

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 381

99TH GENERAL ASSEMBLY

1092H.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 191.227 and 193.245, RSMo, and to enact in lieu thereof twelve new sections relating to health care records.

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

Section A. Sections 191.227 and 193.245, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 191.227, 193.245, 404.1100, 404.1101, 404.1103, 404.1104, 404.1105, 404.1106, 404.1107, 404.1108, 404.1109, and 404.1110, to read as follows:

191.227. 1. All physicians, chiropractors, hospitals, dentists, and other duly licensed practitioners in this state, herein called "providers", shall, upon written request of a patient, or guardian or legally authorized representative of a patient, furnish a copy of his or her record of that patient's health history and treatment rendered to the person submitting a written request, except that such right shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. Beginning August 28, 1994, such record shall be furnished within a reasonable time of the receipt of the request therefor and upon payment of a fee as provided in this section.

2. Health care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records upon payment of a fee for:

(1) (a) Search and retrieval, in an amount not more than ~~twenty-two~~ **twenty-four** dollars and ~~eighty-two~~ **eighty-five** cents plus copying in the amount of ~~fifty-three~~ **fifty-seven** cents per page for the cost of supplies and labor plus, if the health care provider has contracted for off-site records storage and management, any additional labor costs of outside storage

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.

16 retrieval, not to exceed [~~twenty-one~~] **twenty-three** dollars and [~~thirty-six~~] **twenty-six** cents, as  
17 adjusted annually pursuant to subsection 5 of this section; or

18 (b) The records shall be furnished electronically upon payment of the search, retrieval,  
19 and copying fees set under this section at the time of the request or one hundred **eight** dollars  
20 **and eighty-eight cents** total, whichever is less, if such person:

21 a. Requests health records to be delivered electronically in a format of the health care  
22 provider's choice;

23 b. The health care provider stores such records completely in an electronic health record;  
24 and

25 c. The health care provider is capable of providing the requested records and affidavit,  
26 if requested, in an electronic format;

27 (2) Postage, to include packaging and delivery cost; and

28 (3) Notary fee, not to exceed two dollars, if requested.

29 3. Notwithstanding provisions of this section to the contrary, providers may charge for  
30 the reasonable cost of all duplications of health care record material or information which cannot  
31 routinely be copied or duplicated on a standard commercial photocopy machine.

32 4. The transfer of the patient's record done in good faith shall not render the provider  
33 liable to the patient or any other person for any consequences which resulted or may result from  
34 disclosure of the patient's record as required by this section.

35 5. Effective February first of each year, the fees listed in subsection 2 of this section shall  
36 be increased or decreased annually based on the annual percentage change in the unadjusted,  
37 U.S. city average, annual average inflation rate of the medical care component of the Consumer  
38 Price Index for All Urban Consumers (CPI-U). The current reference base of the index, as  
39 published by the Bureau of Labor Statistics of the United States Department of Labor, shall be  
40 used as the reference base. For purposes of this subsection, the annual average inflation rate  
41 shall be based on a twelve-month calendar year beginning in January and ending in December  
42 of each preceding calendar year. The department of health and senior services shall report the  
43 annual adjustment and the adjusted fees authorized in this section on the department's internet  
44 website by February first of each year.

45 **6. A health care provider may disclose a deceased patient's health care records or**  
46 **payment records to the executor or administrator of the deceased person's estate, or**  
47 **pursuant to a valid, unrevoked power of attorney for health care that specifically directs**  
48 **that the deceased person's health care records be released to the agent after death. If an**  
49 **executor, administrator, or agent has not been appointed, the deceased prior to death did**  
50 **not specifically object to disclosure of his or her records in writing, and such disclosure is**  
51 **not inconsistent with any prior expressed preference of the deceased that is known to the**

52 health care provider, a deceased patient's health care records may be released upon  
 53 written request of a person who is deemed as the personal representative of the deceased  
 54 person under this subsection. Priority shall be given to the deceased patient's spouse and  
 55 the records shall be released on the affidavit of the surviving spouse that he or she is the  
 56 surviving spouse. If there is no surviving spouse, the health care records may be released  
 57 to one of the following persons:

58 (1) The acting trustee of a trust created by the deceased patient either alone or with  
 59 the deceased patient's spouse;

60 (2) An adult child of the deceased patient on the affidavit of the adult child that he  
 61 or she is the adult child of the deceased;

62 (3) A parent of the deceased patient on the affidavit of the parent that he or she is  
 63 the parent of the deceased;

64 (4) An adult brother or sister of the deceased patient on the affidavit of the adult  
 65 brother or sister that he or she is the adult brother or sister of the deceased;

66 (5) A guardian or conservator of the deceased patient at the time of the patient's  
 67 death on the affidavit of the guardian or conservator that he or she is the guardian or  
 68 conservator of the deceased; or

69 (6) A guardian ad litem of the deceased's minor child based on the affidavit of the  
 70 guardian that he or she is the guardian ad litem of the minor child of the deceased.

193.245. It shall be unlawful for any person to permit inspection of, or to disclose  
 2 information contained in, vital records or to copy or issue a copy of all or part of any such record  
 3 except as authorized by this law and by regulation or by order of a court of competent  
 4 jurisdiction or in the following situations:

5 (1) ~~[A listing of persons who are born or who die on a particular date may be disclosed~~  
 6 ~~upon request, but no information from the record other than the name and the date of such birth~~  
 7 ~~or death shall be disclosed;]~~

8 ~~——(2)]~~ The department may authorize the disclosure of information contained in vital  
 9 records for legitimate research purposes;

10 ~~[(3)]~~ (2) To a qualified applicant as provided in section 193.255;

11 ~~[(4)]~~ (3) Copies of death records over fifty years old may be disclosed upon request.

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

3 **2. The provisions of sections 404.1100 to 404.1110 shall not be applicable to**  
 4 **situations in which a patient has capacity to make health care decisions, a guardian with**  
 5 **medical decision-making authority is appointed under chapter 475, an attorney-in-fact is**

6 appointed in a durable power of attorney for health care in accordance with sections  
7 404.800 to 404.865, or if the patient is under jurisdiction of the juvenile court.

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

2 (1) "Adult", a person eighteen years of age or older;

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

7 (3) "Best interests":

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

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

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

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

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

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

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

32 (8) "Health care provider", any individual who provides health care to persons and  
33 who is licensed, certified, registered, or otherwise authorized or permitted by law to  
34 provide health care;

35           **(9) "Incapacitated", as such term is defined and determined by sections 404.800 to**  
36 **404.865;**

37           **(10) "Patient", any adult who:**

38           **(a) Is authorized to make health care decisions for himself or herself under**  
39 **Missouri law but is incapacitated; and**

40           **(b) Does not have anyone with legal authority to make health care decisions for**  
41 **such person including, but not limited to, a guardian with medical decision-making**  
42 **authority appointed under chapter 475, or an attorney-in-fact appointed in a durable**  
43 **power of attorney for health care in accordance with sections 404.800 to 404.865, or**  
44 **persons under the jurisdiction of the juvenile court;**

45           **(11) "Patient with capacity", a patient who is determined to no longer be**  
46 **incapacitated under section 404.1106;**

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

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

**404.1103. The physician or another health care provider acting at the direction of**  
2 **the physician shall make reasonable efforts to inform potential designated health care**  
3 **decision-makers set forth under section 404.1104 of whom the physician or physician's**  
4 **designee is aware of the need to appoint a designated health care decision-maker for the**  
5 **patient.**

**404.1104. 1. Decisions concerning the patient's health care may be made by the**  
2 **following persons with capacity in the following order of priority, with the exception of**  
3 **persons excluded under subsection 5 of this section:**

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

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

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

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

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

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

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

13          **(5) Grandparent or adult grandchild of the patient;**

14           **(6) Any other adult relative or nonrelative who can demonstrate that he or she has**  
15 **a close personal relationship with the patient and is familiar with the patient's personal**  
16 **values;**

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

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

23           **2. Reasonable efforts include, without limitation, identifying potential designated**  
24 **health care decision-makers as set forth under this section by examining the patient's**  
25 **personal effects and medical records. If a person with potential health care decision-**  
26 **making authority is identified, attempts to contact that person shall be made within a**  
27 **reasonable time consistent with the patient's medical needs after a determination of**  
28 **incapacity. Contact attempts, including name of the person and known telephone numbers**  
29 **and other contact information, shall be documented in the patient's medical record. The**  
30 **health care facility or health care provider shall look to the health care decision-maker**  
31 **highest in priority who is available and willing to act at the time a health care decision shall**  
32 **be made for the patient.**

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

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

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

47           **(1) If a health care provider knows the person has been reported under any**  
48 **mandatory reporting statute for abuse or neglect of the patient including, but not limited**  
49 **to, section 192.2475, 198.070, 208.912, 210.115, 565.188, 630.162, or 630.165 or any other**

50 **mandatory reporting statute and a finding of abuse or neglect has been substantiated. If**  
51 **the health care provider is aware of a report where a finding has not yet been made, such**  
52 **person shall not be given priority until the investigating agency either makes a finding that**  
53 **the allegations are unsubstantiated or, after investigation, closes the case without making**  
54 **a finding; provided that, such a report shall not be based on the person's support for, or**  
55 **direction to provide, health care to the patient;**

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

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

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

72 **6. (1) The designated health care decision-maker shall make reasonable efforts to**  
73 **obtain information regarding the patient's health care preferences from health care**  
74 **providers, family, friends, or others who may have credible information.**

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

78 **7. This section does not authorize the provision or withholding of health care**  
79 **services that the patient has unambiguously at a time when the patient had capacity,**  
80 **without subsequent contradiction or change of instruction of what he or she would or**  
81 **would not want, expressed either in a valid living will created under sections 459.010 to**  
82 **459.055 or to the patient's physician or other health care provider. Such a statement to the**  
83 **patient's physician or other health care provider, contemporaneously recorded in the**  
84 **patient's medical record and signed by the patient's physician or other health care**

85 provider, shall be deemed such evidence, subject to the ability of a party to a proceeding  
86 under chapter 475 to dispute its accuracy, weight, or interpretation.

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

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

97 **10. Pending the final outcome of proceedings initiated under chapter 475, the**  
98 **designated health care decision-maker, health care provider, or health care facility shall**  
99 **not withhold or withdraw or direct the withholding or withdrawal of health care, nutrition,**  
100 **or hydration if withholding or withdrawal, in reasonable medical judgment, would result**  
101 **in or hasten the death of the patient, would jeopardize the health or limb of the patient, or**  
102 **would result in disfigurement or impairment of the patient's faculties. If a health care**  
103 **provider or a health care facility objects to the provision of such health care, nutrition, or**  
104 **hydration on the basis of religious beliefs or sincerely held moral convictions, the provider**  
105 **or facility shall not impede the transfer of the patient to another health care provider or**  
106 **health care facility willing to provide it and shall provide such health care, nutrition, or**  
107 **hydration to the patient pending the completion of the transfer. For purposes of this**  
108 **section, artificially supplied nutrition and hydration may be withheld or withdrawn during**  
109 **the pendency of the guardianship proceeding only if, based on reasonable medical**  
110 **judgment, the patient's physician and a second licensed physician certify that the patient**  
111 **meets the standard set forth under subdivision (2) of subsection 1 of section 404.1105. If**  
112 **tolerated by the patient and adequate to supply the patient's needs for nutrition or**  
113 **hydration, natural feeding should 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 if 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 is not necessary for comfort care or**  
8 **the relief of pain and would serve only to prolong artificially the dying process and when**  
9 **death will occur within a short period of time regardless of whether 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.**

**404.1106. If any of the individuals specified under section 404.1104 or the**  
2 **designated health care decision-maker or physician believes the patient is no longer**  
3 **incapacitated, the patient's physician shall reexamine the patient and determine in**  
4 **accordance with reasonable medical judgment whether the patient is no longer**  
5 **incapacitated, shall certify the decision and the basis therefor in the patient's medical**  
6 **record, and shall notify the patient with capacity, the designated health care decision-**  
7 **maker, and the person who initiated the redetermination of capacity. Rights of the**  
8 **designated health care decision-maker shall end upon the physician's certification that the**  
9 **patient is no longer incapacitated.**

**404.1107. 1. No health care provider or health care facility that in good faith makes**  
2 **reasonable efforts 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.**

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

10           **3. No health care decision-maker acting in accordance with sections 404.1101 to**  
11 **404.1110 who in good faith makes decisions that are not otherwise unlawful shall not, as**  
12 **a result thereof, be subject to criminal or civil liability.**

**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 the 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 under section 459.025.

404.1110. Nothing under 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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