

HOUSE BILL No. 2848

By Committee on Federal and State Affairs

2-7

9 AN ACT relating to health and health care; concerning nutrition and
10 hydration of persons legally incapable of making health care decisions.

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

13 Section 1. (a) As used in this section:

14 (1) "Attending physician" means the physician who has primary re-
15 sponsibility for the overall medical treatment and care of a person.

16 (2) "Health care provider" means a person who is licensed, certified
17 or otherwise authorized by the law of this state to administer health care
18 in the ordinary course of business or practice of a profession.

19 (3) "Expressly and with informed consent" means consent voluntarily
20 given with sufficient knowledge of the subject matter involved, including
21 a general understanding of the procedure, the medically acceptable al-
22 ternative procedures or treatments, and the substantial risks and hazards
23 inherent in the proposed treatment or procedures, to enable the person
24 giving consent to make an understanding and enlightened decision with-
25 out any element of force, fraud, deceit, duress or other form of constraint
26 or coercion.

27 (4) "Nutrition" means sustenance administered by way of the gastro-
28 intestinal tract.

29 (5) "Person legally incapable of making health care decisions" means
30 any person who:

31 (A) Has been declared legally incompetent to make decisions affect-
32 ing medical treatment or care;

33 (B) in the reasonable medical judgment of the attending physician,
34 is unable to make decisions affecting medical treatment or other health
35 care services; or

36 (C) is a minor.

37 (6) "Physician" means a person licensed to practice medicine and
38 surgery by the state board of healing arts.

39 (7) "Reasonable medical judgment" means a medical judgment that
40 would be made by a reasonably prudent physician, knowledgeable about
41 the case and the treatment possibilities with respect to the medical con-
42 ditions involved.

43 (b) It shall be presumed that every person legally incapable of making

- 1 health care decisions has directed such person's health care providers to
2 provide such person with nutrition or hydration or both to a degree that
3 is sufficient to sustain life.
- 4 (c) No guardian, surrogate, public or private agency, court or any
5 other person shall have the authority to make a decision on behalf of a
6 person legally incapable of making health care decisions to withhold or
7 withdraw hydration or nutrition or both from such a person except in the
8 circumstances and under the conditions specifically provided for in sub-
9 section (d).
- 10 (d) The presumption established in subsection (c) shall not apply:
- 11 (1) If, in reasonable medical judgment:
- 12 (A) Provision of nutrition or hydration or both is not medically
13 possible;
- 14 (B) provision of nutrition or hydration or both would hasten death;
15 or
- 16 (C) the person would be incapable of digesting or absorbing the nu-
17 trition or hydration or both so that its provision would not contribute to
18 sustaining the person's life.
- 19 (2) If the person, when legally capable of making health care deci-
20 sions, executed, expressly and with informed consent, a written directive
21 specifically authorizing the withholding or withdrawal of nutrition or hy-
22 dration or both, to the extent the authorization applies. Such directive
23 shall include, but not be limited to, a declaration executed pursuant to
24 K.S.A. 65-28,101 et seq., and amendments thereto, and a durable power
25 of attorney for health care decisions executed pursuant to K.S.A. 58-625
26 et seq., and amendments thereto.
- 27 (e) A cause of action for injunctive relief may be maintained:
- 28 (1) Against any person who is reasonably believed to be about to
29 violate or who is in the course of violating this section; or
- 30 (2) to secure a court determination, notwithstanding the position of
31 a guardian or surrogate, whether there is clear and convincing evidence
32 that the person legally incapable of making health care decisions, when
33 legally capable of making such decisions, executed expressly and with
34 informed consent, a written directive to withdrawing or withholding hy-
35 dration or nutrition or both in the applicable circumstances.
- 36 (f) The action may be brought by any person who is:
- 37 (1) The spouse, parent, child or sibling of the person;
- 38 (2) a current or former health care provider of the person;
- 39 (3) a legally appointed guardian of the person;
- 40 (4) the state protection and advocacy agency as provided by subsec-
41 tion (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
42 74-5515, and amendments thereto; or
- 43 (5) a public official with appropriate jurisdiction to prosecute or en-

1 force the laws of this state.

2 (g) Pending the final determination of the court, the court shall direct
3 that nutrition or hydration or both be provided such person unless the
4 court determines that subsection (d)(1) is applicable.

5 Sec. 2. This act shall take effect and be in force from and after its
6 publication in the statute book.