

HCS HB 144 -- HEALTH CARE DECISION MAKER ACT

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 6 to 0. Voted "Do Pass with HCS" by the Standing Committee on Rules-Legislative Oversight by a vote of 12 to 0.

This bill establishes the "Designated Health Care Decision-Maker Act." In its main provisions, the bill:

- (1) Limits the determination of incapacity of a patient to a specific process and permits a health care provider or facility to rely upon the health care decisions made by a designated health care decision-maker if certain procedures are followed;
- (2) Requires a physician or other provider to make reasonable efforts to inform potential designated health care decision-makers of a determination that a patient is incapacitated as specified in the bill;
- (3) Delineates a list of priority of persons who may make health care decisions for an incapacitated patient as specified in the bill and excludes certain persons from the list if specified circumstances exist;
- (4) Permits any person interested in the welfare of an incapacitated patient to petition the probate court for an order determining the care to be provided to the patient;
- (5) Prohibits a designated health care decision-maker from withdrawing or withholding nutrition or hydration that is ingested through natural means and permits a designated health care decision-maker to withdraw or withhold artificially supplied nutrition or hydration if specified requirements are met;
- (6) Requires the patient's physician to re-examine the patient if the designated health care decision-maker, physician, or anyone in the priority list believes the patient is no longer incapacitated;
- (7) Prohibits any facility or provider who makes good faith and reasonable efforts to identify, locate, and communicate with potential designated health care decision-makers from being subject to civil or criminal liability or regulatory sanctions for such actions;
- (8) Permits a provider or facility to decline to comply with a health care decision of a patient or designated health care

decision-maker if the provider or facility has a moral or religious objection to the decision so long as the facility or provider takes certain actions as specified in the bill;

(9) Prohibits health care from being denied based on the view that extending the life of certain individuals is of a lower value than extending the life of other specified individuals or on the basis that the provider or facility disagrees with how the patient or decision maker values extension of life versus the risk of disability; and

(10) Prohibits a provider or facility from withholding or withdrawing medical treatment from a pregnant patient.

This bill is similar to HB 2502 (2016).

PROPOSERS: Supporters say that Missouri is one of seven states that do not have a hierarchy for health care decision-makers when there is no advance directive in place, and this bill is meant to help people who need it the most, which is, oftentimes, the elderly population. This bill is not meant to replace or prohibit individuals to set up advance directives. However, there is not currently an informed consent mechanism for surrogate decision-makers in Missouri, and guardianship is seldom sought because it can take forever. The issue is that a lot of people do not want to think about what might happen to them when they are incapacitated, so they delay or avoid setting up an advance directive. This way, there is something in place if a person does not have an advance directive or someone with durable power of attorney. Finally, this should help reduce the times health care providers find themselves in situations where there is no one who is legally authorized to make decisions on an incapacitated person's behalf.

Testifying for the bill were Representative McGaugh; Sheryl Feutz-Harter; Kathy H. Butler; VOYCE; Sheri Bilderback Coaching And Consulting & Healthcare Decisionmaker Coalition; The Missouri Bar; SSM Health Care; BJC Health Care and Cox Health; and the Missouri Hospital Association.

OPPONENTS: Those who oppose the bill say that this is a dangerous and damaging piece of legislation, and the bill does not do what it says it does. The witness testified that this bill discriminates against people with disabilities or dementia. Furthermore, this would allow health care providers to go around family members to petition for guardianship and they can withdraw nutrition to clear up space in a hospital.

Testifying against the bill was the Missouri Family Policy Council.

OTHERS: Others testifying on the bill say that they want to make sure the bill is consistent with Missouri law. Some people in the health care industry will make great decisions, and some will not, and some will try to figure out a way to make room for a new patient. This bill is trying to address an issue that exists in the system.

Testifying on the bill were Missouri Health Care Association; Missouri Hospice & Palliative Care Association; Missouri Catholic Conference; and Missouri Right To Life.