

HOUSE BILL No. 2742

By Committee on Child Welfare and Foster Care

Requested by Representative Xu on behalf of Sarah Goble

2-6

AN ACT concerning health and healthcare; relating to reports by healthcare providers; enacting the family rights in medical investigations act; providing for requirements for the reporting of suspicions of abuse or neglect of a child by medical professionals; permitting parents to request a second opinion after a CARE exam.

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

Section 1. (a) Sections 1 through 6, and amendments thereto, shall be known and may be cited as the family rights in medical investigations act.

(b) As used in this act:

(1) "Child abuse specialist" means any medical professional who holds themselves out as, is employed as or functions as a child abuse review and evaluation provider as defined in K.S.A. 38-2202(h), and amendments thereto, or a forensic medical consultant for the department, law enforcement or a governmental entity.

(2) "Department" means the Kansas department for children and families.

(3) "Hospital" means a hospital or medical facility where a medical opinion alleging abuse or neglect originates.

(4) "Medical professional" means a physician, surgeon, physician assistant, nurse, advanced practice registered nurse, medical technician or any other licensed healthcare provider involved in the evaluation or treatment of a child.

(5) "Parent" means the same as defined in K.S.A. 38-2202(aa), and amendments thereto.

(6) "Report" means an alleged report of child abuse or neglect pursuant to K.S.A. 38-2223, and amendments thereto.

Sec. 2. (a) Prior to issuing a medical opinion asserting that a child's injuries or condition are consistent with abuse or neglect, the medical professional issuing such medical opinion shall document reasonable consideration of alternative medical explanations relevant to the child's presentation, as medically appropriate.

(b) Failure to document such consideration shall not invalidate a report made in good faith pursuant to K.S.A. 38-2223, and amendments

1 thereto.

2 (c) Repeated failure to document reasonable consideration of
3 differential diagnoses may be referred to the appropriate professional
4 licensing board for review, training recommendation or corrective action
5 consistent with existing professional standards.

6 Sec. 3. (a) When a child is under inpatient or outpatient care at a
7 medical facility and a report of child abuse or neglect is made, any medical
8 professional who is reasonably likely to provide information or an opinion
9 to the department or law enforcement agency concerning suspected, or, not
10 yet reported to the department, abuse or neglect shall provide notice to the
11 parent of such child prior to conducting any nonemergency examination or
12 interview related to the suspected abuse or neglect.

13 (1) The medical professional shall explain to the parent of the child
14 the medical professional's role in providing information and opinion to the
15 department or law enforcement regarding whether and to what extent a
16 child's injury or condition is suspected abuse or neglect.

17 (2) The medical professional shall explain that such professional may
18 be required to communicate with the department and law enforcement and
19 provide court testimony.

20 (3) The medical professional shall also provide the child's parent with
21 accurate information about the medical specialties of such medical
22 professional, including identifying such medical professional as a child
23 abuse review and evaluation provider as defined in K.S.A. 38-2202(h), and
24 amendments thereto, or as a member of a child abuse review and
25 evaluation network as defined in K.S.A.38-2202(g), and amendments
26 thereto.

27 (4) Pursuant to paragraphs 1 through 3, the medical professional
28 involved shall afford the parent informed consent as to whether such
29 parent wishes to participate in any conversation with such medical
30 professional.

31 (5) If a medical professional makes a report of child abuse or neglect,
32 the professional shall inform the parent of such parent's right to legal
33 representation at the time that the report is made and certify to the
34 department to be included in the child's record that such professional
35 reviewed all of the patient's previous healthcare records before the report
36 was made.

37 (6) In any investigation that involves a medical professional
38 providing a medical opinion to the department, such department shall
39 inform the parent of the child who is the subject of the investigation of the
40 following:

41 (A) The names and specialties of all medical professionals who have
42 provided medical opinions regarding whether the child has suffered
43 injuries consistent with abuse or neglect, including the names and

1 specialties of all other medical professionals who were consulted by the
2 medical provider prior to rendering an opinion;

3 (B) the right to request and immediately receive a copy of the medical
4 professional's opinion that has been or will be provided to the department,
5 including the basis for such opinion, the names, credentials and specialties
6 of all other medical professionals consulted in rendering such opinion and
7 a copy of any written report that the medical professional has or will
8 provide to the department;

9 (C) the right to obtain and submit to the department an independent
10 second medical opinion from a medical professional outside of the original
11 hospital to be included in the child's investigative records held by the
12 department. The medical professional providing a second opinion shall
13 submit charges pursuant to K.S.A. 38-2226a, and amendments thereto. The
14 department of health and environment shall afterward recoup the costs of
15 such second opinion from the original medical provider. If the department
16 of health and environment does not reimburse such costs within 30 days,
17 the parent shall be informed of alternative state or private funding sources;

18 (D) that any second medical opinion submitted to the department
19 prior to the department's making a determination on whether the report is
20 substantiated or unsubstantiated shall be considered evidence in the
21 department's determination; and

22 (E) the department's procedure and timeline for the investigative
23 process in the event that the department has forwarded the case on to the
24 county or district attorney to initiate a child in need of care proceeding
25 under the revised Kansas code for care of children.

26 Sec. 4. (a) If a case is referred for a CARE review or exam, the
27 CARE provider providing such review or exam shall not be the same
28 individual who initiated the report or provided the original medical
29 opinion.

30 (b) In any CARE exam process, the department shall inform the
31 parent, within 10 business days of receipt of the medical opinion, of the
32 following:

33 (1) The names, credentials and medical specialties of all medical
34 professionals who provided or substantially contributed to the opinion;

35 (2) that the parent has the right to obtain and receive a copy of the
36 medical opinion and any written report provided to the department,
37 including the specified basis for such opinion; and

38 (3) that the parent has the right to obtain an independent second
39 medical opinion from a qualified medical professional who is not
40 associated with the original hospital.

41 (c) All independent second opinion reports submitted to the
42 department on behalf of a parent prior to the conclusion of the
43 investigation shall be considered as evidence in the department's

1 determination.

2 (d) Nothing in this section shall be construed to:

3 (1) Prohibit the department from interviewing a medical professional
4 who made a report as a factual witness;

5 (2) restrict the department's authority to investigate allegations of
6 abuse or neglect as otherwise provided by law; or

7 (3) prohibit any medical professional from making a report as
8 required pursuant to K.S.A. 38-2223, and amendments thereto.

9 Sec. 5. (a) A parent or guardian may obtain an independent second
10 medical opinion from a medical professional who:

11 (1) Is licensed in the relevant specialty; and

12 (2) has no current affiliation with the hospital or child abuse team
13 involved in the original opinion.

14 (b) The medical professional providing a second opinion shall submit
15 charges pursuant to K.S.A. 38-2226a, and amendments thereto. The
16 department of health and environment shall afterward recoup the costs of
17 such second opinion from the original medical provider. If the department
18 of health and environment does not reimburse such costs within 30 days,
19 the parent shall be informed of alternative state or private funding sources.

20 (c) The department shall provide written information to the parent
21 explaining how to submit an independent medical opinion for
22 consideration and the applicable timeline for such investigation.

23 Sec. 6. (a) Nothing in this act shall be construed to:

24 (1) Eliminate mandatory reporting requirements under Kansas law;

25 (2) remove immunity for good faith reporters of suspected child
26 abuse or neglect if such reporters have considered differential diagnoses
27 before making a report; and

28 (3) delay emergency medical care that is necessary to protect a child's
29 health or safety.

30 Sec. 7. This act shall take effect and be in force from and after its
31 publication in the statute book.