

KANSAS MENTAL HEALTH COALITION

An Organization Dedicated to Improving the Lives of Kansans with Mental Illnesses

Written Testimony for the House Judiciary Committee to Oppose HB 2793

Amy A. Campbell – February 15, 2024

Thank you for the opportunity to address your committee today on behalf of the Kansas Mental Health Coalition (KMHC). The Kansas Mental Health Coalition is dedicated to improving the lives of Kansans living with Mental Illnesses and Severe Emotional Disorders. We are consumer and family advocates, provider associations, direct services providers, non-profit and for-profit entities and others who share a common mission. At monthly roundtable meetings, participants develop and track a consensus agenda that provides the basis for legislative advocacy efforts each year. This format enables many groups, that would otherwise be unable to participate in the policy making process, to have a voice in public policy matters that directly affect the lives of their constituencies. The opportunity for dialogue and the development of consensus makes all of us stronger and more effective in achieving our mission.

KMHC opposes HB 2793. In the short time we have reviewed the legislation, it has raised significant concerns among Coalition members who provide care and treatment to minors.

A requirement for parental consent to treatment of their child already exists for medical care and for behavioral health care. However, there are exceptions to this rule. There is no debate about the importance of parental consent.

Behavioral health professionals must be prepared to screen and perhaps counsel minors in emergency or crisis situations where a parent is not immediately available to provide consent, and all too often, professionals are confronted with children who are suffering physical abuse, sexual abuse, and/or are in an emergency mental health crisis.

We do not want medical or behavioral health professionals to fail to support minors in these moments due to doubts about how this state law could impact their license.

There are Kansas statutes governing Consent to Medical Treatment (K.S.A. 38-122, 38-123, 38-123b, 38-2217, 65-448 and 65-2891 through 65-2892). In general, a minor 16 or over may consent to hospital, medical or surgical treatment if no parent or guardian is immediately available. Similarly, an unmarried pregnant minor may consent to hospital, medical and surgical care related to the pregnancy, where no parent or guardian is immediately available. A parent who is a minor, whether married or unmarried, may consent to surgery and other medical procedures for his or her child.

Physicians may examine and treat minors for drug abuse and addiction with the consent of the minor, without the consent of parents of the minor. Consent is not required to medically examine a child who is the alleged victim of child abuse. A minor who is an alleged victim of a sex crime can consent to a medical examination to gather evidence of the crime. Although parental consent is not required, the hospital or medical facility is required to give a parent or guardian written notice that the examination occurred.

Any health care provider may render treatment to a minor without obtaining the consent of parents or a guardian at the scene of an emergency or accident. Emergency care may also be given to a minor who is injured in sports, or to a minor for an emergency which occurs within a hospital or elsewhere, prior to the arrival of the minor's family or family physician.

According to my research, the Kansas Attorney General has concluded a mature minor has the legal capacity to consent to outpatient mental health services. The consent must be informed consent in relation to the potential risks and benefits of the type of mental health treatment provided. Maturity means having the intellectual capacity, experience and knowledge necessary to substantially understand the situation at hand and the consequences of the choices that can be made.

We know that people who experience suicidal thoughts can and do move beyond crisis and lead happy lives. However, the interactions that occur during times of crisis can be life-saving or they can have tragic results – ending young lives and devastating families. We are concerned that the very broad reference to “treatment” and eliminating current statutes that accommodate exceptions to parental consent could delay life-saving interventions, leading to law enforcement solutions where behavioral health interventions could have been safe and effective.

Further, youth living in traumatic circumstances need support. For instance, we are aware of a specific minor who successfully pursued emancipation, due to extreme parental neglect. We are not clear how this change might impact the support provided to that teenager.

Kansas allows a person under the age of 18 to petition a court for the right to become a legal adult prior to reaching age 18. To become an emancipated minor, a minor must be at least 14 years of age, not living with his or her parents (with their consent or acquiescence to be living away from them), managing their own financial affairs and have a legal source of income. The district court judge has discretion to decide whether emancipation is in the best interest of the minor.

The statutes deleted by HB 2793 may indicate the authors were focused on medical treatment related to pregnancy or sexually transmitted diseases. However, the language is far more broad. Online research seems to indicate that all states allow treatment of STIs without parental consent. What is the impact if Kansas chooses to stand alone on this point?

Please do not pass HB 2793. Kansas should carefully examine the unintended consequences and carefully address necessary exceptions to the rule for parental consent to treatment. We do support the importance of parental consent and patient's informed consent to treatment. This is the rule for treatment for minors and a prominent topic for required continuing education.

Thank you for your consideration.

Amy A. Campbell, Lobbyist
P.O. Box 4744, Topeka, KS 66604, 785-969-1617; campbell525@sbcglobal.net

38-123. Consent for medical care of unmarried pregnant minor. Notwithstanding any other provision of the law, an unmarried pregnant minor where no parent or guardian is available may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy, and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of an unmarried pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy, where no parent or guardian is available.

65-2892. Examination and treatment of persons under 18 for venereal disease; liability. Any physician, upon consultation by any person under eighteen (18) years of age as a patient, may, with the consent of such person who is hereby granted the right of giving such consent, make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease. All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian or any other person having custody of such person. Any physician examining or treating such person for venereal disease may, but shall not be obligated to, in accord with his opinion of what will be most beneficial for such person, inform the spouse, parent, custodian, guardian or fiance of such person as to the treatment given or needed without the consent of such person. Such informing shall not constitute libel or slander or a violation of the right of privacy or privilege or otherwise subject the physician to any liability whatsoever. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, provided reasonable care has been taken to elicit from such person under eighteen (18) years of age any history of sensitivity or previous adverse reaction to the medication.