

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 85**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

Sub. for SB 85 would create Simon's Law. Specifically, the bill would address: instituting do-not-resuscitate and similar physician's orders; petitions to enjoin violations of the bill and resolve parental disagreements; required disclosure of policies by facilities and physicians; and existing law concerning emergency health care.

Instituting Do-Not-Resuscitate Orders, Similar Orders

The bill would provide that a do-not-resuscitate order (DNR) or similar physician's order could not be instituted for an unemancipated minor unless at least one parent or legal guardian of the minor has been informed, orally and in writing, of the intent to institute the order. A reasonable attempt to inform the other parent must be made if the other parent is reasonably available and has custodial or visitation rights. The information would not need to be provided in writing if, in reasonable medical judgment, the urgency of the decision requires reliance on providing the information orally.

The bill would provide that either parent or the unemancipated minor's guardian may refuse consent for a DNR or similar order, either orally or in writing. Further, the bill would provide that no DNR or similar order could be instituted, orally or in writing, if there is a refusal of consent.

*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>

The bill would require the following information to be contemporaneously recorded in the patient's medical record:

- By whom and to whom the information was given;
- Date and time information was provided;
- Whether the information was provided in writing;
- The nature of attempts to inform the other parent or the reason for not attempting to notify the other parent if only one parent has been informed; and
- Any refusal of consent to a DNR or similar order by parents or legal guardians.

Petitions to Enjoin Violations of Bill, Parental Disagreement

The bill would allow either parent to petition the district court of the county in which the patient resides or is receiving treatment for an order enjoining violations or threatened violations of the provisions of the bill or to resolve a dispute over whether to institute or revoke a DNR or similar order. Upon receiving such a petition, the district court would be required to issue an order fixing the date, time, and place of hearing on the petition. Notice of the hearing would be given at the district court's direction. A preliminary hearing could be held without notice if the court determined it necessary to prevent imminent danger to the child's life. The hearing could be conducted in a courtroom, treatment facility, or some other suitable place at the court's discretion.

If the parents of a minor patient disagree on whether to institute or revoke a DNR or similar order, the district court would resolve the conflict based on a presumption in favor of providing cardio-pulmonary resuscitation. Additionally, in the event the parents of a minor patient disagreed, a DNR or similar order could not be implemented until there is a final

determination of the court proceedings, including any appeals.

Disclosure of Policies by Facilities and Physicians

The bill would provide that upon request of patients, prospective patients, residents, and prospective residents, health care facilities, nursing homes, and physicians would be required to disclose, in writing, certain policies of the facility or agency, including those relating to:

- A patient or resident;
- The services a patient or resident may receive involving resuscitation or life-sustaining measures; and
- Treatments deemed non-beneficial, ineffective, futile, or inappropriate.

The bill would specify there is no requirement that a health care facility, nursing home, or physician have a written policy relating to or involving resuscitation, life-sustaining, or non-beneficial treatment for unemancipated minor patients or adult patients, residents, or wards.

Existing Law Concerning Emergency Health Care

The provisions of the bill could not be construed to alter or supersede law concerning emergency care by health care providers found in KSA 65-2891.

Background

The bill was introduced in the Senate Committee on Federal and State Affairs at the request of Senator LaTurner. In the Senate Committee hearing, the mother, aunt, and grandmother of the bill's namesake; another private citizen;

and representatives of Concerned Women for America, the Family Policy Alliance of Kansas, the Kansas Catholic Conference, and Kansans for Life appeared in support of the bill. Written-only proponent testimony was provided by the Lieutenant Governor, the Disability Rights Center of Kansas, a neonatologist, and a private citizen.

Appearing in opposition to the bill was a pediatric palliative care physician. Written-only opponent testimony was provided by the Center for Practical Bioethics, the Kansas Hospital Association, and a private citizen.

The Senate Committee recommended adoption of a substitute bill, which incorporates amendments to the original bill, including removal of the requirement that requests to implement DNR orders be made in writing by parent(s) or legal guardians of minor patients.

According to the fiscal note provided by the Division of the Budget on the bill, as introduced, the Kansas State Board of Healing Arts (Board) indicates enactment of the bill could result in an increase in the number of reports or complaints regarding practitioners alleged to have violated the provisions of the bill, resulting in an increase in the number of investigations and disciplinary cases handled by the Board. An estimate of the level of increased workload and resulting fiscal effect cannot be made.

The Office of Judicial Administration indicates enactment of the bill, as introduced, could increase the number of cases filed in district courts, which would increase the time spent by judicial and non-judicial personnel in processing, researching, and hearing cases. An estimate of the level of increase workload the the resulting fiscal effect cannot be made.

Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.