

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 352

As Amended by Senate Committee of the Whole

Brief*

SB 352, as amended, would establish the John D. Springer Patient's Bill of Rights.

The bill would establish who may visit a patient in a medical care facility, require medical care facilities to provide for in-person visitation, and include parameters for medical care facilities as to restrictions regarding infections control protocols that may be placed on visitors. The bill would provide medical care facilities immunity from civil liability for damages for acts taken in compliance with the bill unless the act constituted gross negligence or willful, wanton, or reckless conduct.

The bill would establish a remedy for a medical care facility's compliance with the Act that causes a monetary penalty, fees, or lost funding and establish the Medical Care Facility Reimbursement Fund (Fund) and protocol for reimbursement through the Fund with State General Funds.

The bill would establish patients' rights that medical care facilities would have to protect and promote.

The bill would also establish a civil cause of action against a medical care facility for violations of the bill.

The bill would be in effect upon publication in the *Kansas Register*.

*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>

Visitation Policies and Procedures (Section 1)

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;
- “Medical care facility” would mean a hospital, ambulatory surgical center, or recuperation center, except that “medical care facility” would not include a hospice that is certified to participate in the Medicare program under 42 C.F.R. § 418.1 *et seq.* and that provides services only to hospice patients; and
- “Patient” would mean an individual who is receiving care at or is a resident of a medical care facility.

Patient Visitation Requirements

The bill would specify that when providing care, a medical 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 medical care facilities from prohibiting in-person visitation from two individuals at a time for patients who are either terminally ill or receiving end-of-life care. 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.

Visitation Policies and Procedures

The bill would prohibit medical care facilities from adopting visitation policies and procedures containing more stringent infection control protocols for visitors than for employees of the medical care facility who are providing direct care to patients.

The bill would authorize a medical care facility to require a visitor to adhere to infection control procedures, including wearing personal protective equipment.

For a patient under 18 years of age, the bill would allow a parent or guardian to accompany the minor at all times.

The bill would also require the Secretary of Health and Environment (Secretary) to publish an explanation of visitation requirements and a link to report complaints alleging violations by a medical care facility on the Kansas Department of Health and Environment's website .

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

Civil Cause of Action

The bill would establish a civil cause of action for a violation of a medical facility's visitation policy and procedure. The prevailing plaintiff would be allowed to recover the greater of actual damages sustained by an individual or \$25,000, as well as the cost of the suit, including reasonable attorney fees.

Medical Care Facility Compliance Remedy

The bill would create a remedy for medical care facilities that, due to their compliance with the Act, were found to be in violation of the federal statutes, regulations, or U.S. Centers for Medicare and Medicaid Services (CMS) rulings and such violation results in a monetary penalty, fee, or lost funding from CMS. The medical care facility would have a remedy to certify the amount to the State. Once the amount was certified by the Secretary, the certified amount would be paid with State General Funds to the medical facility and notification provided to the Director of the Budget and the Director of Legislative Research.

The bill would also establish the Medical Care Facility Reimbursement Fund (Fund) at the State Treasury. The Fund would be administered by the Secretary. The Fund would be used for the purpose of reimbursing medical care facilities for penalties, fees, or lost funding resulting from a medical care facility's compliance with the Act.

Patient Bill of Rights (Section 2)

Definitions

The bill would define terms, including:

- “Medical care facility” as a hospital, ambulatory surgical center, or recuperation center, except that “medical care facility” would not include a hospice that is certified to participate in the Medicare program under 42 C.F.R. § 418.1 *et seq.* and that provides services only to hospice patients; and
- “Patient” as an individual who is receiving care at or is a resident of a medical care facility.

Patient’s Rights

The bill would establish that a medical care facility would protect and promote the rights of a patient cared for in a medical care facility and that each patient would have the right to:

- Choose a personal attending physician;
- Be fully informed in advance about care and treatment;
- Be fully informed in advance of any changes in care or treatment that may affect the patient’s well-being;
- Participate in planning care and treatment or changes in care and treatment, except with respect to a patient adjudged incompetent;
 - Such right to participate would include the right to refuse treatment or refuse transfer to another medical care facility if such refusal is

made in writing by the patient or the patient's legal representative.

- Be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the patient's medical symptoms;
 - Restraints and involuntary seclusion could only be imposed to manage harmful behaviors or ensure the physical safety of the patient, staff members, or other patients and would require a written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except in emergency circumstances until a physician's order could reasonably be obtained; and
 - Use of restraint or seclusion in a treatment facility would not exceed three hours without medical reevaluation, except when necessary during the hours of 12:00 midnight and 8:00 a.m.
- Privacy regarding accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and other visitors;
- Confidentiality of personal and clinical records and access to current clinical records of the patient upon request by the patient or the patient's legal representative;
- Receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other patients would be endangered;
- Voice grievances with respect to treatment or care that is or fails to be furnished, without

discrimination or reprisal for voicing the grievances, and the right to prompt efforts by the medical care facility to resolve grievances of the patient;

- Participate in social, religious, and community activities that do not interfere with the rights of other patients in the medical care facility; and
- Examine, upon reasonable request, the results of the most recent survey of the patient facility conducted by the medical care facility's licensing body with respect to the medical care facility and any plan of correction in effect with respect to the medical care facility.

Civil Cause of Action

The bill would establish a civil cause of action for a violation of the patient's bill of rights. The prevailing plaintiff would be allowed to recover the greater of actual damages sustained by an individual or \$25,000, as well as the cost of the suit, including reasonable attorney fees.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Steffen. [Note: A similar bill, HB 2548, has been introduced in the House and was passed, as amended, by the House Committee on Health and Human Services.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on February 7, 2024, Senator Steffen, the widow of John D. Springer, an advanced practice registered nurse, an attorney, and five private citizens provided **proponent** testimony, generally stating their personal experiences with the medical care facilities' visitation

policies. The proponents noted the limitations they felt while visitation restrictions were in place during the COVID-19 pandemic and, due to those experiences, why changes were needed for patients and visitors.

Written-only proponent testimony was provided by representatives of Heartland Case Management and Kansans for Health Freedom, a long-term care administrator, a nurse, four precinct committeepersons, and five private citizens.

Representatives of the Kansas Hospital Association and the Kansas Medical Society provided **opponent** testimony, generally stating that they support efforts to ensure reasonable visitation policies, but flexibility is needed because each patient has a different experience and need. Additional concern was expressed for the establishment of civil causes of action, as legal remedies for adverse patient outcomes and experiences are already well-established in law, and enactment of the bill could result in unintended consequences on multiple fronts.

Written-only opponent testimony was provided by a representative of CommonSpirit Health Mountain Region.

A representative of Kansans for Health Freedom provided written-only neutral testimony, generally stating that the bill would not fully address the needs of patients.

The Senate Committee amended the bill to:

- Remove the specific time frame for establishing visitation policies and procedures by medical care facilities and the parameters to be included in the visitation policy and procedure;
- Provide clarification regarding minor patients and parent or guardian presence; and

- Include clarification around the use of involuntary seclusion and restraints.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to include a remedy for a medical care facility's compliance with the Act that results in a monetary penalty, fees, or lost funding and the establishment and protocol of the Medical Care Facility Reimbursement Fund.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Department of Health and Environment and the Kansas Department for Aging and Disability Services both indicate enactment of the bill would not have a fiscal effect on the operations of either agency.

The Office of Judicial Administration states enactment of the bill could increase the number of cases filed in district courts because it allows for civil actions to be filed. This could result in more time spent by court employees and judges processing, researching, and hearing these cases. The Office estimates enactment of the bill could result in the collection of docket fees and fines assessed in those cases filed under the bill's provisions, which would be deposited to the State General Fund. The bill would not affect other revenues to the Judicial Branch. According to the Office, a fiscal effect cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

John D. Springer Patient's Bill of Rights; civil cause of action; in-person visitation; visitation policy and procedure; hospital; health; Medical Care Facility Reimbursement Fund