

**SENATE . . . . . No. 2378**

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**MESSAGE FROM HIS EXCELLENCY THE GOVERNOR  
RETURNING, UNDER THE PROVISIONS OF  
ARTICLE LVI OF THE AMENDMENTS TO THE  
CONSTITUTION, WITH RECOMMENDATION  
OF AMENDMENT, THE ENGROSSED BILL  
RELATIVE TO CONSENT TO HEALTH  
CARE (SEE SENATE NO. 2127) (RE-  
CEIVED IN THE OFFICE OF THE  
CLERK OF THE SENATE ON THURS-  
DAY, DECEMBER 27, 1984, AT  
TEN MINUTES PAST FIVE  
O'CLOCK P.M.).**

December 27, 1984.

## The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT  
STATEHOUSE • BOSTON 02133

December 27, 1984.

To the Honorable Senate:

I am returning herewith Senate Bill No. 2127 entitled "An Act Relative To Consent To Health Care", for amendment, pursuant to Article LVI of the Amendments to the Massachusetts Constitution.

While I support the effort of the legislature to address the problem that arises when an individual is unable to participate in the health care decision-making process, I am concerned that the language of Senate Bill No. 2127 could give rise to many unforeseen problems. For example, since no definition of "incapable of consenting" is provided, health care professionals have no guidance in making use of the proposed Act. Moreover, the bill contains provisions that are contrary to recent decisions of the Supreme Judicial Court and may well be unconstitutional in that it allows someone other than a court to make the decision concerning a patient's ability to consent to health care. A problem also exists in the *ex parte* nature of some hearings as provided in section six of the proposed bill.

I, therefore recommend the following amendments:

*Section 2.*

STRIKE the phrase "in the good faith opinion of the health care provider", as appearing in lines two and three of section 3 of Chapter 201D.

ADD the following sentence after the last sentence appearing in section three of Chapter 201D:

"For the purpose of this Chapter a person shall be determined to be incapable of making a decision regarding the proposed health care if he has:

- (1) appointed another to presently act as a health care representative for him, pursuant to section six of this chapter; or
- (2) been determined by a court of competent jurisdiction to be incompetent.

ADD the following phrase in the second line of subsection (c) of section six of Chapter 201D, after the word "appointee", "in the presence of a notary public".

STRIKE the phrase "any court of competent jurisdiction" as appearing in line two of section seven of Chapter 201D and insert in place thereof, between the words "petition" and "to" the phrase: "probate court department of the trial court".

DELETE the phrase "serious, adverse" from line two of subsection (c) of section seven of Chapter 201D and insert in place thereof the following:

"immediate, serious, adverse and irrevocable".

ADD between the words "individual" and "incapable", in line three of subsection (a) of section seven of Chapter 201D the phrase "alleged to be."

ADD the following sentence to the end of subsection (c) of section seven of Chapter 201D:

"In the event the court modifies or dispenses with notice and hearing requirements, the respondent shall be afforded an opportunity to be heard as soon as is practical".

DELETE subsection (b) of section 9 of Chapter 201D.

DELETE subsection (c) of section 9 of Chapter 201D.

Respectfully submitted,

MICHAEL S. DUKAKIS

*Governor*

