

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2264

As Amended by Senate Committee on Public
Health and Welfare

Brief*

HB 2264, as amended, would establish the No Patient Left Alone Act (Act). The Act would establish who may visit a patient in a patient care facility and would require patient care facilities to provide for in-person visitation. The bill would require patient care facilities to establish visitation policies and procedures by September 1, 2023. The bill would also establish a Patient's Bill of Rights to protect and promote the rights of each patient in a patient care facility.

Definitions

The bill would define terms, including:

- “Essential caregiver” would mean an individual designated by the patient who meets an essential need of the patient by assisting with the tasks of daily living or providing important emotional, social, or psychological support;
- “Immediate family member” would mean father, mother, stepparent, child, grandchild, stepchild, sibling, spouse, or grandparent of the patient;
- “Patient” would mean an individual who is receiving care at or is a resident of a patient care facility; and

*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>

- “Patient care facility” would mean any adult care home including any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, adult day care facility, and hospice facility certified to participate in the Medicare program that provide service only to hospice patients.

Patient Visitation Requirements

The bill would specify that a patient care facility would not be able to take action to prevent a patient from receiving in-person visitation from any person designated by the patient, if the patient has the capacity to make such designation. If the patient does not have the capacity for such designation, the patient’s agent for health care decisions established by a durable power of attorney would be allowed to designate visitors. Visitors could include, but would not be limited to:

- An immediate family member, domestic partner, or significant other;
- The agent for health care decisions established by a durable power of attorney for health care decisions;
- An essential caregiver; or
- A minister, priest, rabbi, or clergyperson of any religious denomination or sect to which the patient is an adherent.

The bill would prohibit patient care facilities from preventing a patient who is terminally ill or receiving end-of-life care from receiving in-person visitation from two individuals at a time.

The bill would also establish that a patient may refuse in-person visitation or revoke previously granted in-person visitation from any person at any time.

Patient Care Facilities

The bill would provide that patient care facilities must establish visitation policies by September 1, 2023. Further, the bill would provide that visitation policies and procedures must allow in-person visitations, unless the patient objects.

The bill would require visitation policies and procedures, if established, to be provided to the patient care facility's licensing agency at the time of initial licensure, renewal, or at any time upon request and be easily accessible from the home page of the medical care facility's website.

The bill would specify that visitation policies and procedures cannot contain more stringent infection control protocols for visitors than for employees of the patient care facility who are providing direct care to patients.

The bill would establish that a patient care facility may:

- Adopt visitation policies and procedures that are more stringent for intensive or critical care units;
- Require a visitor to agree in writing to follow the facility's policies and procedures;
- Temporarily suspend a visitor's in-person visitation if such visitor violates the facility's policies and procedures;
- Revoke a visitor's in-person visitation if such visitor repeatedly violates the facility's policies and procedures or displays any violent or aggressive behavior; or

- Require a visitor to adhere to infection control procedures, including wearing personal protective equipment.

The bill would specify that the Department of Health and Environment must publish on its website an explanation of visitation requirements and a link to report complaints alleging violations by a patient care facility.

The bill would provide civil liability immunity for damages to the patient care facility except in cases of gross negligence or willful, wanton, or reckless conduct.

Patient's Bill of Rights

The bill would require patient care facilities to protect and promote the rights of each patient, as follows:

- Patients have the right to choose a personal attending physician, be fully informed in advance about care and treatment, be fully informed in advance of changes to their care and treatment that may affect well-being, and to participate in planning or changing the plan of care and treatment except for a patient adjudged incompetent;
- Patients have the right to be free from mental or physical abuse, corporal punishment, involuntary seclusion, and physical or chemical restraints used for discipline or convenience;
- Patients have the right to privacy in their accommodations, medical treatment, communications, visits or meetings;
- Patients have the right to confidentiality in personal and clinical records; right to access within 24 hours, excluding weekend and holiday, current

clinical records upon request of patient or patient's legal representative;

- Patients have the right to receive services with reasonable accommodation of individual needs and preferences except where the health and safety of the patient or another patient would be endangered;
- Patients have the right to voice grievances regarding treatment or care that is or fails to be provided without reprisal and to timely efforts by a patient care facility to resolution of grievances;
- Patients have the right to participate in social, religious, and community activities that do not interfere with the rights of other patients in the facility; and
- Patients have the right to examine, upon reasonable request, surveys by the patient care facility's licensing body and any plan of correction in effect.

The bill would also make technical amendments.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative Eplee on behalf of Representative Resman.

House Committee on Health and Human Services

In the House Committee hearing on February 7, 2023, **proponent** testimony was provided by two private citizens who practice in the medical community stating that the bill addresses the main issue of ensuring that patients in a facility are permitted to have in-person visits during their stay in the facility.

Written-only proponent testimony was received from representatives of HCA Healthcare and the Kansas Medical Society.

Opponent testimony was provided by a representative of LeadingAge Kansas, who suggested amendments to the bill, particularly regarding the need for patient care facilities to adhere to federal laws, rules, and other guidance in order to remain eligible for federal funding and programs.

Neutral testimony was provided by a representative of Kansas Health Care Association and Kansas Center for Assisted Living. Neutral written-only testimony was received from representatives of the Kansas Hospital Association and Kansas Adult Care Executives.

The House Committee amended the bill to:

- Specify that a patient care facility could not prevent a patient from receiving in-person visitation from any person designated by the patient or, if the patient does not have the capacity to make such a designation, by the patient's agent for health care decisions established by a durable power of attorney;
- Add domestic partners and significant others to the list of individuals that would be allowed in-person visitation of a patient;

- Specify that patient care facilities may, rather than shall, establish visitation policies and procedures and that such policies and procedures would not be limited to those listed in the bill;
- Provide that patient care facilities would be able to require a visitor to adhere to infection control procedures, including wearing personal protective equipment, though such protocols could not be more stringent for visitors than those providing direct care to patients;
- Provide for civil liability from damages to patient care facilities acting in compliance with the Act unless such actions would constitute gross negligence or willful, wanton, or reckless conduct; and
- Specify the Act would not supersede any federal law, rules, regulations, or guidance regarding patient care facilities and would not prohibit a patient care facility from taking actions necessary to ensure eligibility for federal financial participation, federal funds, participation in federal programs, and reimbursement for services provided.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on March 16, 2023, **proponent** testimony was provided by Representative Eplee and a representative of LeadingAge Kansas who stated generally the intent of the bill was to address issues of patient care to ensure respectful care of patients and their families while balancing the need of patients with the needs of other stakeholders.

Written-only proponent testimony was provided by representatives of Kansas Hospital Association and HCA Healthcare.

Opponent testimony was provided by a representative of Kansans for Health Freedom, a precinct committee woman, and a private citizen who stated generally this bill transfers the decision making authority to the hospital and the bill does not address people.

Written-only neutral testimony was received from a representative of the Kansas Medical Society.

The Senate Committee amended the bill to:

- Modify the option for patient care facilities to have visitor policies and made it a requirement;
- Remove the minimum requirements of what a patient care facility includes in the visitation policy and procedure, which were infection control protocols and education for visitors, a set schedule of dates and times when visitation is allowed, allowable visit length, and limits on number of visitors;
- Remove the circumstances of when a patient was to be permitted in-person visitors which were:
 - Terminally ill or receiving end-of-life care;
 - Making one or more major medical decisions;
 - Experiencing emotional distress or grieving the recent loss of a friend or family member;
 - Experiencing functional, cognitive, or nutritional decline;
 - Struggling with the change in environment at the patient care facility after having previously lived with such patient's immediate family member;

- Admitted to a medical care facility for childbirth, including care related to a miscarriage or stillbirth; or
- Under 18 years of age.
- Remove the provision that a patient care facility could modify visitation based upon a patient's condition or need for rest;
- Remove the provision allowing a patient care facility to take the steps necessary to ensure eligibility with federal programs or financial participation and would not supersede any federal law, rules, regulations, or guidance regarding patient care facilities; and
- Add provisions that would establish a patient's bill of rights.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, both the Department of Health and Environment and the Kansas Department for Aging and Disability Services (KDADS) indicate that enactment of the bill would have no fiscal effect. KDADS' regulatory role for adult care homes, subject to federal regulation, would continue under the provisions of the bill. If the federal Centers for Medicare and Medicaid Services (CMS) impose a requirement for infection control procedures or limits on visitation for all Medicaid and Medicare providers, those federal mandates would supersede the requirements of the bill as a condition of participation for payment. KDADS would survey and enforce the federal requirements under its agreement with CMS.

Patient's Bill of Rights; No Patient Left Alone Act; patient care facilities; in-person visits; patient