

SENATE BILL No. 352

By Committee on Public Health and Welfare

1-17

1 AN ACT concerning health and healthcare; enacting the John D. Springer
2 patient's bill of rights; requiring hospitals to allow in-person visitation
3 in certain circumstances; requiring hospitals to adopt visitation policies
4 and procedures; ***{establishing the medical care facility reimbursement***
5 ***fund to reimburse medical care facilities for lost federal funding due***
6 ***to compliance with the John D. Springer patient's bill of rights;***
7 ***creating a civil cause of action for violation of such rights.***
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) The provisions of sections 1 and ~~section—2~~, and
11 amendments thereto, shall be known and may be cited as the John D.
12 Springer patient's bill of rights.

13 (b) As used in this section:

14 (1) "Essential caregiver" means an individual designated by the
15 patient who meets an essential need of the patient by assisting with the
16 tasks of daily living or providing important emotional, social or
17 psychological support.

18 (2) "Immediate family member" means father, mother, stepparent,
19 child, grandchild, stepchild, sibling, spouse or grandparent of the patient.

20 (3) "Medical care facility" means the same as defined in K.S.A. 65-
21 425, and amendments thereto.

22 (4) "Patient" means an individual who is receiving care at or is a
23 resident of a medical care facility.

24 (c) A medical care facility shall not:

25 (1) Take action to prevent a patient from receiving in-person
26 visitation from an individual designated by the patient, if the patient has
27 the capacity to make such designation, or an individual designated by the
28 patient's agent for healthcare decisions established by a durable power of
29 attorney for healthcare decisions pursuant to K.S.A 58-625 et seq., and
30 amendments thereto, if the patient does not have such capacity. Such
31 visitor may include, but shall not be limited to:

32 (A) An immediate family member, domestic partner or significant
33 other;

34 (B) the agent for healthcare decisions established by a durable power

1 of attorney for healthcare decisions pursuant to K.S.A. 58-625 et seq., and
2 amendments thereto;

3 (C) an essential caregiver; or

4 (D) a minister, priest, rabbi or clergyperson of any religious
5 denomination or sect to which the patient is an adherent; or

6 (2) prohibit a patient who is terminally ill or receiving end-of-life
7 care from receiving in-person visitation from two individuals at a time.

8 (d) A patient may refuse in-person visitation or revoke previously
9 granted in-person visitation from any individual at any time.

10 ~~(e) (1) Each medical care facility shall, prior to September 1, 2024,~~
11 ~~establish visitation policies and procedures that:~~

12 ~~(A) Allow in-person visitation, unless the patient objects;~~

13 ~~(B) are provided to the medical care facility's licensing agency at the~~
14 ~~time of initial licensure or renewal or any time upon request; and~~

15 ~~(C) are easily accessible from the homepage of the medical care~~
16 ~~facility's website.~~

17 ~~(2)—A medical care facility shall not adopt infection control protocols~~
18 ~~for visitors that are more stringent than such policies for employees of the~~
19 ~~medical care facility who are providing direct care to patients.~~

20 ~~(3)(2) A medical care facility may:~~

21 ~~(A) Adopt visitation policies and procedures that are more stringent~~
22 ~~for intensive or critical care units;~~

23 ~~(B) require a visitor to agree in writing to follow the facility's policies~~
24 ~~and procedures;~~

25 ~~(C) temporarily suspend a visitor's in-person visitation if such visitor~~
26 ~~violates the facility's policies and procedures;~~

27 ~~(D) revoke a visitor's in-person visitation if such visitor repeatedly~~
28 ~~violates the facility's policies and procedures or displays any violent or~~
29 ~~aggressive behavior; or~~

30 ~~(E) notwithstanding subsection (e)(2), require a visitor to adhere to~~
31 ~~infection control procedures, including wearing personal protective~~
32 ~~equipment.~~

33 (f) *For a patient under 18 years of age, a parent or guardian shall*
34 *be allowed to accompany a minor at all times.*

35 (g) The secretary of health and environment shall publish on the
36 department of health and environment's website an explanation of this
37 section's visitation requirements and a link to report complaints alleging
38 violations of this section by a medical care facility.

39 ~~(g)(h)~~ (h) A medical care facility shall be immune from civil liability for
40 damages for acts taken in compliance with this section unless such act
41 constitutes gross negligence or willful, wanton or reckless conduct.

42 ~~(h)(i)~~ (i) In an action brought for a violation of this section, a prevailing
43 plaintiff shall recover the actual damages such individual sustained or

1 \$25,000, whichever is greater, and the cost of the suit, including
2 reasonable attorney fees.

3 *{(j) (1) If a medical care facility's compliance with this section*
4 *causes such medical care facility to be in violation of federal statutes,*
5 *regulations or United States centers for medicare and medicaid services*
6 *rulings, and such violation results in money penalties, fees or lost*
7 *funding from the United States centers for medicare and medicaid*
8 *services, the medical care facility shall certify to the secretary of health*
9 *and environment the amount of such penalties, fees or lost funding. The*
10 *secretary of health and environment shall certify such amount to the*
11 *director of accounts and reports. Upon receipt of such certification, the*
12 *director of accounts and reports shall transfer such certified amount*
13 *from the state general fund to the medical care facility reimbursement*
14 *fund. Each time the secretary transmits such certification to the director*
15 *of accounts and reports, the secretary shall transmit a copy of such*
16 *certification to the director of the budget and the director of legislative*
17 *research.*

18 *(2) There is hereby established in the state treasury the medical care*
19 *facility reimbursement fund, which shall be administered by the*
20 *secretary of health and environment. All expenditures from the medical*
21 *care facility reimbursement fund shall be made in accordance with*
22 *appropriation acts upon warrants of the director of accounts and reports*
23 *issued pursuant to vouchers approved by the secretary or the secretary's*
24 *designee. Moneys in the fund shall be used for the purpose of*
25 *reimbursing medical care facilities for penalties, fees or lost funding as*
26 *provided in paragraph (1).}*

27 Sec. 2. (a) Each patient being cared for in a medical care facility has
28 rights that the medical care facility shall protect and promote. Such rights
29 include:

30 (1) The right to choose a personal attending physician, to be fully
31 informed in advance about care and treatment, to be fully informed in
32 advance of any changes in care or treatment that may affect the patient's
33 well-being and, except with respect to a patient adjudged incompetent, to
34 participate in planning care and treatment or changes in care and
35 treatment. Such right to participate shall include the right to refuse
36 treatment or refuse transfer to another medical care facility if such refusal
37 is made in writing by the patient or the patient's legal representative;

38 (2) *(A)* the right to be free from physical or mental abuse, corporal
39 punishment, ~~involuntary seclusion~~ and any physical or chemical restraints
40 imposed for purposes of discipline or convenience and not required to treat
41 the patient's medical symptoms. Restraints *and involuntary seclusion* may
42 only be imposed to *manage harmful behaviors or* ensure the physical
43 safety of the patient, *staff members* or other patients and upon the written

1 order of a physician that specifies the duration and circumstances under
2 which the restraints are to be used, except in emergency circumstances
3 until such order could reasonably be obtained; **and**

4 ***(B) the use of restraint or seclusion in a treatment facility shall not***
5 ***exceed three hours without medical reevaluation, except that such***
6 ***medical reevaluation shall not be required, unless necessary, between***
7 ***the hours of 12:00 midnight and 8:00 a.m.***

8 (3) the right to privacy regarding accommodations, medical
9 treatment, written and telephonic communications, visits and meetings of
10 family and other visitors;

11 (4) the right to confidentiality of personal and clinical records and
12 access to current clinical records of the patient upon request by the patient
13 or the patient's legal representative;

14 (5) the right to receive services with reasonable accommodation of
15 individual needs and preferences, except where the health or safety of the
16 individual or other patients would be endangered;

17 (6) the right to voice grievances with respect to treatment or care that
18 is or fails to be furnished, without discrimination or reprisal for voicing the
19 grievances, and the right to prompt efforts by the medical care facility to
20 resolve grievances of the patient;

21 (7) the right of the patient to participate in social, religious and
22 community activities that do not interfere with the rights of other patients
23 in the medical care facility; and

24 (8) the right to examine, upon reasonable request, the results of the
25 most recent survey of the patient facility conducted by the medical care
26 facility's licensing body with respect to the medical care facility and any
27 plan of correction in effect with respect to the medical care facility.

28 (b) In any action brought for a violation of this section, a prevailing
29 plaintiff shall recover the actual damages such individual sustained or
30 \$25,000, whichever is greater, and the cost of the suit, including
31 reasonable attorney fees.

32 (c) As used in this section:

33 (1) "Medical care facility" means the same as defined in K.S.A. 65-
34 425, and amendments thereto.

35 (2) "Patient" means an individual who is receiving care at or is a
36 resident of a medical care facility.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the Kansas register.