SESSION OF 2024

SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 287

As Agreed to April 30, 2024

Brief*

House Sub. for SB 287 would require parental consent to health care services for a minor child provided in a school facility, establish the No Patient Left Alone Act (Act), expand the eligibility of facilities regarding the licensure of rural emergency hospitals (REHs), and amend law concerning emergency medical services (EMS) to add provisions allowing distribution of nonprescription, over-the-counter (OTC) medications, as approved by the EMS medical director, to the list of interventions that emergency medical responders may provide. The bill would also make technical changes.

Parental Consent for Minor Health Care

Definitions

The bill would define the following terms:

- "Appropriate licensing agency" would mean the agency that issues the license, certification, or registration to the health care provider;
- "Behavioral health crisis" would mean behavioral and conduct issues that impact the safety or health of a juvenile, members of the juvenile's household, or family or members of the community, including, but not limited to, non-life-threatening mental health and substance abuse concerns;
- "Consent" would mean assent in fact, whether expressed or apparent;
- "Drug" would mean articles:
    - Recognized in the official U. S. Pharmacopeia, or other such official compendiums of the United States, or official national formulary, or any supplement to any of them;
    - Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals;

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    - Other than food, intended to affect the structure or any function of the body of human or other animals; and
    - Intended for use as a component of any articles specified previously; but does not include devices or their components, parts, or accessories, except that the term "drug" does not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with statute regarding livestock and domestic animals prior to its repeal;

- "Healthcare provider" would mean a person who is licensed by or holds a temporary permit to practice that is issued by the State Board of Healing Arts, the Board of Nursing, or the Behavioral Sciences Regulatory Board;

- "Minor" would mean an individual under 18 years of age;

- "Parent," as defined in KSA 38-141, which includes the following: a natural parent, an adoptive parent, a stepparent, or a guardian or conservator of a child who is liable by law to maintain, care for, or support the child; and

- "School facility" would mean any building or structure owned, operated, or maintained by the State Board of Education of a public school or by the governing body of an accredited nonpublic school if such facility is accessible to students.

Health Care Prohibitions at a School Facility

Unless the health care provider has the consent of a minor's parent, the bill would prohibit a health care provider at a school facility from the following actions:

- Prescribing, dispensing, or administering any prescription or nonprescription drug;

- Administering a diagnostic test with the minor's bodily fluid; or

- Conducting ongoing behavioral health treatment.

A health care provider who violates these provisions would be subject to professional discipline from the health care provider's appropriate licensing agency.

Exceptions

The bill would not prevent a health care provider at a school facility from the following actions:

- Administering a non-academic test, questionnaire, survey, or examination pursuant to KSA 72-6316;

- Administering a suicide risk assessment or screening tool for suicide risk, pursuant to KSA 72-6316(f), or conducting a behavioral health assessment or intervention for a minor experiencing a behavioral health crisis;

- Conducting a school-based screening required by law; or

- Providing education to a minor.

Consent Requirements Not Changed

The bill would clarify that this bill would not repeal nor change any consent requirements in current law provided in the following statutes:

KSA 38-122. Consent by a parent for surgery and other procedures on a child.

KSA 38-123. Consent for medical care of an unmarried pregnant minor.

KSA 38-123a. Donation of blood by persons over 16; compensation.

KSA 38-137. Immunization of minor children; written delegation of consent by parent; consent for immunization by person other than parent; when.

KSA 38-2217. Health services (Kansas Code for Care of Children).

KSA 65-2891. Emergency care by health care providers; liability; standards of care applicable; definition of health care provider.

KSA 65-2892. Examination and treatment of persons under 18 for venereal disease; liability.

KSA 65-2892a. Examination and treatment of minors for drug abuse, misuse, or addiction; liability.

No Patient Left Alone Act

Definitions

The bill would define terms, including:

- "Essential caregiver" would mean an individual designated by the patient who meets an essential need of the patient by assisting with the tasks of daily living or providing important emotional, social, or psychological support;
- "Immediate family member" would mean father, mother, stepparent, child, grandchild, stepchild, sibling, spouse, or grandparent of the patient;
- "Patient" would mean an individual who is receiving care at a patient care facility; and
- "Patient care facility" would mean any adult care home, including any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, adult day care facility, hospital, ambulatory surgical center or recuperation center, and hospice facility certified to participate in the Medicare program that provides service only to hospice patients.

Patient Visitation Requirements

The bill would specify that when providing end-of-life care, a patient care facility would not be able to take action to prevent a patient from receiving in-person visitation from any person designated by the patient, if the patient has the capacity to make such designation. If the patient does not have the capacity for such designation, the patient's agent for health care decisions established by a durable power of attorney would be allowed to designate visitors. Visitors could include, but would not be limited to:

- An immediate family member, domestic partner, or significant other;
- The agent for health care decisions established by a durable power of attorney for health care decisions;
- An essential caregiver; or
- A minister, priest, rabbi, or clergyperson of any religious denomination or sect to which the patient is an adherent.

The bill would prohibit patient care facilities from receiving in-person visitation from one or more individuals at a time. The bill would also establish that a patient may refuse in-person visitation or revoke previously granted in-person visitation from any person at any time.

Patient Visitation Policies and Procedures

The bill would provide that patient care facilities may establish visitation policies by September 1, 2024, including, but not limited to, infection control protocols and education for visitors, a set schedule of dates and times when visitation is allowed, allowable visit length, and limits on number of visitors.

The bill would also provide that visitation policies and procedures must allow in-person visitations, unless the patient objects, if the patient is:

- Terminally ill or receiving end-of-life care;
- Making one or more major medical decisions;
- Experiencing emotional distress or grieving the recent loss of a friend or family member;
- Experiencing functional, cognitive, or nutritional decline;
- Struggling with the change in environment at the patient care facility after having previously lived with such patient's immediate family member;
- Admitted to a medical care facility for childbirth, including care related to a miscarriage or stillbirth; or
- Under 18 years of age.

The bill would require visitation policies and procedures to be provided to the patient care facility's licensing agency at the time of initial licensure, renewal, or at any time upon request and be easily accessible from the home page of the patient care facility's website.

The bill would specify that visitation policies and procedures cannot contain more stringent infection control protocols for visitors than for employees of the patient care facility who are providing direct care to patients.

The bill would establish that a patient care facility may:

- Adopt visitation policies and procedures that are more stringent for intensive or critical care units;
- Modify visitation based on a patient's condition or need for rest;
- Require a visitor to agree in writing to follow the facility's policies and procedures;
- Temporarily suspend a visitor's in-person visitation if such visitor violates the facility's policies and procedures;
- Revoke a visitor's in-person visitation if such visitor repeatedly violates the facility's policies and procedures or displays any violent or aggressive behavior; or
- Require a visitor to adhere to infection control procedures, including wearing personal protective equipment.

The bill would also specify that the Department of Health and Environment (KDHE) is required to publish an explanation of visitation requirements and a link for individuals to report complaints alleging violations by a patient care facility on its website.

Civil Liability Immunity; Federal Program Participation

The bill would provide civil liability immunity for damages to the patient care facility except in cases of gross negligence or willful, wanton, or reckless conduct.

The bill would not supersede any federal law, rules, or regulations regarding patient care facilities or prohibit a patient care facility from taking actions necessary, including those based on guidance from the Centers for Medicare and Medicaid Services (CMS), to ensure eligibility with federal programs or financial participation and reimbursement for services provided in the patient care facility.

Rural Emergency Hospital Licensure

The bill would expand eligibility for REH licensure to facilities that were at any point during the period between January 1, 2015, and December 26, 2020, one of the following types of facilities:

- Licensed critical access hospital;

- General hospital with no more than 50 licensed beds located in a county in a rural area as defined in Section 1886(d)(2)(D) of the federal Social Security Act;
- General hospital with no more than 50 licensed beds that is deemed as being located in a rural area pursuant to Section 1886(d)(8)(E) of the federal Social Security Act; or
- A department of a provider or a provider-based entity.

The bill would define "provider-based entity" as a provider of health care services or a rural health clinic that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider under the ownership and administrative and financial control of the main provider (42 CFR § 413.65).

Current law provides for a licensed general hospital or critical access hospital that applies for and receives licensure as an REH and elects to operate as an REH to retain its original license as a general hospital or critical access hospital. The bill would expand this provision to cover provider-based entities or provider departments.

Effective Date

The bill would provide for the Rural Emergency Hospital Adjustment Act (S. 3394, 118th Cong. (2023)), if enacted into law, to have its passage certified by the Attorney General to the Secretary of State. Upon receipt of the certification, the Secretary would publish the certification in the *Kansas Register*, and the bill would then be in effect upon its publication in the *Kansas Register*.

Authorized Activities of Emergency Medical Responders

Distribution of Emergency Opioid Antagonists

The bill would provide for first responders, scientists, or technicians operating under a first responder agency or school nurse to distribute emergency opioid antagonists (ex. Naloxone, also known as Narcan) as clinically indicated, provided that all personnel with access to the emergency opioid antagonists receive training as outlined in statute, including training on standards and procedures for distribution.

Over-the-Counter Medications Administered by Emergency Medical Responders

The bill would add provisions allowing the distribution of non-prescription, over-the-counter (OTC) medications by emergency medical responders, as approved by the EMS medical director.

The EMS medical director would not be able to include as approved OTC medications any compound, mixture, or preparation that has a detectable quantity of ephedrine or pseudoephedrine and that is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors.

Conference Committee Action

The second Conference Committee agreed to:

- The provisions of SB 287, as passed by the House;
- Add the provisions of SB 352, as amended by the House Committee on Health and Human Services, with the following changes:
  - Amend the definition of "patient";
  - Remove the provision that the bill would not supersede federal guidance regarding patient care facilities; and
  - Insert a provision regarding the ability of a patient care facility to take actions necessary based upon guidance from CMS to ensure continued eligibility for federal financial participation;
- Add the provisions of House Sub. for SB 219, as passed by the House Committee on Health and Human Services; and
- Add the provisions of HB 2579, with an amendment allowing for the distribution of emergency opioid antagonists by emergency medical personnel.

Background

The second Conference Committee agreed to the provisions of House Sub. for SB 287, as passed by the House, regarding parental consent for minor health care, and added the provisions of SB 352, as amended by the House Committee on Health and Human Services and the second Conference Committee, regarding patient visitation in patient care facilities; the provisions of House Sub. for SB 219, as passed by the House Committee on Health and Human Services, regarding rural emergency hospital licensure; and the provisions of HB 2579, as introduced and amended by the second Conference Committee, regarding authorized activities of emergency medical responders.

House Sub. for SB 287 (Parental Consent for Minor Health Care)

The House Committee on Health and Human Services recommended a substitute bill incorporating provisions of HB 2793, as amended by the House Committee on Health and Human Services. The background information on HB 2793 is detailed below.

[*Note:* SB 287, as introduced, would have amended the provisions of the Kansas Silver Alert Plan regarding issuance of an alert for a person 18 years of age or older when certain conditions were met. The provisions of SB 287 were not retained in the substitute bill; the amended contents of SB 287 are included in the Conference Committee Report for HB 2531.]

HB 2793 (Parental Consent for Minor Health Care)

HB 2793 was introduced by the House Committee on Health and Human Services at the request of Representative Bryce.

House Committee on Health and Human Services

In the House Committee hearing on February 15, 2024, Representative Bryce, a representative of Kansas Medical Society, and a private citizen provided **proponent** testimony, stating generally that the bill would clarify definitions for consent of medical treatment for minors.

Written-only proponent testimony was provided by a pastor and four private citizens.

Representatives of the Board of Nursing, the Kansas Chapter of the American Academy of Pediatrics, Kansas Mental Health Coalition, and Wyandot Behavioral Healthcare provided **opponent** testimony, stating generally that health care services covered by the bill are very broad and the bill's provisions may result in unintended consequences or a delay in care. The opponents also noted a lack of clarity regarding behavioral health emergency services and other mental health services.

Written-only opponent testimony was provided by the Board of the Kansas School Nurses Association, Equality Kansas, Johnson County Department of Health and Environment, Kansas Academy of Family Physicians, Kansas Association of School Boards, and Loud Light Civic Action.

No other testimony was provided.

The House Committee amended the bill to:

- Provide definitions for "behavioral health crisis," "drug," and "school facility";
- Remove the definition for "healthcare service";
- Clarify the definition for "healthcare provider";
- Clarify what a health care provider would be allowed to do with consent while at a school facility; and
- Clarify the statutes that would be exempt from the provisions of the bill and retain KSA 38-123 and KSA 65-2892a.

  [*Note:* These amendments were retained by the second Conference Committee.]

The House Committee removed the contents of SB 287, inserted the amended contents of HB 2793, and recommended a substitute bill be passed.

House Committee of the Whole

The House Committee of the Whole amended the bill to clarify that the provisions of KSA 72-6316 would continue to be allowed to be conducted within a school facility. [*Note:* This amendment was retained by the second Conference Committee.]

SB 352 (No Patient Left Alone Act)

The House Committee on Health and Human Services recommended a substitute bill incorporating provisions of the No Patient Left Alone Act, originally contained in HB 2548, as amended by the House Committee of Health and Human Services. The background information on HB 2548 is detailed below.

[*Note:* SB 352, as amended by the Senate Committee of the Whole, would have established the John D. Springer Patient's Bill of Rights, which would have included patient visitation procedures at medical care facilities regarding in-person visitation and parameters for visitors regarding infectious disease control. The bill would have provided medical care facilities immunity from civil liability for damages for acts taken in compliance with the bill unless the act constituted gross negligence or willful, wanton, or reckless conduct. The bill would also have established a remedy for a medical care facility's compliance with the Act that causes a monetary penalty, fees, or lost funding and establish the Medical Care Facility Reimbursement Fund (Fund) and protocol for reimbursement through the Fund with State General Fund moneys. Additionally, the bill would have established patients' rights that medical care facilities would have to protect and promote and provided a civil cause of action against a medical care facility for violations of the bill. These provisions were not retained in the substitute bill.]

HB 2548 (No Patient Left Alone Act)

HB 2548 was introduced in the House Committee on Health and Human Services at the request of Representative Eplee.

House Committee on Health and Human Services

In the House Committee hearing on February 6, 2024, a private citizen who practices in the medical community and representatives of the Kansas Medical Society and LeadingAge Kansas provided **proponent** testimony, stating generally that the bill addresses the individual needs of patient care facilities and ensures visitation for patients receiving end-of-life care.

Written-only proponent testimony was received from a representative of Meadowlark Hospice.

Written-only neutral testimony was provided by representatives of the Kansas Hospital Association and Mountain Region CommonSpirit Health.

The House Committee amended the bill to:

- Insert clarifying language for patient care facility visitation requirements to specify such restrictions would be for instances when these facilities provide end-of-life care;
- Remove the two individual limit for in-person visitors at a time for patients; and
- Specify that the link on the KDHE website is for individuals to report complaints alleging violations of the visitation policies.

  [*Note:* These amendments were retained by the second Conference Committee.]

The House Committee also amended the bill to insert language for the term “patient” to clarify that a patient would mean an individual receiving end-of-life care at a patient care facility.

[*Note:* This amendment was not retained by the second Conference Committee.]

The House Committee amended the bill to remove the contents of SB 352 and insert the contents of HB 2548, as amended.

SB 219 (Rural Emergency Hospital Licensure)

The House Committee on Health and Human Services recommended a substitute bill incorporating provisions pertaining to REH licensure (provisions of HB 2637, as introduced). The background information on HB 2637 is detailed below.

[*Note:* SB 219, as recommended by the Senate Committee on Public Health and Welfare during the 2023 Legislative Session, would have amended the Health Care Provider Insurance Availability Act to add facilities where elective abortions are performed to the list of entities that are not health care providers, which would make such facilities ineligible to purchase professional liability insurance from the Health Care Stabilization Fund. These provisions were later added by the Senate Committee on Public Health and Welfare to HB 2325. The House concurred with amendments to HB 2325, and the bill was passed by the Legislature but vetoed by the Governor. The motion to override was successful in the House, but the veto was sustained in the Senate. The provisions of SB 219 were not retained in the substitute bill.]

HB 2637 (Rural Emergency Hospital Licensure)

HB 2637 was introduced by the House Committee on Health and Human Services at the request of Representative Bryce on behalf of the Kansas Hospital Association (KHA).

House Committee on Health and Human Services

In the House Committee hearing, a representative of KHA provided **proponent** testimony, stating the bill would ensure Kansas is ready to take advantage of any new flexibilities regarding REH licensure if they are provided at the federal level. The representative stated the bill would allow hospitals that have closed since 2015 the opportunity to reopen as REHs. The conferee noted the legislation would potentially affect five hospitals in Kansas, but it would not force any hospitals to adopt REH licensure and would not prevent them from changing to another designation in the future.

Written-only proponent testimony was provided by representatives of Ascension Via Christi Pittsburg, Kansas Medical Society, and the League of Kansas Municipalities.

No other testimony was provided.

House Committee of the Whole

The House Committee of the Whole amended the bill to require facilities eligible for REH licensure to be located at least 35 miles from an existing hospital. On final action, the bill, as amended, was not passed. [*Note:* This amendment was not retained by the House Committee of Health and Human Services when the Committee placed the contents of HB 2637 in SB 219 on February 28, 2024.]

HB 2579 (Over-the-Counter Medications Administered by Emergency Medical Responders)

HB 2579 was introduced in the House Committee on Health and Human Services at the request of Representative S. Ruiz on behalf of Johnson County MED-ACT; Kansas City, Kansas, Fire Department; Johnson County Emergency Medical Services Physician; and the Mid-America Regional Council Emergency Rescue.

House Committee on Health and Human Services

In the House Committee hearing on January 31, 2024, an EMS medical director and representatives of the Johnson County Department of Emergency Services, Kansas EMS Association, and Mid-America Regional Council Emergency Rescue provided **proponent** testimony, stating generally that the bill would provide clarification to EMRs regarding the distribution of OTC medication and allow each EMS to determine which OTC medications would be available.

Written-only proponent testimony was provided by representatives of the Kansas Association of Local Health Departments, Kansas Medical Society, Kansas Public Health Association, and Kansas Region III EMS Council.

A representative of the Emergency Medical Services Board (Board) provided **opponent** testimony, stating the language is unnecessary, implementation would create obstacles to providing care, and the Board could issue a guidance document to address the issue.

Written-only neutral testimony was provided by a representative of the State Board of Pharmacy.

On January 31, 2024, the House Committee adopted an amendment to the bill to remove “when authorized by a physician” regarding an advance practice registered nurse. Upon reconsideration on February 1, 2024, the House Committee removed the amendment and passed the bill as introduced.

Fiscal Information

House Sub. for SB 287 (Parental Consent for Minor Health Care)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Behavioral Sciences Regulatory Board and the Board of Nursing indicate any fiscal effect related to enactment of the bill would be absorbed within existing resources.

SB 219 (Rural Emergency Hospital Licensure)

According to the fiscal note prepared by the Division of the Budget on SB 219, as introduced, KDHE reports that enactment of the bill would not have a fiscal effect on the agency and states the bill would supersede Centers of Medicare and Medicaid Services authority. The Office of the Attorney General notes the Office of the Medicaid Inspector General and Medicaid Fraud Control Unit would have the authority to audit and investigate the facilities referenced in the bill, but any additional reviews stemming from the bill would be handled within existing resources.

The Office of the Secretary of State reports passage of the bill would not have a significant fiscal impact on the agency but notes the charge to publish the required certification in the Kansas Register would be $7.00 per column inch. The agency notes that generally, it is a minimum of two column inches, or $14.00, to publish text. The cost range charged would depend on several factors, but printing can be omitted if it would be too expensive, cumbersome, or otherwise inexpedient. In those cases, the agency could provide a webpage link or reference to the text in the *Kansas Register*. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

SB 352 (No Patient Left Alone Act)

According to the fiscal note prepared by the Division of the Budget on SB 352 as introduced, KDHE and the Kansas Department for Aging and Disability Services (KDADS) indicate the bill would have no fiscal effect on the agencies. KDADS' regulatory role for adult care homes, subject to federal regulation, would continue under the provisions of the bill. If the Centers for Medicare and Medicaid Services (CMS) imposes a requirement for infection control procedures or limits on visitation for all Medicaid and Medicare providers, those federal mandates would supersede the requirements in the bill as a condition of participation for payment. KDADS would survey and enforce the federal requirements under its agreement with CMS.

HB 2579 (Over-the-Counter Medications Administered by Emergency Medical Responders)

According to the fiscal note prepared by the Division of the Budget on HB 2579, as introduced, the Board indicates the bill would not have a fiscal effect on its operations. However, the agency notes that reimbursement and procurement of OTC medications could increase operating costs for local EMS providers. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The League of Kansas Municipalities and the Kansas Association of Counties indicate that enactment of the bill would not have a fiscal effect on local government.

Health care; children; minors; parental consent; school facility; patient care facilities; in-person visits; patient; visitation policies; emergency medical services; over-the-counter medications; rural emergency hospital; licensure; hospitals

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