient;  
35       (6) Any other adult relative or nonrelative who can demonstrate that he or she has a close  
36 personal relationship with the patient and is familiar with the patient's personal values;  
37       (7) A person who is a member of the same community of persons as the patient who is  
38 bound by vows to a religious life and who conducts or assists in the conducting of religious services  
39 and actually and regularly engages in religious, benevolent, charitable, or educational ministry, or  
40 performance of health care services; or  
41       (8) Any other person designated by the unanimous mutual agreement of the persons listed  
42 above who is involved in the patient's care.  
43       2. Reasonable efforts include, without limitation, identifying potential designated health  
44 care decision-makers as set forth under this section by examining the patient's personal effects and  
45 medical records. If a person with potential health care decision-making authority is identified,  
46 attempts to contact that person shall be made within a reasonable time consistent with the patient's  
47 medical needs after a determination of incapacity. Contact attempts, including name of the person  
48 and known telephone numbers and other contact information, shall be documented in the patient's

1 medical record. The health care facility or health care provider shall look to the health care  
2 decision-maker highest in priority who is available and willing to act at the time a health care  
3 decision shall be made for the patient.

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

9 4. A person who is a member of the classes listed under subsection 1 of this section shall not  
10 be denied priority under this section based solely upon that person's support for, or direction to  
11 provide, withhold or withdraw health care to the patient, subject to the rights of other classes of  
12 potential designated decision-makers, a health care provider, or health care facility to petition the  
13 probate court for an order for the appointment of a temporary or permanent guardian under chapter  
14 475 to act in the best interests of the patient.

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

17 (1) If a health care provider knows the person has been reported under any mandatory  
18 reporting statute for abuse or neglect of the patient including, but not limited to, section 192.2475,  
19 198.070, 208.912, 210.115, 565.188, 630.162, or 630.165 or any other mandatory reporting statute  
20 and a finding of abuse or neglect has been substantiated. If the health care provider is aware of a  
21 report where a finding has not yet been made, such person shall not be given priority until the  
22 investigating agency either makes a finding that the allegations are unsubstantiated or, after  
23 investigation, closes the case without making a finding; provided that, such a report shall not be  
24 based on the person's support for, or direction to provide, health care to the patient;

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

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

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

39 6. (1) The designated health care decision-maker shall make reasonable efforts to obtain  
40 information regarding the patient's health care preferences from health care providers, family,  
41 friends, or others who may have credible information.

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

45 7. This section does not authorize the provision or withholding of health care services that  
46 the patient has unambiguously at a time when the patient had capacity, without subsequent  
47 contradiction or change of instruction of what he or she would or would not want, expressed either  
48 in a valid living will created under sections 459.010 to 459.055 or to the patient's physician or other

1 health care provider. Such a statement to the patient's physician or other health care provider,  
2 contemporaneously recorded in the patient's medical record and signed by the patient's physician or  
3 other health care provider, shall be deemed such evidence, subject to the ability of a party to a  
4 proceeding under chapter 475 to dispute its accuracy, weight, or interpretation.

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

9 9. Nothing under sections 404.1100 to 404.1110 shall preclude any person interested in the  
10 welfare of a patient including, but not limited to, a designated health care decision-maker, a member  
11 of the classes listed under this section regardless of priority, or a health care provider or health care  
12 facility involved in the care of the patient, from petitioning the probate court for the appointment of  
13 a temporary or permanent guardian for the patient, including expedited adjudication under chapter  
14 475.

15 10. Pending the final outcome of proceedings initiated under chapter 475, the designated  
16 health care decision-maker, health care provider, or health care facility shall not withhold or  
17 withdraw or direct the withholding or withdrawal of health care, nutrition, or hydration if  
18 withholding or withdrawal, in reasonable medical judgment, would result in or hasten the death of  
19 the patient, would jeopardize the health or limb of the patient, or would result in disfigurement or  
20 impairment of the patient's faculties. If a health care provider or a health care facility objects to the  
21 provision of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely  
22 held moral convictions, the provider or facility shall not impede the transfer of the patient to another  
23 health care provider or health care facility willing to provide it and shall provide such health care,  
24 nutrition, or hydration to the patient pending the completion of the transfer. For purposes of this  
25 section, artificially supplied nutrition and hydration may be withheld or withdrawn during the  
26 pendency of the guardianship proceeding only if, based on reasonable medical judgment, the  
27 patient's physician and a second licensed physician certify that the patient meets the standard set  
28 forth under subdivision (2) of subsection 1 of section 404.1105. If tolerated by the patient and  
29 adequate to supply the patient's needs for nutrition or hydration, natural feeding should be the  
30 preferred method.

31 404.1105. 1. No designated health care decision-maker may, with the intent of hastening or  
32 causing the death of the patient, authorize the withdrawal or withholding of nutrition or hydration  
33 supplied through either natural or artificial means. A designated health care decision-maker may  
34 authorize the withdrawal or withholding of artificially supplied nutrition and hydration only if the  
35 physician and a second licensed physician certify in the patient's medical record, based on  
36 reasonable medical judgment, that:

37 (1) Artificially supplied nutrition or hydration is not necessary for comfort care or the relief  
38 of pain and would serve only to prolong artificially the dying process and when death will occur  
39 within a short period of time regardless of whether such artificially supplied nutrition or hydration is  
40 withheld or withdrawn; or

41 (2) Artificially supplied nutrition or hydration cannot be physiologically assimilated or  
42 tolerated by the patient.

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

45 404.1106. If any of the individuals specified under section 404.1104 or the designated  
46 health care decision-maker or physician believes the patient is no longer incapacitated, the patient's  
47 physician shall reexamine the patient and determine in accordance with reasonable medical  
48 judgment whether the patient is no longer incapacitated, shall certify the decision and the basis

1 therefor in the patient's medical record, and shall notify the patient with capacity, the designated  
2 health care decision-maker, and the person who initiated the redetermination of capacity. Rights of  
3 the designated health care decision-maker shall end upon the physician's certification that the patient  
4 is no longer incapacitated.

5 404.1107. 1. No health care provider or health care facility that in good faith makes  
6 reasonable efforts to identify, locate, and communicate with potential designated health care  
7 decision-makers in accordance with sections 404.1100 to 404.1110 shall be subject to civil or  
8 criminal liability or regulatory sanction for the effort to identify, locate, and communicate with such  
9 potential designated health care decision-makers.

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

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

17 404.1108. 1. A health care provider or a health care facility may decline to comply with the  
18 health care decision of a patient or a designated health care decision-maker if such decision is  
19 contrary to the religious beliefs or sincerely held moral convictions of the health care provider or  
20 health care facility.

21 2. If at any time a health care facility or health care provider determines that any known or  
22 anticipated health care preferences expressed by the patient to the health care provider or health care  
23 facility, or as expressed through the patient's designated health care decision-maker, are contrary to  
24 the religious beliefs or sincerely held moral convictions of the health care provider or health care  
25 facility, such provider or facility shall promptly inform the patient or the patient's designated health  
26 care decision-maker.

27 3. If a health care provider declines to comply with such health care decision, no health care  
28 provider or health care facility shall impede the transfer of the patient to another health care  
29 provider or health care facility willing to comply with the health care decision.

30 4. Nothing in this section shall relieve or exonerate a health care provider or a health care  
31 facility from the duty to provide for the health care, care, and comfort of a patient pending transfer  
32 under this section. If withholding or withdrawing certain health care would, in reasonable medical  
33 judgment, result in or hasten the death of the patient, such health care shall be provided pending  
34 completion of the transfer. Notwithstanding any other provision of this section, no such health care  
35 shall be denied on the basis of a view that treats extending the life of an elderly, disabled, or  
36 terminally ill individual as of lower value than extending the life of an individual who is younger,  
37 nondisabled, or not terminally ill, or on the basis of the health care provider's or facility's  
38 disagreement with how the patient or individual authorized to act on the patient's behalf values the  
39 tradeoff between extending the length of the patient's life and the risk of disability.

40 404.1109. No health care decision-maker shall withhold or withdraw health care from a  
41 pregnant patient, consistent with existing law, as set forth under section 459.025.

42 404.1110. Nothing under sections 404.1100 to 404.1110 is intended to:

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

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

46  
47 Further amend said bill by amending the title, enacting clause, and intersectional references  
48 accordingly.