

FIRST REGULAR SESSION

SENATE BILL NO. 517

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1786S.02I

AN ACT

To repeal sections 404.805, 404.830, 404.850, and 404.855, RSMo, and to enact in lieu thereof six new sections relating to surrogate health care decisions.

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

Section A. Sections 404.805, 404.830, 404.850, and 404.855, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 404.805, 404.830, 404.850, 404.855, 404.875, and 404.881, to read as follows:

404.805. 1. As used in sections 404.800 to [404.865] **404.881**, the following terms mean:

(1) "Certification", a written instrument or a written entry in a medical record;

(2) **"Health care provider", any person delivering, or purporting to deliver, any health care, and including any employee, agent, or other representative of such person;**

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

[(3)] (4) "Patient", the principal of a durable power of attorney for health care under sections 404.800 to [404.865] **404.881**;

(5) **"Surrogate", a person authorized to make health care decisions for a patient by a power of attorney, a court order, or the provisions of section 404.875.**

2. The definitions of section 404.703 shall apply to sections 404.800 to [404.865] **404.881** except as modified by this section.

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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

attorney in fact **or surrogate** 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 **or surrogate** 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 **or surrogate** shall not impede the attorney in fact from transferring the patient to another health care provider or facility.

404.850. 1. A power of attorney for health care **or surrogate** may be revoked at any time and in any manner by which the patient is able to communicate the intent to revoke. Revocation shall be effective upon communication of such revocation by the patient to the attorney in fact **or surrogate** or to the attending physician or health care provider.

2. Upon learning of the revocation of a power of attorney for health care **or surrogate**, the attending physician or other health care provider shall cause the revocation to be made a part of the patient's medical records.

3. Unless the power of attorney provides otherwise, execution by the patient of a valid power of attorney for health care revokes any prior power of attorney for health care.

404.855. 1. A third person, if acting in good faith, may rely and act on the instruction of and deal with the attorney in fact acting pursuant to the authority granted in a power of attorney for health care without liability to the patient or the patient's successors in interest.

2. **This immunity from liability also shall apply to third persons, if such persons are acting in good faith and relying on the instructions of a surrogate.**

404.875. 1. If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to consult with a surrogate. If the patient has a durable power of attorney for health care that meets the requirements of sections 404.820 to 404.865, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

(1) The patient's spouse, unless the patient and spouse are legally separated;
(2) An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation;

(3) A parent of the patient;

(4) A brother or sister of the patient;

(5) A close friend of the patient. For the purposes of this subdivision, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

2. If the health care provider cannot locate any of the people listed in subsection 1 of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care provider or facility appointed or elected to render advice concerning ethical issues involving medical treatment.

3. A surrogate who is not the patient's agent with a durable power of attorney for health care or guardian shall not make decisions to withdraw the artificial administration of food or fluid.

404.881. 1. A person authorized as a surrogate to make health care decisions under sections 404.875 to 404.890 is not responsible for paying the patient's health care costs unless the person is otherwise required to do so.

2. Sections 404.875 to 404.881 do not authorize a surrogate to consent to any act or omission to which the patient could not lawfully consent.