

## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **HB 2359** be amended on page 10, in line 23, after "(g)" by inserting "'Expressly and with informed consent" means consent voluntarily given with sufficient knowledge of the subject matter involved, including a general understanding of the procedure, medically acceptable alternative procedures or treatments and substantial risks and hazards inherent in the proposed treatment or procedures, to enable the person giving consent to make an understanding and enlightened decision without any element of force, fraud, deceit, duress or other form of constraint or coercion.

(h)";

Also on page 10, following line 31, by inserting:

"(l) "Hydration" means water or fluid administered in any manner.";

On page 11, following line 14, by inserting:

"(v) "Nutrition" means sustenance administered in any manner.";

Also on page 11, following line 19, by inserting:

"(y) "Person legally incapable of making health care decisions" means any person who:

(1) (A) Has been declared legally unable to make decisions affecting medical treatment or care; and

(B) in the reasonable medical judgment of the attending physician, is unable to make decisions affecting medical treatment or other health care services; or

(2) is a minor.";

Also on page 11, following line 24, by inserting:

"(cc) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

On page 52, in line 16, by striking "may" and inserting "shall"; in line 20, by striking "may" and inserting "shall"; in line 36, by striking "may" and inserting "shall";

On page 53, in line 30, by striking "or"; in line 37, by striking "have the authority to"; in line 41, by striking all after "(C)"; by striking all in lines 42 and 43;

On page 54, by striking all in lines 1 through 19; in line 20, by striking all before the period and inserting "in accordance with subsection (d) or (e)"; in line 21, after "(d)" by inserting "(1) It shall be presumed that every adult under guardianship has directed such adult's guardian to direct the adult's healthcare providers to provide such adult with nutrition or hydration or both to a degree that is sufficient to sustain life. No court, guardian or any person shall have the authority to make a decision on behalf of an adult who is legally incapable of making healthcare decisions to withhold or withdraw nutrition or hydration or both from such adult except if:

(A) The adult, when legally capable of making healthcare decisions, executed, expressly and with informed consent, a written directive specifically authorizing the withholding or withdrawal of nutrition or hydration or both under the adult's current circumstances. Such directive shall include, but not be limited to, a declaration or a durable power of attorney for healthcare decisions described in subsection (c)(4); or

(B) the adult's treating physician certifies in writing that, in the physician's reasonable medical judgment:

(i) The provision of nutrition or hydration or both to the adult would hasten death; or

(ii) the adult would be incapable of digesting or absorbing the nutrition or hydration or

both so that its provision would not contribute to sustaining the adult's life.

(2) (A) Prior to withholding or withdrawing nutrition or hydration or both under paragraph (1)(B), a motion shall be filed with the court with the written certification from the adult's treating physician.

(B) Notice of such filing shall be provided to the adult subject to guardianship, any attorney representing the adult subject to guardianship and any other person whom the court determines at the time of filing of the petition.

(C) The court shall appoint an attorney for the adult. The court may request that the state protection and advocacy agency as provided by K.S.A. 65-5603(a)(10) or 74-5515, and amendments thereto, or 42 U.S.C. § 15043, 42 U.S.C. § 10805 or 29 U.S.C. § 794e, represent the adult.

(D) The court shall hold a hearing within 72 hours or as soon thereafter as the court is available.

(E) The court shall not authorize withholding or withdrawing nutrition or hydration or both unless the court finds by clear and convincing evidence that:

- (i) The provision of nutrition or hydration or both to the adult would hasten death; or
- (ii) the adult would be incapable of digesting or absorbing the nutrition or hydration or both so that its provision would not contribute to sustaining the adult's life.

(3) (A) A cause of action for injunctive relief may be maintained:

(i) Against any person who is reasonably believed to be about to violate or who is in the course of violating this subsection; or

(ii) to secure a court determination, notwithstanding the position of a guardian, that the adult legally incapable of making healthcare decisions, when legally capable of making such decisions, executed expressly and with informed consent, a written directive to withdraw or

withhold hydration or nutrition or both in the applicable circumstances. Such written directive shall be presumed valid unless there is clear and convincing evidence to the contrary.

(B) The action may be brought by any person who is:

(i) The spouse, parent, child or sibling of the adult;

(ii) a current healthcare provider of the adult;

(iii) the guardian of the adult;

(iv) the state protection and advocacy agency as provided by K.S.A. 65-5603(a)(10) or 74-5515, and amendments thereto, or 42 U.S.C. § 15043, 42 U.S.C. § 10805 or 29 U.S.C. § 794e; or

(v) a public official with appropriate jurisdiction to enforce the laws of this state.

(C) Pending the final determination of the court, the court shall direct that nutrition or hydration or both be provided to such adult unless the court determines that paragraph (3)(A) is applicable.

(e) (1) No court, guardian or any person shall have the authority to make a decision on behalf of an adult who is legally incapable of making healthcare decisions to withhold or withdraw life-saving or life-sustaining medical care, treatment, services or procedures from such adult except if:

(A) The adult, when legally capable of making healthcare decisions, executed, expressly and with informed consent, a written directive specifically authorizing the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services or procedures from such adult under the adult's current circumstances. Such directive shall include, but not be limited to, a declaration or a durable power of attorney for healthcare decisions described in subsection (c)(4); or

(B) (i) The adult's treating physician certifies in writing to the guardian that the adult is

suffering from a severe illness and that life-sustaining medical care is objectively futile and would only prolong the dying process; and

(ii) such opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the healthcare provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order that would have the effect of withholding or withdrawing life-saving or life-sustaining medical care.

(2) (A) Prior to withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures under paragraph (1)(B), a motion shall be filed with the court with the written certification from the adult's treating physician.

(B) Notice of such filing shall be provided to the adult subject to guardianship, any attorney representing the adult subject to guardianship and any other person whom the court determines at the time of filing of the petition.

(C) The court shall appoint an attorney for the adult. The court may request that the state protection and advocacy agency as provided by K.S.A. 65-5603(a)(10) or 74-5515, and amendments thereto, or 42 U.S.C. § 15043, 42 U.S.C. § 10805 or 29 U.S.C. § 794e, represent the adult.

(D) The court shall hold a hearing within 72 hours or as soon thereafter as the court is available.

(E) The court shall not authorize withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures unless the court finds by clear and convincing evidence that:

(i) The adult is suffering from a severe illness and that life-sustaining medical care is objectively futile and would only prolong the dying process; and

(ii) such opinion is concurred in by either a second physician or by any medical ethics or

similar committee to which the healthcare provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order that would have the effect of withholding or withdrawing life-saving or life-sustaining medical care.

(f)";

Also on page 54, in line 21, by striking "may" and inserting "shall"; in line 23, by striking "must" and inserting "shall";

On page 55, in line 1, by striking "may" and inserting "shall"; in line 2, by striking all before "authorized" and inserting "unless";

On page 56, in line 41, by striking "78(c)" and inserting "78(e)";

On page 93, in line 8, by striking "78(c)" and inserting "78(e)";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly; and the bill be passed as amended.

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Chairperson