

FIRST REGULAR SESSION

# SENATE BILL NO. 493

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HEGEMAN.

Read 1st time February 28, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2128S.01I

## AN ACT

To amend chapter 404, RSMo, by adding thereto ten 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 ten new sections, to be known as sections 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:

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

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

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

**(2) "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;**

**(3) "Best interests":**

**(a) Promoting the incapacitated person's right to enjoy the**

11 highest attainable standard of health for that person;

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

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

19 (4) "Designated health care decision-maker", the person  
20 designated to make health care decisions for a patient under section  
21 404.1104;

22 (5) "Disability" or "disabled", shall have the same meaning as  
23 defined in 42 U.S.C. Section 12102, the Americans with Disabilities Act  
24 of 1990, as amended; provided that, the term "this chapter" in that  
25 definition shall be deemed to refer to sections 404.1100 to 404.1110;

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

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

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

42 (9) "Incapacitated", as such term is defined and determined by  
43 sections 404.805 and 404.825;

44 (10) "Patient", any adult who:

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

47 (b) Does not have anyone with legal authority to make health

48 care decisions for such person including, but not limited to, a guardian  
49 with medical decision-making authority appointed under chapter 475,  
50 or an attorney-in-fact appointed in a durable power of attorney for  
51 health care in accordance with sections 404.800 to 404.865, or persons  
52 under the jurisdiction of the juvenile court;

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

55 (12) "Physician", a treating, attending, or consulting physician  
56 licensed to practice medicine under chapter 334;

57 (13) "Reasonable medical judgment", a medical judgment that  
58 would be made by a reasonably prudent physician knowledgeable about  
59 the case and the health care possibilities with respect to the medical  
60 conditions involved.

404.1103. 1. The physician or another health care provider  
2 acting at the direction of the physician shall make reasonable efforts  
3 to inform potential designated health care decision-makers set forth  
4 under section 404.1104 of whom the physician or physician's designee  
5 is aware of the need to appoint a designated health care decision-maker  
6 for the patient.

7 2. Reasonable efforts include, without limitation, identifying  
8 potential designated health care decision-makers as set forth under this  
9 section by examining the patient's personal effects and medical records.  
10 If a person with potential health care decision-making authority is  
11 identified, attempts to contact that person shall be made within a  
12 reasonable time consistent with the patient's medical needs after a  
13 determination of incapacity. Contact attempts, including name of the  
14 person and known telephone numbers and other contact information,  
15 shall be documented in the patient's medical record. The health care  
16 facility or health care provider shall look to the health care  
17 decision-maker highest in priority who is available and willing to act  
18 at the time a health care decision shall be made for the patient.

404.1104. 1. Decisions concerning the patient's health care may  
2 be made by the following persons with capacity in the following order  
3 of priority, with the exception of persons excluded under subsection 4  
4 of this section:

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

- 7           **(a) A current dissolution of marriage or separation action;**  
8           **(b) A signed written property or marital settlement agreement;**  
9   **or**  
10          **(c) A permanent order of separate maintenance or support or a**  
11 **permanent order approving a property or marital settlement agreement**  
12 **between the parties;**  
13          **(2) An adult child of the patient;**  
14          **(3) A parent of the patient;**  
15          **(4) An adult sibling of the patient;**  
16          **(5) Grandparent or adult grandchild of the patient;**  
17          **(6) Any other adult relative or nonrelative who can demonstrate**  
18 **that he or she has a close personal relationship with the patient and is**  
19 **familiar with the patient's personal values;**  
20          **(7) A person who is a member of the same community of persons**  
21 **as the patient who is bound by vows to a religious life and who**  
22 **conducts or assists in the conducting of religious services and actually**  
23 **and regularly engages in religious, benevolent, charitable, or**  
24 **educational ministry, or performance of health care services; or**  
25          **(8) Any other person designated by the unanimous mutual**  
26 **agreement of the persons listed above who is involved in the patient's**  
27 **care.**

28          **2. A person who is a member of the classes listed under**  
29 **subsection 1 of this section shall not be denied priority under this**  
30 **section based solely upon that person's support for, or direction to**  
31 **provide, withhold or withdraw health care to the patient, subject to the**  
32 **rights of other classes of potential designated decision-makers, a health**  
33 **care provider, or health care facility to petition the probate court for**  
34 **an order for the appointment of a temporary or permanent guardian**  
35 **under chapter 475 to act in the best interests of the patient.**

36          **3. Notwithstanding the provisions of subsection 1 of this section,**  
37 **priority under this section shall not be given to persons in any of the**  
38 **following circumstances:**

- 39          **(1) If a health care provider knows the person has been reported**  
40 **under any mandatory reporting statute for abuse or neglect of the**  
41 **patient including, but not limited to, section 192.2475, 198.070, 208.912,**  
42 **210.115, 565.188, 630.162, or 630.165 or any other mandatory reporting**  
43 **statute and a finding of abuse or neglect has been substantiated. If the**

44 health care provider is aware of a report where a finding has not yet  
45 been made, such person shall not be given priority until the  
46 investigating agency either makes a finding that the allegations are  
47 unsubstantiated or, after investigation, closes the case without making  
48 a finding; provided that, such a report shall not be based on the  
49 person's support for, or direction to provide, health care to the patient;

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

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

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

70 4. (1) The designated health care decision-maker shall make  
71 reasonable efforts to obtain information regarding the patient's health  
72 care preferences from health care providers, family, friends, or others  
73 who may have credible information.

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

78 5. This section does not authorize the provision or withholding  
79 of health care services that the patient has unambiguously at a time  
80 when the patient had capacity, without subsequent contradiction or

81 change of instruction of what he or she would or would not want,  
82 expressed either in a valid living will created under sections 459.010 to  
83 459.055 or to the patient's physician or other health care  
84 provider. Such a statement to the patient's physician or other health  
85 care provider, contemporaneously recorded in the patient's medical  
86 record and signed by the patient's physician or other health care  
87 provider, shall be deemed such evidence, subject to the ability of a  
88 party to a proceeding under chapter 475 to dispute its accuracy,  
89 weight, or interpretation.

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

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

103       8. Pending the final outcome of proceedings initiated under  
104 chapter 475, the designated health care decision-maker, health care  
105 provider, or health care facility shall not withhold or withdraw or  
106 direct the withholding or withdrawal of health care, nutrition, or  
107 hydration if withholding or withdrawal, in reasonable medical  
108 judgment, would result in or hasten the death of the patient, would  
109 jeopardize the health or limb of the patient, or would result in  
110 disfigurement or impairment of the patient's faculties. If a health care  
111 provider or a health care facility objects to the provision of such health  
112 care, nutrition, or hydration on the basis of religious beliefs or  
113 sincerely held moral convictions, the provider or facility shall not  
114 impede the transfer of the patient to another health care provider or  
115 health care facility willing to provide it and shall provide such health  
116 care, nutrition, or hydration to the patient pending the completion of  
117 the transfer. For purposes of this subsection, artificially supplied

118 nutrition and hydration may be withheld or withdrawn during the  
119 pendency of the guardianship proceeding only if, based on reasonable  
120 medical judgment, the patient's physician and a second licensed  
121 physician certify that the patient meets the standard set forth under  
122 subdivision (2) of subsection 1 of section 404.1105. If tolerated by the  
123 patient and adequate to supply the patient's needs for nutrition or  
124 hydration, natural feeding should be the preferred method.

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

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

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

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

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

404.1107. 1. No health care provider or health care facility that

2 in good faith makes reasonable efforts to identify, locate, and  
3 communicate with potential designated health care decision-makers in  
4 accordance with sections 404.1100 to 404.1110 shall be subject to civil  
5 or criminal liability or regulatory sanction for the effort to identify,  
6 locate, and communicate with such potential designated health care  
7 decision-makers.

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

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

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

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

14       3. If a health care provider declines to comply with such health  
15 care decision, no health care provider or health care facility shall  
16 impede the transfer of the patient to another health care provider or  
17 health care facility willing to comply with the health care decision.

18       4. Nothing in this section shall relieve or exonerate a health care  
19 provider or a health care facility from the duty to provide for the  
20 health care, care, and comfort of a patient pending transfer under this  
21 section. If withholding or withdrawing certain health care would, in



22 reasonable medical judgment, result in or hasten the death of the  
23 patient, such health care shall be provided pending completion of the  
24 transfer. Notwithstanding any other provision of this section, no such  
25 health care shall be denied on the basis of a view that treats extending  
26 the life of an elderly, disabled, or terminally ill individual as of lower  
27 value than extending the life of an individual who is younger,  
28 nondisabled, or not terminally ill, or on the basis of the health care  
29 provider's or facility's disagreement with how the patient or individual  
30 authorized to act on the patient's behalf values the tradeoff between  
31 extending the length of the patient's life and the risk of disability.

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

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

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

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

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