

FIRST REGULAR SESSION

# HOUSE BILL NO. 392

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WHITE (Sponsor), SATER, DAVIS, LANT, FLANIGAN,  
KELLEY (126), ENTLICHER, RIZZO, FRANKLIN AND FREDERICK (Co-sponsors).

0934L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 191, RSMo, by adding thereto seven new sections relating to the adult health care consent act.

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

Section A. Chapter 191, RSMo, is amended by adding thereto seven new sections, to be  
2 known as sections 191.1300, 191.1302, 191.1304, 191.1306, 191.1308, 191.1310, and 191.1312,  
3 to read as follows:

**191.1300. 1. Sections 191.1300 to 191.1312 shall be known and may be cited as the**  
2 **"Adult Health Care Consent Act".**

3 **2. As used in sections 191.1300 to 191.1312, the following terms shall mean:**

4 **(1) "Health care", a procedure to diagnose or treat a human disease, ailment,**  
5 **defect, abnormality, or complaint, whether of physical or mental origin, and includes the**  
6 **provision of:**

7 **(a) Intermediate or skilled nursing care;**

8 **(b) Services for the rehabilitation of injured, disabled, or sick persons; and**

9 **(c) The placement in or removal from a facility that provides such forms of care;**

10 **(2) "Health care provider" or "provider", a person, health care facility,**  
11 **organization, or corporation licensed, certified, or otherwise authorized or permitted by**  
12 **the laws of this state to administer health care;**

13 **(3) "Health care professional", an individual who is licensed, certified, or otherwise**  
14 **authorized by the laws of this state to provide health care to members of the public;**

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.

15 (4) "Physician", an individual who is licensed to practice medicine or osteopathy  
16 under chapter 334;

17 (5) "Unable to consent", unable to appreciate the nature and implications of the  
18 patient's condition and proposed health care, to make a reasoned decision concerning the  
19 proposed health care, or to communicate such decision in an unambiguous manner.  
20 Unable to consent does not include minors and sections 191.1300 to 191.1312 do not affect  
21 the delivery of health care to minors unless they are married or have been determined  
22 judicially to be emancipated. A patient's inability to consent shall be certified by two  
23 licensed physicians, each of whom has examined the patient. However, in an emergency,  
24 the patient's inability to consent may be certified by a health care professional responsible  
25 for the care of the patient if the health care professional states in writing in the patient's  
26 record that the delay occasioned by obtaining certification from two licensed physicians  
27 would be detrimental to the patient's health. A certifying physician or other health care  
28 professional shall give an opinion regarding the cause and nature of the inability to  
29 consent, its extent, and its probable duration. If a patient unable to consent is being  
30 admitted to hospice care pursuant to a physician certification of a terminal illness required  
31 by Medicare, such certification meets the certification requirements of this subdivision.

191.1302. 1. If a patient is unable to consent, decisions concerning the patient's  
2 health care may be made by the following persons in the following order of priority:

3 (1) A guardian appointed by a court of competent jurisdiction under chapter 475,  
4 if the decision is within the scope of the guardianship;

5 (2) An attorney-in-fact appointed by the patient in a durable power of attorney for  
6 health care executed under sections 404.800 to 404.872, if the decision is within the scope  
7 of his or her authority;

8 (3) A person given priority to make health care decisions for the patient by another  
9 statutory provision;

10 (4) A spouse of the patient, unless the spouse and the patient are separated under  
11 one of the following:

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

13 (b) A formal signing of a written property or marital settlement agreement;

14 (c) Entry of a permanent order of separate maintenance and support, or of a  
15 permanent order approving a property or marital settlement agreement between the  
16 parties;

17 (5) A parent or adult child of the patient;

18 (6) An adult sibling, grandparent, or adult grandchild of the patient;

19 (7) Any other relative by blood or marriage who reasonably is believed by the  
20 health care professional to have a close personal relationship with the patient;

21 (8) A person given authority to make health care decisions for the patient by  
22 another statutory provision.

23 2. If persons of equal priority disagree on whether certain health care should be  
24 provided to a patient who is unable to consent, an authorized person, a health care  
25 provider involved in the care of the patient, or any other person interested in the welfare  
26 of the patient may petition the probate court for an order determining what care is to be  
27 provided or for appointment of a temporary or permanent guardian.

28 3. Priority under this section shall not be given to a person if a health care provider  
29 responsible for the care of a patient who is unable to consent determines that the person  
30 is not reasonably available, is not willing to make health care decisions for the patient, or  
31 is unable to consent as defined in section 191.1300.

32 4. An attending physician or other health care professional responsible for the care  
33 of a patient who is unable to consent shall not give priority or authority under subdivisions  
34 (5) to (8) of subsection 1 of this section to a person if the attending physician or health care  
35 professional has actual knowledge that, before becoming unable to consent, the patient did  
36 not want such person involved in decisions concerning the patient's care.

37 5. This section does not authorize a person to make health care decisions on behalf  
38 of a patient who is unable to consent if, in the opinion of the certifying physicians, the  
39 patient's inability to consent is temporary, and the attending physician or other health care  
40 professional responsible for the care of the patient determines that the delay occasioned  
41 by postponing treatment until the patient regains the ability to consent will not result in  
42 significant detriment to the patient's health.

43 6. A person authorized to make health care decisions under subsection 1 of this  
44 section shall base such decisions on the patient's wishes to the extent that the patient's  
45 wishes can be determined. If the patient's wishes cannot be determined, the person shall  
46 base the decision on the patient's best interest.

47 7. A person authorized to make health care decisions under subsection 1 of this  
48 section may either consent or withhold consent to health care on behalf of the patient.

191.1304. 1. Health care may be provided without consent to a patient who is  
2 unable to consent if no person authorized under section 191.1302 to make health care  
3 decisions for the patient is available immediately, and in the reasonable medical judgment  
4 of the attending physician or other health care professional responsible for the care of the  
5 patient, the delay occasioned by attempting to locate an authorized person or by continuing  
6 to attempt to locate an authorized person presents a substantial risk of death, serious

7 permanent disfigurement, or loss or impairment of the functioning of a bodily member or  
8 organ, or other serious threat to the health of the patient. Health care for the relief of  
9 suffering may be provided without consent at any time that an authorized person is  
10 unavailable.

11       **2. Health care decisions on behalf of a patient who is unable to consent may be**  
12 **made by a person named in section 191.1302 if no person having higher priority under that**  
13 **section is available immediately, and in the reasonable medical judgment of the attending**  
14 **physician or other health care professional responsible for the care of the patient, the delay**  
15 **occasioned by attempting to locate a person having higher priority presents a substantial**  
16 **risk of death, serious permanent disfigurement, loss or impairment of the functioning of**  
17 **a bodily member or organ, or other serious threat to the health of the patient.**

**191.1306. Health care may be provided without consent to a patient who is unable**  
2 **to consent if no person authorized under section 191.1302 to make health care decisions for**  
3 **the patient is reasonably available and willing to make the decision, and in the reasonable**  
4 **medical judgment of the attending physician or other health care professional responsible**  
5 **for the care of the patient, the health care is necessary for the relief of suffering or**  
6 **restoration of bodily function or to preserve the life, health, or bodily integrity of the**  
7 **patient.**

**191.1308. 1. Unless the patient, while able to consent, has stated a contrary intent**  
2 **to the attending physician or other health care professional responsible for the care of the**  
3 **patient, sections 191.1300 to 191.1312 do not authorize the provision of health care to a**  
4 **patient who is unable to consent if the attending physician or other health care professional**  
5 **responsible for the care of the patient has actual knowledge that the health care is contrary**  
6 **to the religious beliefs of the patient.**

7       **2. Sections 191.1300 to 191.1312 do not authorize the provision of health care to a**  
8 **patient who is unable to consent if the attending physician or other health care professional**  
9 **responsible for the care of the patient has actual knowledge that the health care is contrary**  
10 **to the patient's unambiguous and uncontradicted instructions expressed at a time when the**  
11 **patient was able to consent.**

12       **3. Sections 191.1300 to 191.1312 do not limit the evidence on which a court may**  
13 **base a determination of a patient's intent in a judicial proceeding.**

**191.1310. 1. A person who in good faith makes a health care decision as provided**  
2 **in section 191.1302 shall not be subject to civil or criminal liability on account of the**  
3 **substance of such decision.**

4       **2. A person who consents to health care as provided in section 191.1302 does not**  
5 **by virtue of such consent become liable for the costs of care provided to the patient.**

6           **3. A health care provider who in good faith relies on a health care decision made**  
7 **by a person authorized under section 191.1302 shall not be subject to civil or criminal**  
8 **liability or disciplinary action on account of the provider's reliance on such decision.**

9           **4. A health care provider who in good faith relies on a health care decision under**  
10 **section 191.1306 or 191.1308 shall not be subject to civil or criminal liability or disciplinary**  
11 **action on account of the provision of care. However, this section does not affect a health**  
12 **care provider's liability arising from the provision of care in a negligent manner.**

**191.1312. No provision of sections 191.1300 to 191.1312 shall affect the ability of**  
2 **a state agency or health care provider working in conjunction with a state agency to**  
3 **conduct testing or provide treatment which is mandated or allowed by other provisions of**  
4 **law.**