

FIRST REGULAR SESSION

# HOUSE BILL NO. 1133

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGAUGH.

2324L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 404.830, RSMo, and to enact in lieu thereof twelve new sections relating to designated health care decision-makers for medical treatment.

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

Section A. Section 404.830, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 404.830, 404.1100, 404.1101, 404.1102, 404.1103, 404.1104, 404.1105, 404.1106,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:

404.830. 1. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the individual's religious beliefs, or sincerely held moral convictions.

2. No hospital, nursing facility, residential care facility, or other health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the hospital's or facility's institutional policy based on religious beliefs or sincerely held moral convictions unless the hospital or facility received a copy of the durable power of attorney for health care prior to commencing the current series of treatments or current confinement.

3. Any health care provider or facility which, pursuant to subsection 1 or 2 of this section, refuses to honor a health care decision of an attorney in fact shall not impede the attorney in fact from transferring the patient to another health care provider or facility.

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

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 care would, in reasonable medical judgment, result in or hasten the death of the patient,  
17 such health care shall be provided pending completion of the transfer.

18

19 Notwithstanding subsections 1 and 2 of this section, if the attorney in fact directs the  
20 provision of life-preserving medical treatment or artificially supplied nutrition and  
21 hydration to the patient, life-preserving medical treatment and, if the patient is unable to  
22 ingest adequate nutrition and hydration through natural means, artificially supplied  
23 nutrition and hydration, may not be denied to the patient:

24 (1) On the basis of a view that treats extending the life of an elderly, disabled, or  
25 terminally ill individual as of lower value than extending the life of an individual who is  
26 younger, nondisabled, or not terminally ill; or

27 (2) On the basis of the physician's or health care provider's disagreement with how  
28 the patient or individual authorized to act on the patient's behalf values the tradeoff  
29 between extending the length of the patient's life and the risk of disability.

30

31 In an action to enforce this subsection, if the attorney in fact pleads a prima facie case, the  
32 health care provider or facility may defend his or her or its actions by pleading a legitimate  
33 different reason or reasons that provided a basis for the denial of treatment, subject to an  
34 opportunity for the attorney in fact to plead that the reason or reasons for the denial of  
35 treatment are being applied differently based on the grounds under subdivision (1) or (2)  
36 of subsection 4 of this section.

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

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

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

6 (2) "Best interests":

7 (a) Ensuring that the incapacitated person has the right to enjoy the highest  
8 attainable standard of health for that person;

9 (b) Advocating that the person who is incapacitated receive the same range, quality,  
10 and standard of health care, care, and comfort as is provided to an individual without a  
11 disability;

12 (c) Monitoring health care providers and health care facilities to ensure that they  
13 provide health care, care, and comfort of the same quality to the person who is  
14 incapacitated as they provide to other individuals without disabilities; and

15 (d) Preventing discriminatory denial of health care, care, or comfort, or food or  
16 fluids, on the basis that the person who is incapacitated is an individual with a disability;

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

19 (4) "Health care", a procedure to diagnose or treat a human disease, ailment,  
20 defect, abnormality, or complaint, whether of physical or mental origin and includes:

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

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

25 (c) Making arrangements for placement in or removal from a health care facility  
26 or health care provider that provides such forms of care;

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

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

36 (7) "Incapacitated", a person who is unable by reason of any physical or mental  
37 condition to receive and evaluate information or to communicate decisions to such an  
38 extent that the person lacks capacity to meet essential requirements for food, clothing,  
39 shelter, safety, or other care such that serious physical injury, illness, or disease is likely  
40 to occur;

41 (8) "Patient", any adult person or any person otherwise authorized to make  
42 treatment decisions for himself or herself under Missouri law;

43 (9) "Physician", a treating, attending, or consulting physician licensed to practice  
44 medicine under chapter 334;

45 (10) "Reasonable medical judgment", a medical judgment that would be made by  
46 a reasonably prudent physician who is knowledgeable about the case and the treatment  
47 possibilities with respect to the medical conditions involved.

2       **404.1102.** The determination that a patient is incapacitated shall be made as set  
3 forth in section 404.825. A health care provider or health care facility may rely in the  
4 exercise of good faith and in accordance with reasonable medical judgment upon the health  
5 care decisions made for a patient by a designated health care decision-maker selected in  
6 accordance with section 404.1104, provided two licensed physicians determine, after  
7 reasonable inquiry and in accordance with reasonable medical judgment, that such patient  
8 is incapacitated and has neither a guardian with medical decision-making authority  
9 appointed in accordance with chapter 475, an attorney in fact appointed in a durable  
10 power of attorney for health care in accordance with sections 404.800 to 404.865, nor any  
11 other known person who has the legal authority to make health care decisions.

2       **404.1103.** Upon a determination that a patient is incapacitated, the physician or  
3 another health care provider acting at the direction of the physician shall make reasonable  
4 efforts to inform potential designated health care decision-makers set forth in section  
5 404.1104 of whom the physician or physician's designee is aware, of the need to appoint a  
6 designated health care decision-maker. Reasonable efforts includes, without limitation,  
7 identifying a member of the patient's family, a guardian with medical decision-making  
8 authority appointed in accordance with chapter 475, or an attorney in fact appointed in  
9 a durable power of attorney for health care in accordance with sections 404.800 to 404.865,  
10 by examining the patient's personal effects and medical records. If a family member,  
11 attorney-in-fact for health care or guardian with health care decision-making authority is  
12 identified, a documented attempt to contact that person by telephone, with all known  
13 telephone numbers and other contact information used, shall be made within twenty-four  
hours after a determination of incapacity is made as provided in section 404.1102.

2       **404.1104. 1.** If a patient is incapacitated under section 404.1102 and is unable to  
3 consent regarding his or her own health care, decisions concerning the patient's health care  
4 may be made by the following competent persons in the following order of priority:

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

7       (a) Current dissolution of marriage or separation action;

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

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

11       (2) An adult child of the patient;

12       (3) A parent;

13       (4) An adult sibling;

      (5) Grandparent or adult grandchild;

14           (6) Niece or nephew or the next nearest other relative of the patient, by  
15 consanguinity or affinity;

16           (7) Any nonrelative who demonstrates that he or she has a close personal  
17 relationship with the patient and is familiar with the patient's personal values; or

18           (8) Any other person designated by the unanimous mutual agreement of the  
19 persons listed above who are involved in the patient's care.

20           2. If a person who is a member of the classes listed in subsection 1 of this section,  
21 regardless of a priority, or a health care provider or a health care facility involved in the  
22 care of the patient, disagree on whether certain health care should be provided to or  
23 withheld or withdrawn from a patient, any such person, provider, or facility, or other  
24 person interested in the welfare of the patient may petition the probate court for an order  
25 for the appointment of a temporary or permanent guardian in accordance with subsection  
26 7 of this section to act in the best interest of the patient.

27           3. Priority under this section shall not be given to persons in any of the following  
28 circumstances:

29           (1) If a report of abuse or neglect of the patient has occurred outside the state or  
30 under sections 198.070, 208.912, 210.115, 565.188, or 660.300 has been made, then unless  
31 the report has been determined to be unsubstantiated or unfounded, or a contrary  
32 determination was finally reversed after administrative or judicial review, the person  
33 reported as the alleged perpetrator shall not be given priority or authority to make health  
34 care decisions under subsection 1 of this section, provided that such a report shall not be  
35 based on the person's support for, or direction to provide, health care to the patient;

36           (2) If the patient's physician or the physician's designee reasonably determines,  
37 after making a diligent effort to contact the designated health care decision-maker using  
38 known telephone numbers and other contact information and receiving no response, that  
39 such person is not reasonably available to make medical decisions as needed or is not  
40 willing to make health care decisions for the patient; or

41           (3) If a probate court in a proceeding under subsection 7 of this section finds that  
42 the involvement of the person in decisions concerning the patient's health care is contrary  
43 to instructions that the patient had unambiguously, and without subsequent contradiction  
44 or change, expressed before he or she became incapacitated. Such a statement to the  
45 patient's physician or other health care provider in the presence of a witness,  
46 contemporaneously recorded in the patient's medical record, and signed by the patient,  
47 health care provider, and witness, shall be deemed an instruction, subject to the ability of  
48 a party to a proceeding under subsection 7 of this section to dispute its accuracy, weight,  
49 or interpretation.

50           **4. (1) The designated health care decision-maker shall make reasonable efforts to**  
51 **obtain information regarding the patient's treatment preferences from health care**  
52 **providers, family, friends, or others who may have credible information.**

53           **(2) The designated health care decision-maker, and the probate court in any**  
54 **proceeding under subsection 7 of this section, shall always make health care decisions in**  
55 **the patient's best interests, and if the patient's religious and moral beliefs and treatment**  
56 **preferences are known and not inconsistent with the patient's best interests, in accordance**  
57 **with those beliefs and preferences.**

58           **5. This section does not authorize the provision or withholding of health care**  
59 **services that the patient has unambiguously, without contradiction or change of**  
60 **instruction, expressed that he or she would or would not want at a time when such patient**  
61 **had capacity. Such statement to the patient's physician or other health care provider in**  
62 **the presence of a witness, contemporaneously recorded in the patient's medical record and**  
63 **signed by the patient, health care provider, and witness, shall be deemed such evidence,**  
64 **subject to the availability of a party to a proceeding under subsection 7 of this section to**  
65 **dispute its accuracy, weight, or interpretation.**

66           **6. A designated health care decision-maker shall be deemed a personal**  
67 **representative for the purposes of access to and disclosure of private medical information**  
68 **under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC**  
69 **1320d and 45 CFR 160-164.**

70           **7. Nothing in sections 404.1100 to 404.1110 shall preclude any person interested in**  
71 **the welfare of a patient, including but not limited to a designated health care**  
72 **decision-maker, a member of the classes listed in subsection 1 of this section regardless of**  
73 **priority, or a health care provider or health care facility involved in the care of the patient,**  
74 **from petitioning the probate court for an order determining the care to be provided to the**  
75 **patient or for the appointment of a temporary or permanent guardian for the patient,**  
76 **including expedited adjudication under chapter 475, nor any other known person who has**  
77 **the legal authority to make health care decisions.**

78           **8. Pending the final outcome of proceedings initiated under subsection 7 of this**  
79 **section, the designated health care decision-maker, health care provider, health care**  
80 **facility, court, or temporary or permanent guardian shall not withhold or withdraw, or**  
81 **direct the withholding or withdrawal, of health care, nutrition, or hydration whose**  
82 **withholding or withdrawal, in reasonable medical judgment, would result or hasten the**  
83 **death of the patient, would jeopardize the health or limb of the patient, or would result in**  
84 **disfigurement or impairment of the patient's faculties, except to the extent that all parties**  
85 **to the court proceeding including the person, provider, or facility who or which filed the**

86 petition, agree in a written stipulation that certain specified health care may be withheld  
87 or withdrawn. If a health care provider or a health care facility objects to the provision  
88 of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely held  
89 moral convictions, the provider or facility shall not impede the transfer of the patient to  
90 another health care provider or health care facility willing to provide it, and shall provide  
91 such health care, nutrition, or hydration to the patient pending the completion of the  
92 transfer. For purposes of this section, artificially supplied nutrition and hydration may be  
93 withheld or withdrawn during the pendency of the guardianship proceeding only if, based  
94 on reasonable medical judgment, the patient's physician and a second licensed physician  
95 certify that the patient cannot tolerate it in accordance with section 404.1105.

2 404.1105. No designated health care decision-maker may, with the intent of causing  
3 the death of the patient, authorize the withdrawal or withholding of nutrition or hydration  
4 which the patient may ingest through natural means. A designated health care  
5 decision-maker may authorize the withdrawal or withholding of artificially supplied  
6 nutrition and hydration only when the physician and a second licensed physician certify  
7 in the patient's medical record based on reasonable medical judgment, that the provision  
8 or continuation of artificially supplied nutrition and hydration cannot be tolerated by the  
9 patient. For purposes of this section, artificially supplied nutrition and hydration does not  
10 medically benefit the patient if its withholding or withdrawal does not hasten the patient's  
11 death and its provision will not comfort the patient. The decision to withdraw or withhold  
12 artificially supplied nutrition and hydration shall not be based, in whole or in part, on a  
patient's preexisting mental or physical disability.

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

2 404.1107. Any health care provider or health care facility that makes good faith  
3 and reasonable attempts to identify, locate and communicate with potential designated  
4 health care decision-makers in accordance with sections 404.1100 to 404.1110 shall not be  
5 subject to civil or criminal liability or regulatory sanction for the effort to identify, locate,  
and communicate with such potential designated health care decision-makers.

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

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

12 **3. If a health care provider declines to comply with such medical treatment**  
13 **decision, the health care provider or health care facility shall not impede the transfer of the**  
14 **patient to another health care provider or health care facility willing to comply with the**  
15 **medical treatment decision.**

16 **4. Nothing in this section shall relieve or exonerate a health care provider or a**  
17 **health care facility from the duty to provide for the medical treatment, care, and comfort**  
18 **of a patient pending transfer under this section. If withholding or withdrawing certain**  
19 **health care would, in reasonable medical judgment, result in or hasten the death of the**  
20 **patient, such health care shall be provided pending completion of the transfer.**

21 **5. Notwithstanding the provisions of subsections 1 and 2 of this section, if the health**  
22 **care decision to which the health care provider or facility objects is to provide life-**  
23 **preserving medical treatment or artificially supplied nutrition and hydration, the provision**  
24 **of life-preserving medical treatment, and, if the patient is unable to ingest adequate**  
25 **nutrition and hydration through natural means, artificially supplied nutrition and**  
26 **hydration, shall not be denied to the patient:**

27 **(1) On the basis of a view that treats extending the life of an elderly, disabled, or**  
28 **terminally ill individual as of lower value than extending the life of an individual who is**  
29 **younger, nondisabled, or not terminally ill; or**

30 **(2) On the basis of the physician's or health care provider's disagreement with how**  
31 **the patient or individual authorized to act on the patient's behalf values the tradeoff**  
32 **between extending the length of the patient's life and the risk of disability.**

33 **In an action to enforce the provisions of this subsection, if the patient or designated health**  
34 **care decision-maker pleads a prima facie case, the health care provider or facility may**  
35 **defend his, her, or its actions by pleading a legitimate different reason or reasons that**  
36 **provided a basis for the denial of treatment, subject to an opportunity for the patient or**



37 **designated health care decision-maker to plead that the reason or reasons for the denial**  
38 **of treatment are being applied differently based on the grounds established in subdivision**  
39 **(1) or (2) of this subsection.**

**404.1109. A health care decision-maker shall not withhold or withdraw medical**  
2 **treatment from a pregnant patient, consistent with existing law, as set forth in section**  
3 **459.025.**

**404.1110. Nothing in this act is intended to:**

2 **(1) Encourage or discourage any particular medical treatment or to interfere with**  
3 **or affect any method of religious or spiritual healing otherwise permitted by law;**

4 **(2) Be construed as condoning, authorizing, or approving euthanasia or mercy**  
5 **killing; or**

6 **(3) Be construed as permitting any affirmative or deliberate act to end a person's**  
7 **life, except to permit natural death as provided by this legislation.**

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