

SENATE BILL No. 85

By Committee on Federal and State Affairs

1-25

1 AN ACT concerning healthcare; relating to withholding life-sustaining
2 treatment from patients under 18 years of age; permission requirements
3 and exceptions; dispute resolution.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) This section shall be known and may be cited as
7 Simon's law.

8 (b) As used in this section:

9 (1) "Life-sustaining measures" means procedures, including
10 resuscitation; medication; nutrition and hydration, including medically
11 assisted nutrition and hydration, when withholding or withdrawal of such
12 in reasonable medical judgment would result in or hasten the death of the
13 patient.

14 (2) "Reasonable medical judgment" means a medical judgment that
15 would be made by a reasonably prudent physician who is knowledgeable
16 about the case and the treatment possibilities with respect to the medical
17 conditions involved.

18 (c) Upon the request of a patient or resident or a prospective patient
19 or resident, a healthcare facility, nursing home or physician shall disclose
20 in writing any policies relating to a patient or resident or the services a
21 patient or resident may receive involving life-sustaining measures,
22 including any policies related to healthcare deemed futile, inappropriate or
23 non-beneficial, within the healthcare facility or agency.

24 (d) No healthcare facility, nursing home, physician, nurse or medical
25 staff shall withhold, withdraw or place any restrictions on life-sustaining
26 measures for any patient, resident or ward under 18 years of age without
27 the written permission of at least one parent or legal guardian of the patient
28 or ward.

29 (e) No do-not-resuscitate order or similar physician's order shall be
30 instituted either orally or in writing without the written permission of at
31 least one parent or legal guardian of the patient or resident under 18 years
32 of age or prospective patient or resident under 18 years of age.

33 (f) Permission previously given under subsection (d) or (e) may be
34 revoked in writing by the legal guardian or either parent of the patient. If
35 the parents are unable to agree on whether to withhold, withdraw or place
36 restrictions on life-sustaining measures, including on whether to institute a

1 do-not-resuscitate order or similar physician's order, either parent may
2 institute a proceeding under subsection (i) to resolve the conflict based on
3 a presumption in favor of the provision of life-sustaining measures, unless
4 there is clear and convincing evidence both that failure to provide such
5 measures would not constitute withholding of medically indicated
6 treatment as defined in 42 U.S.C. § 5106g, regardless of whether the minor
7 is an infant or is disabled, and that such provision is contrary to the best
8 interests of the child. Pending the final outcome of such proceedings,
9 including any appeals, no permission under subsection (d) or (e) may be
10 implemented.

11 (g) (1) Subject to this subsection, the requirements for written
12 permission in subsections (d) and (e) shall not apply to the extent that
13 providing any life-sustaining measure would be:

14 (A) Futile because, in reasonable medical judgment, withholding any
15 life-sustaining measure would not cause or hasten the death of the patient;
16 or

17 (B) medically inappropriate because, in reasonable medical judgment,
18 providing any life-sustaining measure would create a greater risk of
19 causing or hastening the death of the patient than withholding such
20 measure from the patient.

21 (2) The provisions of this subsection may be implemented so long as:

22 (A) A reasonably diligent effort has been made to contact at least one
23 parent or legal guardian who, if contacted, has been informed of the
24 planned withholding, withdrawal or restriction; and

25 (B) the healthcare provider does not interfere with the efforts of the
26 parent or legal guardian to obtain other medical opinions or a transfer of
27 the patient to a provider selected by the parent or guardian and provides
28 immediate access to the child and the child's medical records to licensed
29 health care providers designated by the parent or guardian for that purpose,
30 if so requested.

31 (h) Nothing in this section shall require a healthcare facility, nursing
32 home or physician to have a written policy relating to or involving life-
33 sustaining or non-beneficial treatment for patients under 18 years of age or
34 adult patients, residents or wards.

35 (i) A parent or guardian may petition a district court of the county in
36 which the patient resides or in which the patient is receiving treatment for
37 an order enjoining a violation or threatened violation of this section or to
38 resolve a conflict under subsection (f). Upon receiving such a petition, the
39 district court shall issue an order fixing the date, time and place of a
40 hearing on the petition and order that notice of the hearing shall be given
41 to such persons as the court shall direct. A preliminary hearing may be
42 held forthwith and without notice if the court determines that holding that
43 hearing forthwith and without notice is necessary to prevent imminent

1 danger to the child's life. In the court's discretion, a hearing may be
2 conducted in a courtroom, a treatment facility or at some other suitable
3 place.

4 (j) Nothing in this section may be construed to alter the ability of any
5 person, including a health care provider, to institute a guardianship
6 proceeding pursuant to K.S.A. 59-3059, and amendments thereto, or to
7 seek immediate action to protect the proposed ward under K.S.A. 59-3073,
8 and amendments thereto.

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