

SENATE BILL NO. 356

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLACK.

1174S.01H

KRISTINA MARTIN, Secretary

AN ACT

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

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 be known as sections 404.1100, 404.1101, 404.1102, 404.1103, 404.1104, 404.1105, 404.1106, 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 "Designated Health Care Decision-Maker Act".

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

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

(2) "Best interests":

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

(b) Advocating that the person who is incapacitated receive the same range, quality, and standard of health

15 care, care, and comfort as is provided to a similarly
16 situated individual who is not incapacitated; and

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

21 (3) "Designated health care decision-maker", the
22 person designated to make health care decisions for a
23 patient under section 404.1104, not including a person
24 acting as a guardian or an agent under a durable power of
25 attorney for health care or any other person legally
26 authorized to consent for the patient under any other law to
27 make health care decisions for an incapacitated patient;

28 (4) "Disability" or "disabled", the same meaning as
29 the term "disability" is defined in 42 U.S.C. Section 12102,
30 the Americans with Disabilities Act of 1990, as amended,
31 except the term "this chapter" in that definition shall be
32 deemed to refer to sections 404.1100 to 404.1110;

33 (5) "Health care", a procedure to diagnose or treat a
34 human disease, ailment, defect, abnormality, or complaint,
35 whether of physical or mental origin and includes:

36 (a) Assisted living services, or intermediate or
37 skilled nursing care provided in a facility licensed under
38 chapter 198;

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

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

44 (6) "Health care facility", any hospital, hospice,
45 inpatient facility, nursing facility, skilled nursing
46 facility, residential care facility, intermediate care

47 facility, dialysis treatment facility, assisted living
48 facility, home health or hospice agency; any entity that
49 provides home or community-based health care services; or
50 any other facility that provides or contracts to provide
51 health care, and which is licensed, certified, or otherwise
52 authorized or permitted by law to provide health care. The
53 term "health care facility" shall not include facilities,
54 including psychiatric hospitals, operated by the department
55 of mental health and facilities licensed, certified, or
56 otherwise regulated under chapters 630 to 633;

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

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

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

71 (10) "Physician", a treating, attending, or consulting
72 physician licensed to practice medicine under chapter 334;

73 (11) "Reasonable medical judgment", a medical judgment
74 that would be made by a reasonably prudent physician,
75 knowledgeable about the case and the health care
76 possibilities with respect to the medical conditions
77 involved.

404.1102. The determination that a patient is
2 incapacitated shall be made as set forth in section
3 404.825. A health care provider or health care facility may
4 rely on the exercise of good faith and in accordance with
5 reasonable medical judgment upon the health care decisions
6 made for a patient by a designated health care decision-
7 maker selected in accordance with section 404.1104, provided
8 that two licensed physicians determine, after reasonable
9 inquiry and in accordance with reasonable medical judgment,
10 that such patient is incapacitated and has neither a
11 guardian with medical decision-making authority appointed in
12 accordance with chapter 475, an attorney in fact appointed
13 in a durable power of attorney for health care in accordance
14 with sections 404.800 to 404.865, is not a child under the
15 jurisdiction of the juvenile court under section 211.031,
16 nor any other known person who has the legal authority to
17 make health care decisions.

404.1103. Upon a determination that a patient is
2 incapacitated, the physician or another health care provider
3 acting at the direction of the physician shall make
4 reasonable efforts to inform potential designated health
5 care decision-makers set forth in section 404.1104 of whom
6 the physician or physician's designee is aware, of the need
7 to appoint a designated health care decision-maker.
8 Reasonable efforts include, without limitation, identifying
9 potential designated health care decision-makers as set
10 forth in subsection 1 of section 404.1104, a guardian with
11 medical decision-making authority appointed in accordance
12 with chapter 475, an attorney in fact appointed in a durable
13 power of attorney for health care in accordance with
14 sections 404.800 to 404.865, the juvenile court under
15 section 211.031, or any other known person who has the legal

16 authority to make health care decisions, by examining the
17 patient's personal effects and medical records. If a family
18 member, attorney in fact for health care, or guardian with
19 health care decision-making authority is identified, a
20 documented attempt to contact that person by telephone, with
21 all known telephone numbers and other contact information
22 used, shall be made within twenty-four hours after a
23 determination of incapacity is made as provided in section
24 404.1102.

404.1104. 1. If a patient is incapacitated under the
2 circumstances described in section 404.1102 and is unable to
3 provide consent regarding his or her own health care, and
4 does not have a legally appointed guardian, an agent under a
5 health care durable power of attorney, is not under the
6 jurisdiction of the juvenile court, or does not have any
7 other person who has legal authority to consent for the
8 patient, decisions concerning the patient's health care may
9 be made by the following competent persons in the following
10 order of priority, with the exception of persons excluded
11 under subsection 4 of this section:

12 (1) The spouse of the patient, unless the spouse and
13 patient are separated under one of the following:

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

16 (b) A signed written property or marital settlement
17 agreement; or

18 (c) A permanent order of separate maintenance or
19 support or a permanent order approving a property or marital
20 settlement agreement between the parties;

21 (2) An adult child of the patient;

22 (3) A parent of the patient;

23 (4) An adult sibling of the patient;

- 24 (5) A grandparent or adult grandchild;
- 25 (6) A niece or nephew or the next nearest other
26 relative of the patient, by consanguinity or affinity;
- 27 (7) A person who is a member of the same community of
28 persons as the patient who is bound by vows to a religious
29 life and who conducts or assists in the conducting of
30 religious services and actually and regularly engages in
31 religious, benevolent, charitable, or educational ministry,
32 or performance of health care services;
- 33 (8) Any nonrelative who can demonstrate that he or she
34 has a close personal relationship with the patient and is
35 familiar with the patient's personal values; or
- 36 (9) Any other person designated by the unanimous
37 mutual agreement of the persons listed above who is involved
38 in the patient's care.
- 39 2. If a person who is a member of the classes listed
40 in subsection 1 of this section, regardless of priority, or
41 a health care provider or a health care facility involved in
42 the care of the patient, disagrees on whether certain health
43 care should be provided to or withheld or withdrawn from a
44 patient, any such person, provider, or facility, or any
45 other person interested in the welfare of the patient may
46 petition the probate court for an order for the appointment
47 of a temporary or permanent guardian in accordance with
48 subsection 8 of this section to act in the best interest of
49 the patient.
- 50 3. A person who is a member of the classes listed in
51 subsection 1 of this section shall not be denied priority
52 under this section based solely upon that person's support
53 for, or direction to provide, withhold, or withdraw health
54 care to the patient, subject to the rights of other classes
55 of potential designated decision-makers, a healthcare

56 provider, or healthcare facility to petition the probate
57 court for an order for the appointment of a temporary or
58 permanent guardian under subsection 8 of this section to act
59 in the best interests of the patient.

60 4. Priority under this section shall not be given to
61 persons in any of the following circumstances:

62 (1) If a report of abuse or neglect of the patient has
63 been made pursuant to section 192.2475, 198.070, 208.912,
64 210.115, 565.188, or 630.163, or any other mandatory
65 reporting statutes, and if the health care provider knows of
66 such a report of abuse or neglect, then unless the report
67 has been determined to be unsubstantiated or unfounded, or a
68 determination of abuse was finally reversed after
69 administrative or judicial review, the person reported as
70 the alleged perpetrator of the abuse or neglect shall not be
71 given priority or authority to make health care decisions
72 pursuant to subsection 1 of this section, provided that such
73 a report shall not be based on the person's support for, or
74 direction to provide, health care to the patient;

75 (2) If the patient's physician or the physician's
76 designee reasonably determines, after making a diligent
77 effort to contact the designated health care decision-maker
78 using known telephone numbers and other contact information
79 and receiving no response, that such person is not
80 reasonably available to make medical decisions as needed or
81 is not willing to make health care decisions for the
82 patient; or

83 (3) If a probate court in a proceeding under
84 subsection 8 of this section finds that the involvement of
85 the person in decisions concerning the patient's health care
86 is contrary to instructions that the patient had
87 unambiguously, and without subsequent contradiction or

88 change, expressed before he or she became incapacitated.
89 Such a statement to the patient's physician or other health
90 care provider contemporaneously recorded in the patient's
91 medical record and signed by the patient's physician or
92 other health care provider shall be deemed such an
93 instruction, subject to the ability of a party to a
94 proceeding under subsection 8 of this section to dispute its
95 accuracy, weight, or interpretation.

96 5. (1) The designated health care decision-maker
97 shall make reasonable efforts to obtain information
98 regarding the patient's health care preferences from health
99 care providers, family, friends, or others who may have
100 credible information.

101 (2) The designated health care decision-maker, and the
102 probate court in any proceeding under subsection 8 of this
103 section, shall always make health care decisions in the
104 patient's best interests, and if the patient's religious and
105 moral beliefs and health care preferences are known and not
106 inconsistent with the patient's best interests, in
107 accordance with those beliefs and preferences.

108 6. This section does not authorize the provision or
109 withholding of health care services that the patient has
110 unambiguously, without subsequent contradiction or change of
111 instruction, expressed to the patient's physician or other
112 health care provider that he or she would or would not want
113 at a time when such patient had capacity. Such a statement
114 to the patient's physician or other health care provider,
115 contemporaneously recorded in the patient's medical record
116 and signed by the patient's physician or other health care
117 provider, shall be deemed such evidence, subject to the
118 ability of a party to a proceeding under subsection 8 of

119 this section to dispute its accuracy, weight, or
120 interpretation.

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

126 8. Nothing in sections 404.1100 to 404.1110 shall
127 preclude any person interested in the welfare of a patient
128 including, but not limited to, a designated health care
129 decision-maker, a member of the classes listed in subsection
130 1 of this section regardless of priority, or a health care
131 provider or health care facility involved in the care of the
132 patient, from petitioning the probate court for the
133 appointment of a temporary or permanent guardian for the
134 patient including expedited adjudication as provided in
135 chapter 475.

136 9. Pending the final outcome of proceedings initiated
137 under subsection 8 of this section, the designated health
138 care decision-maker, health care provider, or health care
139 facility shall not withhold or withdraw, or direct the
140 withholding or withdrawal, of health care, nutrition, or
141 hydration whose withholding or withdrawal, in reasonable
142 medical judgment, would result in or hasten the death of the
143 patient, would jeopardize the health or limb of the patient,
144 or would result in disfigurement or impairment of the
145 patient's faculties. If a health care provider or a health
146 care facility objects to the provision of such health care,
147 nutrition, or hydration on the basis of religious beliefs or
148 sincerely held moral convictions, the provider or facility
149 shall not impede the transfer of the patient to another
150 health care provider or health care facility willing to

151 provide it, and shall provide such health care, nutrition,
152 or hydration to the patient pending the completion of the
153 transfer. For purposes of this section, artificially
154 supplied nutrition and hydration may be withheld or
155 withdrawn during the pendency of the guardianship proceeding
156 only if, based on reasonable medical judgment, the patient's
157 physician and a second licensed physician certify that the
158 patient meets the standard set forth in subdivision (2) of
159 subsection 1 of section 404.1105. If tolerated by the
160 patient and adequate to supply the patient's needs for
161 nutrition or hydration, natural feeding should be the
162 preferred method.

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

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

16 (2) Artificially supplied nutrition or hydration
17 cannot be physiologically assimilated or tolerated by the
18 patient.

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

22 3. The provisions of this section shall not apply to
23 subdivision (3) of section 459.010.

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

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

 404.1108. 1. A health care provider or a health care
2 facility may decline to comply with the health care decision
3 of a patient or a designated health care decision-maker if
4 such decision is contrary to the religious beliefs or
5 sincerely held moral convictions of a health care provider
6 or health care facility.

7 2. If at any time, a health care facility or health
8 care provider determines that any known or anticipated
9 health care preferences expressed by the patient to the
10 health care provider or health care facility, or as
11 expressed through the patient's designated health care
12 decision-maker, are contrary to the religious beliefs or
13 sincerely held moral convictions of the health care provider
14 or health care facility, such provider or facility shall
15 promptly inform the patient or the patient's designated
16 health care decision-maker.

17 3. If a health care provider declines to comply with
18 such health care decision, no health care provider or health
19 care facility shall impede the transfer of the patient to
20 another health care provider or health care facility willing
21 to comply with the health care decision.

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

38 tradeoff between extending the length of the patient's life
39 and the risk of disability.

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

404.1110. Nothing in sections 404.1100 to 404.1110 is
2 intended to:

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

5 (2) Be construed as permitting any affirmative or
6 deliberate act to end a person's life, except to permit
7 natural death as provided by sections 404.1100 to 404.1110.

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