

## HOUSE BILL No. 2691

By Committee on Federal and State Affairs

2-14

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1 AN ACT concerning health care; relating to transportable physician orders  
2 for patient preferences.

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

5 Section 1. (a) Within 90 days after the effective date of this act, the  
6 department of health and environment shall promulgate rules and  
7 regulations establishing the standardized format for a Kansas transportable  
8 physician orders for patient preferences (TPOPP) form in accordance with  
9 the provisions in section 2, and amendments thereto, adhering to the  
10 directions, sequence and wording in those provisions. The rules and  
11 regulations shall be prepared in accordance with the rules and regulations  
12 filing act except that any 60-day requirement in that act shall be treated as  
13 a 30-day requirement for the purpose of regulations issued under this  
14 section. The regulations shall specify an effective date of the form to be no  
15 fewer than 30 and no later than 90 days after the date of promulgation of  
16 the rules and regulations.

17 (b) A Kansas transportable physician orders for patient preferences  
18 (TPOPP) must be executed, implemented, reviewed and revoked in  
19 accordance with the instructions on the form.

20 (c) A transportable physician orders for patient preferences (TPOPP),  
21 physician orders for life-sustaining treatment (POLST), physician orders  
22 for scope of treatment (POST), medical orders for life-sustaining treatment  
23 (MOLST), medical orders for scope of treatment (MOST) or similar  
24 document that does not comply with the standardized format for a Kansas  
25 transportable physician orders for patient preferences established by rules  
26 and regulations promulgated in accordance with this section:

27 (1) That was executed in Kansas prior to the effective date of the  
28 standardized format established in accordance with this section shall have  
29 no validity after 45 days following that effective date or after 10 days  
30 following the admission of the patient to a Kansas medical care facility,  
31 whichever is later, except that a standardized format Kansas transportable  
32 physician orders for patient preferences executed subsequent to such  
33 document's execution shall immediately supersede it; or

34 (2) that was executed outside Kansas in compliance with the laws of  
35 the jurisdiction of execution shall have no validity after 10 days following  
36 the admission of the patient to a Kansas medical care facility, except that a

1 standardized format Kansas transportable physician orders for patient  
2 preferences executed subsequent to such document's execution shall  
3 immediately supersede it.

4 Sec. 2. (a) At the top of the first page of the standardized format  
5 Kansas transportable physician orders for patient preferences the following  
6 wording in all capitals shall appear against a contrasting color background:  
7 "FORM SHALL ACCOMPANY PERSON WHEN TRANSFERRED OR  
8 DISCHARGED"; at the bottom of the first page the following wording in  
9 all capitals shall appear against a contrasting color background: "HIPAA  
10 PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS AND  
11 PROXY DECISION MAKERS AS NECESSARY FOR TREATMENT."

12 (b) There shall be an introductory section, the left block of which  
13 shall contain the name "Kansas Transportable Physician Orders for Patient  
14 Preferences (TPOPP)" followed by the words "This Physician Order set is  
15 based on the patient's current medical condition and wishes and is to be  
16 reviewed for potential replacement in the case of a substantial change in  
17 either. Any section not completed indicates full treatment for that section.  
18 Photocopy or fax copy of this form is legal and valid." The right block  
19 shall contain lines for the patient's name, the patient's date of birth and the  
20 effective date of the form followed by the statement "Form must be  
21 reviewed at least annually."

22 (c) In Section A of the form, the left block shall contain, in bold, "**A.  
23 Check One**" and the right block shall be headed in bold  
24 "**Cardiopulmonary Resuscitation (CPR): Person has no pulse and is  
25 not breathing.**" Below this there shall be a checkbox followed by  
26 "Attempt Resuscitation (CPR)," then a checkbox followed by "Do Not  
27 Attempt Resuscitation (DNR/ no CPR)," and below which shall be the  
28 words, "When not in cardiopulmonary arrest, follow orders in **B, C and D**  
29 below."

30 (d) In Section B of the form, the left block shall contain, in bold, "**B.  
31 Check One**" and the right block shall be headed in bold "**Medical  
32 Interventions: Person has pulse and/or is breathing.**" Below this there  
33 shall be a checkbox followed by, in bold, "**Full Treatment**" followed by,  
34 "Includes the use of intubation, advanced airway interventions, mechanical  
35 ventilation, defibrillation or cardio version as indicated, medical treatment,  
36 intravenous fluids, and comfort measures. Transfer to hospital if indicated.  
37 Include intensive care." Following this, in bold, "**Treatment Goal:  
38 Attempt to preserve life by all medically effective means.**"

39 Below this there shall be a checkbox followed by, in bold, "**Limited  
40 Interventions**" followed by, "Includes the use of medical treatment, oral  
41 and intravenous medications, intravenous fluids, cardiac monitoring as  
42 indicated, noninvasive bi-level positive airway pressure, a bag valve mask,  
43 and comfort measures. Do not use intubation or mechanical ventilation.

1 Transfer to hospital if indicated. Avoid intensive care." Following this, in  
2 bold, "**Treatment Goal: Attempt to preserve life by basic medical**  
3 **treatments.**"

4 Below this there shall be a checkbox followed by, in bold, "**Comfort**  
5 **Measures only**" followed by, "Includes keeping the patient clean, warm,  
6 and dry; use of medication by any route; positioning, wound care, and  
7 other measures to relieve pain and suffering. Use oxygen, suction, and  
8 manual treatment of airway obstruction as needed for comfort. Do not  
9 transfer to hospital unless comfort needs cannot be met in the patient's  
10 current location (e.g., hip fracture)."

11 Below this there shall be, in italics, "*Additional Orders:*" followed by  
12 an underlined space for other instructions.

13 (e) In Section C of the form, the left block shall contain, in bold, "**C.**  
14 **Check One**" and the right block shall be headed in bold "**Antibiotics.**"

15 Below this there shall be a checkbox followed by, in bold, "**Use**  
16 **Antibiotics to preserve life.**"

17 Below this there shall be a checkbox followed by, in bold, "**Determine**  
18 **use or limitation of antibiotics when infection occurs.**"

19 Below this there shall be a checkbox followed by, in bold, "**Use**  
20 **antibiotics only to relieve pain and discomfort.**"

21 Below this there shall be, in italics, "*Additional Orders:*" followed by  
22 an underlined space for other instructions.

23 (f) In Section D of the form, the left block shall contain, in bold, "**D.**  
24 **Check One in Each Column**" and the right block shall be headed in bold  
25 "**Medically Administered Fluids and Nutrition,**" below which shall be  
26 "Administer oral fluids and nutrition, if necessary by spoon feeding, if  
27 physically possible." Below these the right block shall be divided into  
28 three columns.

29 The leftmost column shall be headed, "TPN (Total Parenteral Nutrition-  
30 provision of nutrition into blood vessels)." Below this there shall be a  
31 checkbox followed by, in bold, "**TPN long-term**" followed by "if needed."  
32 Below this there shall be a checkbox followed by, in bold, "**TPN for a**  
33 **trial period**" followed by "Goal(s) for trial period" followed by an  
34 underlined space. Below this there shall be a checkbox followed by, in  
35 bold, "**No TPN.**"

36 The middle column shall be headed "Tube Feeding." Below this there  
37 shall be a checkbox followed by, in bold, "**Long-term feeding tube**"  
38 followed by "if needed." Below this there shall be a checkbox followed by,  
39 in bold, "**Feeding tube for a trial period**" followed by "Goal(s) for trial  
40 period" followed by an underlined space. Below this there shall be a  
41 checkbox followed by, in bold, "**No feeding tube.**"

42 The rightmost column shall be headed, "Intravenous (IV) Fluids for  
43 Hydration." Below this there shall be a checkbox followed by, in bold,

1 **"Long-term IV fluids"** followed by "if needed." Below this there shall be  
2 a checkbox followed by, in bold, **"IV fluids for a trial period"** followed  
3 by "Goal(s) for trial period" followed by an underlined space. Below this  
4 there shall be a checkbox followed by, in bold, **"No IV fluids."**

5 Running below all the columns there shall be, in italics, *"Additional*  
6 *Orders:"* followed by an underlined space for other instructions.

7 (g) In Section E of the form, the left block shall contain, in bold, **"E.**  
8 **Check all that apply"** and the right block shall be headed, in bold,  
9 **"Patient Preferences as a Basis for this TPOPP Form,"** shall include the  
10 following:

11 (1) Below the heading there shall be a checkbox followed by, "The  
12 patient has a durable power of attorney for health care decisions in  
13 accordance with K.S.A. 58-628 or 58-630, and amendments thereto."  
14 Below that there shall be a checkbox followed by, "The patient has a  
15 declaration in accordance with K.S.A. 65-28,103, and amendments  
16 thereto." Below that shall be the words "Date of execution" followed by an  
17 underlined space. Below that shall be the words, "If TPOPP not being  
18 executed by patient: I certify that this TPOPP is in accordance with the  
19 patient's advance directive." Below this there shall be an underlined space  
20 underneath which shall be positioned the words "Name and Position  
21 (print)" and "Signature.";

22 (2) below these shall be the words "Directions given by" and below  
23 that a checkbox followed by "Patient," a checkbox followed by "Parent of  
24 Minor," a checkbox followed by "Guardian of Minor," a checkbox  
25 followed by "Health Care Agent," and a checkbox followed by "Other"  
26 followed by an underlined space. Beneath the checkbox and "Other" and  
27 the underlined space shall be the words "Basis of Authority" followed by  
28 an underlined space; and

29 (3) below these shall be a four column table with four rows. In the top  
30 row the first column shall be blank; the second column shall have the  
31 words, "Printed Name"; the third column shall have the word "Signature,"  
32 and the fourth column shall have the word "Date." In the remaining rows  
33 the second through fourth columns shall be blank. In the first column of  
34 these rows, in the second row shall be the words "Attending physician"; in  
35 the third row shall be the words "Patient or other individual checked  
36 above"; and in the fourth row shall be the words, "Health care professional  
37 preparing form (besides doctor)."

38 (h) Section F of the form, which shall have the heading, in bold,  
39 **"Information for Patient or Representative of Patient Named on this**  
40 **Form,"** shall include the following language, with the portions in bold  
41 below appearing in bold on the form:

42 "The TPOPP form is **always voluntary** and is usually for persons with  
43 advanced illness. TPOPP records your wishes for medical treatment in

1 your current state of health. Once initial medical treatment is begun and  
2 the risks and benefits of further therapy are clear, your treatment wishes  
3 may change. Your medical care and this form can be changed to reflect  
4 your new wishes at any time. However, no form can address all the  
5 medical treatment decisions that may need to be made. An advance  
6 healthcare directive is, regardless of your health status. An advance  
7 directive allows you to document in detail your future health care  
8 instructions and/or name a health-care agent to speak for you if you are  
9 unable to speak for yourself.

10 **The State of Kansas affirms that the lives of all are of equal dignity**  
11 **regardless of age or disability and emphasizes that no one should ever**  
12 **feel pressured to agree to forego life-preserving medical treatment**  
13 **because of age, disability, or fear of being regarded as a "burden."**

14 If this form is for a minor for whom you are authorized to make  
15 healthcare decisions, you may not direct denial of medical treatment in a  
16 manner that would violate the child abuse and neglect laws of Kansas. In  
17 particular, you may not direct the withholding of medically indicated  
18 treatment from a disabled infant with life-threatening conditions, as those  
19 terms are defined in 42 U.S.C. § 5106g or regulations implementing it and  
20 42 U.S.C. § 5106a."

21 (i) Section G of the form, which shall have the heading, "Directions  
22 for Completing and Implementing Form," shall include the following four  
23 subdivisions:

24 (1) The first subdivision, entitled "COMPLETING TPOPP," shall  
25 have the following language:

26 TPOPP must be reviewed and prepared in consultation with the patient  
27 or the patient's representative.

28 TPOPP must be reviewed and signed by a physician to be valid. Be  
29 sure to document the basis for concluding the patient had or lacked  
30 capacity at the time of execution of the form in the patient's medical  
31 record. The signature of the patient or the patient's representative is  
32 required; however, if the patient's representative is not reasonably  
33 available to sign the original form, a copy of the completed form with the  
34 signature of the patient's representative must be placed in the medical  
35 record as soon as practicable and "on file" must be written on the  
36 appropriate signature on this form.

37 (2) The second subdivision, entitled "IMPLEMENTING TPOPP,"  
38 shall have the following language:

39 If a physician, or health facility as defined by subsection (c) of K.S.A.  
40 40-2,116, and amendments thereto, is unwilling to comply with the orders  
41 due to policy or personal objections, the physician or facility must not  
42 impede transfer of the patient to another provider or facility willing to  
43 implement the orders and must provide at least requested care in the

1 meantime unless, in reasonable medical judgment, denial of requested care  
2 would not result in or hasten the patient's death.

3 If a minor protests a directive to deny the minor life-preserving medical  
4 treatment, the denial of treatment may not be implemented pending  
5 issuance of a judicial order resolving the conflict.

6 (3) The third subdivision, entitled "REVIEWING TPOPP," shall have  
7 the following language:

8 This TPOPP must be reviewed at least annually or earlier if:

9 The patient is admitted to or discharged from a medical care facility;

10 There is a substantial change in the patient's health status; or

11 The patient's treatment preferences change.

12 (d) The fourth subdivision, entitled "REVOCATION OF TPOPP,"  
13 shall have the following language:

14 If TPOPP is revised or becomes invalid, write the word "**VOID**" in  
15 large letters on the front of the form. After voiding the form a new form  
16 may be completed. A patient with capacity or the individual or individuals  
17 authorized to sign on behalf of the patient in Section E of this form may  
18 void this form. If no new form is completed, full treatment and  
19 resuscitation is to be provided.

20 (j) Section H of the form, which shall have the heading, "REVIEW  
21 SECTION: Periodic review confirms current form or may require  
22 completion of new form," shall include the following columns and a  
23 number of rows determined by the department of health and environment:

24 (1) Date of Review

25 (2) Reviewer

26 (3) Physician Signature

27 (4) Location of Review

28 (5) Outcome of Review.

29 Each row in this column shall include: a checkbox followed by "FORM  
30 CONFIRMED - No Change," below which there shall be a checkbox  
31 followed by "FORM VOIDED, see updated form," below which there  
32 shall be a checkbox followed by "FORM VOIDED, no new form."

33 Sec. 3. (a) A physician or other healthcare provider acting in good  
34 faith and in accordance with reasonable medical standards applicable to  
35 the physician or other healthcare provider is not subject to civil or criminal  
36 liability or to discipline for unprofessional conduct for:

37 (1) Executing a Kansas standardized format transportable physician  
38 orders for patient preferences form in compliance with a healthcare  
39 decision of a person apparently having authority to make a health-care  
40 decision for a patient, including a decision to provide, withhold or  
41 withdraw health care;

42 (2) declining to execute a transportable physician orders for patient  
43 preferences in compliance with a health-care decision of a person based on

1 a reasonable belief that the person then lacked authority; or

2 (3) complying with an apparently valid Kansas standardized format  
3 transportable physician orders for patient preferences on the assumption  
4 that the order was valid when made and has not been revoked or  
5 terminated.

6 (b) A person who intentionally falsifies, forges, conceals, defaces or  
7 obliterates an individual's transportable physician orders for patient  
8 preferences without the individual's consent, or who coerces or  
9 fraudulently induces an individual to give, revoke or not to give a Kansas  
10 standardized format transportable physician orders for patient preferences,  
11 is subject to liability to that individual for damages of \$200,000 or actual  
12 damages resulting from the action, whichever is greater, plus reasonable  
13 attorney fees.

14 (c) On petition of a physician or health facility involved with the  
15 patient's care, the patient, the patient's health care agent, guardian, parent,  
16 sibling or other relative within the fourth degree of relationship computed  
17 as provided in K.S.A. 59-509, and amendments thereto, provided that a  
18 relative by adoption or marriage shall be treated equally as a relative by  
19 blood, any court of competent jurisdiction may enjoin or direct a  
20 healthcare decision related to a transportable physician orders for patient  
21 preferences, or order other appropriate equitable relief. The court shall  
22 issue such temporary orders as it determines necessary to preserve the life  
23 of the patient pending a final judgment in such litigation.

24 Sec. 4. This act shall take effect and be in force from and after its  
25 publication in the statute book.