

SESSION OF 2004

SUPPLEMENTAL NOTE ON SENATE BILL NO. 343

As Amended by House Committee on
Judiciary

Brief*

SB 343 repeals a law enacted in 2003 concerning hospitals and providing for the transfer of hospital assets to a foundation created under the bill. The term "hospital" is defined to include: those defined in KSA 65-425 that are not-for-profit and are licensed by the Department of Health and Environment; or Health Midwest, Inc. and any other similarly situated hospital holding company; or a licensed Kansas not-for-profit hospital that is a subsidiary or affiliate of a domestic or foreign hospital holding company.

The 2003 law requires that, whenever there is a proposed change in control of a not-for-profit hospital by sale, merger, integration, or any other event that may result in a change or loss of the hospital's federal tax exempt status or forfeiture or amendment of the hospital's articles of incorporation that alters the original purpose of the hospital, and before there is any transfer or depletion of the hospital's assets, a new foundation must be formed and all Kansas assets of the hospital must be transferred to the foundation.

The House Committee inserted provisions that allow, according to federal requirements, for an adult or emancipated minor or the minor's legal guardian or the attorney in fact with the authority to make health care decisions capable of giving informed consent, to consent to approved medical research protocol.

If the above designated people cannot be contacted, after using reasonably diligent efforts, any member of the adult's or emancipated child's family may provide informed consent to research protocol.

The priority of family members to provide consent is as follows:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- ! the adult or emancipated minor's spouse, unless they are legally separated;
- ! an adult child;
- ! a parent; or
- ! an adult relative by blood or marriage.

No decision or consent can be given to research protocols that are contrary to the incapacitated person's permission that has been expressed either orally or in writing, regarding the research protocols.

These provisions are from HB 2741.

Background

The repeal of KSA 65-441a was supported by HCA, Inc. and by the Kansas Hospital Association. Proponents said last year's legislation was done quickly, and has been declared unconstitutional by a Johnson County district court. The legislation served its short-term purpose but does not establish good long-term policy for the state in this area.