

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 437

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 437, as amended, would enact new law regarding life-sustaining treatments for patients under 18 years of age. The provisions of the bill would be known and cited as Simon's Law.

Definitions

The bill would define procedures, food, medication, or nutrition to be "life-sustaining" if, in reasonable medical judgment, the withdrawal or withholding of these procedures, food, medication, or nutrition would result in or hasten the death of the patient. [*Note: life-sustaining procedures, food, medication, or nutrition will be referred to as "life-sustaining treatments" throughout this supplemental note.*]

"Reasonable medical judgment" would be defined as a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

Written Disclosure of Policies

The bill would require a healthcare facility, nursing home, or physician, upon the request of a patient, resident, or prospective patient or resident, to disclose in writing any

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

policies relating to a patient or resident or the services a patient or resident may receive involving life-sustaining treatment, including any policies related to health care deemed futile, inappropriate, or non-beneficial within the healthcare facility or agency. However, the bill would not require a healthcare facility, nursing home, or physician to have such a written policy.

Written Permission for Withholding or Restricting Life-Sustaining Treatments and Implementing Do-Not-Resuscitate Orders

The bill would prohibit healthcare facilities, nursing homes, physicians, nurses, and medical staff from withholding or restricting life-sustaining treatments from any patient, resident, or ward under 18 years of age without the written permission of at least one parent or legal guardian of the patient or ward. Additionally, the bill would prohibit do-not-resuscitate orders or similar physician's orders from being instituted either orally or in writing without the written permission of at least one parent or legal guardian of the patient, resident, or prospective patient or resident who is under 18 years of age.

Subject to the procedure for making a reasonably diligent effort to communicate with at least one parent or legal guardian as outlined below, written permission would not apply if providing resuscitation or life-sustaining treatments is, in reasonable medical judgment:

- Futile because withholding resuscitation or life-sustaining treatments would not cause or hasten the death of the patient; or
- Medically inappropriate because providing resuscitation or life-sustaining treatments would create a greater risk of causing or hastening the death of the patient than withholding resuscitation or life-sustaining treatments.

The bill would require a reasonably diligent effort to contact at least one parent or legal guardian who, if contacted, was informed of the planned withholding of life-sustaining treatments or do-not-resuscitate order, and the healthcare provider cooperated with the parent or legal guardian's efforts to obtain other medical opinions or a transfer of the patient to a provider selected by the parent or guardian, if so requested.

Revocation of Written Permission

The bill would allow for the written permission of do-not-resuscitate orders, similar physician's orders, or the withholding or restricting of life-sustaining treatments to be revoked in writing by the legal guardian or either parent of the patient. The bill also would provide that if parents disagree on withholding life-sustaining treatments or resuscitation, either parent may petition a district court in the county where the patient resides or where the patient is receiving treatment to resolve the conflict. The bill would require a presumption in favor of the provision of life-sustaining treatments and resuscitation, unless there is clear and convincing evidence such provision is contrary to the best interests of the child.

The bill also would outline the procedure for the district court upon receiving such a petition. Upon receipt, the district would be required to issue an order fixing the date, time, and place of the trial on the petition and order notice of the trial to such persons as the court directs. The trial could be held immediately without notice if the court determines holding the trial immediately is in the best interests of the petitioner. A trial may be conducted in a courtroom, treatment facility, or at some other suitable place, in the court's discretion. The bill would prohibit implementing written permission for restricting or withholding life-sustaining treatments, or implementing a do-not-resuscitate order, until the final outcome of court proceedings and appeals.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator LaTurner. The bill was referred to the Senate Committee on Public Health and Welfare. At the Senate Committee hearing, testimony was provided by two private citizens and a representative of Kansans for Life, who stated the bill would protect the family's wishes regarding a child's life-sustaining treatments and resuscitation and ensure the transparency of the related written policies of hospitals, nursing homes, and physicians. Written proponent testimony was provided by representatives of the Disability Rights Center of Kansas and the Kansas Catholic Conference. There was no neutral or opponent testimony.

The Senate Committee amended the bill to clarify the definitions for "life-sustaining" and "reasonable medical judgment"; clarify disclosure requirements; expand provisions related to written permission by legal guardians or parents and exceptions to written permission; and outline the legal procedure for when parents disagree on life-sustaining treatments or resuscitation.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Kansas Department for Aging and Disability Services indicates the bill would have no fiscal effect. The Kansas State Board of Healing Arts indicates the bill could result in an increase in the number of complaints regarding practitioner violations of the requirements of the bill, but is unable to estimate what the costs would be for the additional staff time spent on filing complaints and initiating investigations. Any fiscal effect associated with the original bill is not reflected in *The FY 2017 Governor's Budget Report*.