

## HOUSE BILL No. 2741

By Committee on Judiciary

2-6

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9 AN ACT concerning health care; relating to health care decisions.

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

12 Section 1. As used in sections 1 through 4, and amendments thereto:

13 (a) "Advance health care directive" means an individual's instruction  
14 or a power of attorney for health care decisions.

15 (b) "Agent" means an individual designated in power of attorney for  
16 health care decisions to make a health care decision for the individual  
17 granting the power.

18 (c) "Best Interest" means that the benefits to the individual resulting  
19 from a treatment outweigh the burdens to the individual resulting from  
20 that treatment and shall include the:

21 (1) Effect of the treatment on the physical, emotional and cognitive  
22 functions of the patient;

23 (2) degree of physical pain or discomfort caused to the individual by  
24 the treatment or the withholding or withdrawal of the treatment;

25 (3) degree to which the individual's medical condition, the treatment  
26 or the withholding or withdrawal of treatment, results in a severe and  
27 continuing impairment;

28 (4) effect of the treatment on the life expectancy of the patient;

29 (5) risks, side effects and benefits of the treatment or the withholding  
30 of treatment; and

31 (6) basic principles and core values of the individual receiving treat-  
32 ment, to the extent that these may assist the surrogate decision maker in  
33 determining benefits and burdens.

34 (d) "Capacity" means an individual's ability to understand the signif-  
35 icant benefits, risks and alternatives to proposed health care and to make  
36 and communicate a health care decision.

37 (e) "Emancipated minor" means a person who is age 16 or 17 and  
38 who is or has been married, or a person who is under the age of 18 and  
39 who has acquired the rights of majority through court action.

40 (f) "Guardian" means a judicially appointed guardian or conservator  
41 having authority to make a health care decision for an individual.

42 (g) "Health care" means any care, treatment, service or procedure to  
43 maintain, diagnose, or otherwise affect an individual's physical or mental

1 condition.

2 (h) “Health care decision” means a decision made by an individual  
3 or the individual’s agent, guardian or surrogate, regarding the individual’s  
4 health care including: (1) Selection and discharge of health care providers  
5 and institutions; (2) approval or disapproval of diagnostic tests, surgical  
6 procedures, programs of medication and orders not to resuscitate; (3)  
7 directions to provide, withhold or withdraw artificial nutrition and hydra-  
8 tion and all other forms of health care; and (4) authorization to approve  
9 an individual’s participation in an experimental protocol that has been  
10 approved by the health care institution’s institutional review board.

11 (i) “Health care institution” means an institution, facility or agency  
12 licensed, certified or otherwise authorized or permitted by law to provide  
13 health care in the ordinary course of business.

14 (j) “Health care provider” means an individual licensed, certified or  
15 otherwise authorized or permitted by law to provide health care in the  
16 ordinary course of business or practice of a profession.

17 (k) “Individual instruction” means an individual’s direction concern-  
18 ing a health care decision for the individual.

19 (l) “Person” means an individual, corporation, business trust, estate,  
20 trust, partnership, association, joint venture, government, governmental  
21 subdivision, agency, authority or instrumentality, or any other legal or  
22 commercial entity.

23 (m) “Physician” means an individual authorized to practice medicine  
24 or osteopathy under the Kansas healing arts statutes, K.S.A. 65-2801 *et*  
25 *seq.*, and amendments thereto.

26 (n) “Power of attorney for health care decisions” means the desig-  
27 nation of an agent to make health care decisions for the individual grant-  
28 ing the power pursuant to K.S.A. 58-625, *et seq.*, and amendments  
29 thereto.

30 (o) “Primary physician” means a physician designated by an individ-  
31 ual or the individual’s agent, guardian or surrogate, to have primary re-  
32 sponsibility for the individual’s health care or, in the absence of a desig-  
33 nation or if the designated physician is not reasonably available, a  
34 physician who undertakes the responsibility.

35 (p) “Reasonably available” means readily able to be contacted without  
36 undue effort and willing and able to act in a timely manner considering  
37 the urgency of the patient’s health care needs.

38 (q) “State” means a state of the United States, the District of Colum-  
39 bia, the Commonwealth of Puerto Rico, or a territory or insular possession  
40 subject to the jurisdiction of the United States.

41 (r) “Supervising health care provider” means the primary physician  
42 or, if there is no primary physician or the primary physician is not rea-  
43 sonably available, the health care provider who has undertaken primary

1 responsibility for an individual's health care.

2 (s) "Surrogate" means an individual, other than a patient's agent or  
3 guardian, authorized under this act to make a health care decision for the  
4 patient.

5 Sec. 2. (a) A surrogate may make a health care decision for a patient  
6 who is an adult or emancipated minor if the patient has been determined  
7 by the primary physician to lack capacity and no agent or guardian has  
8 been appointed or the agent or guardian is not reasonably available.

9 (b) An adult or emancipated minor may designate any individual to  
10 act as surrogate by personally informing the supervising health care pro-  
11 vider. In the absence of a designation, or if the designee is not reasonably  
12 available, any member of the following classes of the patient's family who  
13 is reasonably available, in descending order of priority, may act as the  
14 surrogate:

15 (1) The spouse, unless legally separated;

16 (2) an adult child;

17 (3) a parent; or

18 (4) an adult brother or sister.

19 (c) If none of the individuals eligible to act as a surrogate under sub-  
20 section (b) is reasonably available, an adult who has exhibited special care  
21 and concern for the patient, who is familiar with the patient's personal  
22 values, and who is reasonably available may act as the surrogate.

23 (d) A surrogate shall communicate the surrogate's assumption of au-  
24 thority as promptly as practicable to the members of the patient's family  
25 specified in subsection (b) who can be readily contacted.

26 (e) If more than one member of a class assumes authority to act as  
27 the surrogate, and such member's do not agree on a health care decision  
28 and the supervising health care provider is so informed, the supervising  
29 health care provider shall comply with the decision of a majority of the  
30 members of that class who have communicated such member's views to  
31 the supervising health care provider. If the class is evenly divided con-  
32 cerning the health care decision and the supervising health care provider  
33 is so informed, that class shall be disqualified from making the health care  
34 decision, and the next class in the chain of priority under subsection (b)  
35 shall have the authority to act as the surrogate. This process will continue  
36 until a surrogate makes a health care decision that is not opposed by an  
37 even number of members in the same class in the chain of priority.

38 (f) A surrogate shall make a health care decision in accordance with  
39 the patient's individual instructions, if any, and other wishes to the extent  
40 known to the surrogate. Otherwise, the surrogate shall make the decision  
41 in accordance with the surrogate's determination of the patient's best  
42 interest. In determining the patient's best interest, the surrogate shall  
43 consider the patient's personal values to the extent known to the

1 surrogate.

2 (g) A health care decision made by a surrogate for a patient is effec-  
3 tive without judicial approval.

4 (h) A patient may at any time disqualify another, including a member  
5 of the patient's family, from acting as the individual's surrogate by a signed  
6 writing or by personally informing the supervising health care provider  
7 of the disqualification.

8 (i) Unless related to the patient by blood, marriage or adoption, a  
9 surrogate may not be an owner, operator or employee of the health care  
10 institution at which the individual is receiving care.

11 (j) A supervising health care provider may require an individual  
12 claiming the right to act as surrogate for a patient to provide a written  
13 declaration under penalty of perjury stating facts and circumstances rea-  
14 sonably sufficient to establish the claimed authority.

15 Sec. 3. (a) Sections 1 through 4, and amendments thereto, do not  
16 affect the right of a patient to make health care decisions while having  
17 capacity to do so.

18 (b) A patient is presumed to have capacity to make a health care  
19 decision, to give or revoke an advance health care directive, to execute a  
20 power of attorney for health care decisions and to designate or disqualify  
21 a surrogate.

22 Sec. 4. (a) Sections 1 through 4, and amendments thereto, do not  
23 create a presumption concerning the intention of a patient who has not  
24 made or who has revoked an advance health care directive.

25 (b) Death resulting from the withholding or withdrawal of health care  
26 in accordance with sections 1 through 4, and amendments thereto, do  
27 not for any purpose constitute a suicide or homicide or legally impair or  
28 invalidate a policy of insurance or an annuity providing a death benefit,  
29 notwithstanding any term of the policy or annuity to the contrary.

30 (c) Sections 1 through 4, and amendments thereto, do not authorize  
31 mercy killing, assisted suicide, euthanasia or the provision withholding or  
32 withdrawal of health care, to the extent prohibited by other statutes of  
33 this state.

34 (d) Sections 1 through 4, and amendments thereto, do not authorize  
35 or require a health care provider or institution to provide health care  
36 contrary to generally accepted health care standards applicable to the  
37 health care provider or institution.

38 (e) Sections 1 through 4, and amendments thereto, do not authorize  
39 an agent or surrogate to consent to the admission of an individual to a  
40 mental health care institution unless the individual's written advance  
41 health care directive expressly so provides.

42 (f) Sections 1 through 4, and amendments thereto, do not affect other  
43 statutes of this state governing treatment for mental illness of an individ-

1 ual involuntarily committed to a mental health care institution under the  
2 appropriate statute.  
3 Sec. 5. This act shall take effect and be in force from and after its  
4 publication in the statute book.