

SUBSTITUTE FOR HB2691

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

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

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

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

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

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

(2) that was executed outside Kansas in compliance with the laws of the jurisdiction of execution shall have no validity after ten (10) days following the admission of the patient to a Kansas medical care facility; provided, that a standardized format Kansas transportable physician orders for patient preferences executed subsequent to such document's execution shall immediately supersede it.

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

(b) There shall be an introductory section, the left block of which shall contain the name "KansasTransportable Physician Orders for Patient Preferences (TPOPP)" followed by the words "This Physician Order set is based on the patient's current medical condition and wishes and is to be reviewed for potential replacement in the case of a substantial change in either, as well as in

other cases listed under F. Any section not completed indicates full treatment for that section. Photocopy or fax copy of this form is legal and valid." and the right block of which shall contain lines for the patient's name, the patient's date of birth, and the effective date of the form followed by the statement "Form must be reviewed at least annually."

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

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

Below this there shall be a checkbox followed by, in bold, "**Limited Interventions**" followed by, "Includes the use of medical treatment, oral and intravenous medications, intravenous fluids, cardiac monitoring as indicated, noninvasive bi-level positive airway pressure, a bag valve mask, or other advanced airway interventions. Includes treatment listed under "Comfort Measures." Do not use intubation or mechanical ventilation. Transfer to hospital if indicated. Avoid intensive care." followed by, in bold, "**Treatment Goal: Attempt to preserve life by basic medical treatments.**"

Below this there shall be a checkbox followed by, in bold, "**Comfort Measures only**" followed by, "Includes keeping the patient clean, warm, and dry; use of medication by any route; positioning, wound care, and other measures to relieve pain and suffering. Use oxygen, suction, and manual treatment of airway obstruction as needed for comfort. Transfer from current location to intermediate facility only if needed and adequate to meet comfort needs and to hospital only if comfort needs cannot otherwise be met in the patient's current location (e.g., hip fracture; if intravenous route of comfort measures is required)."

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

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

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

Below this there shall be a checkbox followed by, in bold, "**Trial period of antibiotics if and when infection occurs.**" After this there shall be, in italics, "**Include goals below in E.*"

Below this there shall be a checkbox followed by, in bold, "**Initially, use antibiotics only to relieve pain and discomfort.**" After this there shall be, in italics, "*+Contact patient or patient's representative for further direction.*"

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

(f) In Section D of the form, the left block shall contain, in bold, “**D. Check One in Each Column**” and the right block shall be headed in bold “**Assisted Nutrition and Hydration,**” below which shall be “Administer oral fluids and nutrition, if necessary by spoon feeding, if physically possible.” Below these the right block shall be divided into three columns.

The leftmost column shall be headed, “TPN (Total Parenteral Nutrition-provision of nutrition into blood vessels).” Below this there shall be a checkbox followed by, in bold, “**TPN long-term**” followed by “if needed”. Below this there shall be a checkbox followed by, in bold, “**TPN for a trial period***”. Below this there shall be a checkbox followed by, in bold, “**Initially, no TPN+**”.

The middle column shall be headed “Tube Feeding”. Below this there shall be a checkbox followed by, in bold, “**Long-term feeding tube**” followed by “if needed”. Below this there shall be a checkbox followed by, in bold, “**Feeding tube for a trial period***”. Below this there shall be a checkbox followed by, in bold, “**Initially, no feeding tube**”.

The rightmost column shall be headed, “Intravenous (IV) Fluids for Hydration”. Below this there shall be a checkbox followed by, in bold, “**Long-term IV fluids**” followed by “if needed”. Below this there shall be a checkbox followed by, in bold, “**IV fluids for a trial period***”. Below this there shall be a checkbox followed by, in bold, “**Initially, no IV fluids+**”.

Running below all the columns there shall be, in italics, “*Additional Orders:*” followed by an underlined space for other instructions, followed by, in italics, “**Include goals below in E. +Contact patient or patient’s representative for further direction.*”

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

(1) Below the heading there shall be a box including the words, in bold, “**Patient Goals/Medical Condition:**” followed by an adequate space for such information;

(2) below this there shall be a checkbox followed by, “The patient has a durable power of attorney for health care decisions in accordance with K.S.A. 58-628 or 58-630, and amendments thereto.” Below that there shall be a checkbox followed by, “The patient has a declaration in accordance with K.S.A. 65-28,103, and amendments thereto.” Below that shall be the indented words “Date of execution” followed by an underlined space. Below that shall be the words, “If TPOPP not being executed by patient: we certify that this TPOPP is in accordance with the patient’s advance directive.” Below this there shall be an underlined space underneath which shall be positioned the words “Name and Position (print) Signature” and “Signature of Physician”;

(3) below these shall be the words “Directions given by:” and below that a checkbox followed by “Patient”, a checkbox followed by “Parent of Minor”, a checkbox followed by “Guardian of Minor”, a checkbox followed by “Health Care Agent”, and a checkbox followed by “Other:” followed by an underlined space. Beneath the checkbox and “Other” and the underlined space shall be the words “Basis of Authority:” followed by an underlined space; and

(4) below these shall be a four column table with four rows. In the top row the first column shall be blank; the second column shall have the words, “Printed Name”; the third column shall have the word “Signature”, and the fourth column shall have the word “Date”. In the remaining rows the second through fourth columns shall be blank. In the first column of these rows, in the second row shall be the words “Attending physician”; in the third row shall be the words “Patient or other individual checked above (patient’s representative)”; and in the

fourth row shall be the words, "Health care professional preparing form (besides doctor)."

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

"The TPOPP form is **always voluntary** and is usually for persons with advanced illness. TPOPP records your wishes for medical treatment in your current state of health. Once initial medical treatment is begun and the risks and benefits of further therapy are clear, your treatment wishes may change. Your medical care and this form can be changed to reflect your new wishes at any time. However, no form can address all the medical treatment decisions that may need to be made. An advance healthcare directive is, regardless of your health status. An advance directive allows you to document in detail your future health care instructions and/or name a healthcare agent to speak for you if you are unable to speak for yourself.

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

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

(i) Section G of the form, which shall have the heading, in bold, "**Directions for Completing and Implementing Form**," shall include the following four (4) subdivisions:

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

TPOPP must be reviewed and prepared in consultation with the patient or the patient's representative. TPOPP must be reviewed and signed by a physician to be valid. Be sure to document the basis for concluding the patient had or lacked capacity at the time of execution of the form in the patient's medical record. If the patient lacks capacity, any current advance directive form must be reviewed and the patient's representative and physician must both certify that TPOPP complies with it. The signature of the patient or the patient's representative is required; however, if the patient's representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's representative must be placed in the medical record as soon as practicable and "on file" must be written on the appropriate signature line on this form.

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

If a physician, or health facility as defined by subsection (c) of K.S.A. 40-2, 116, and amendments thereto, is unwilling to comply with the orders due to policy or personal objections, the physician or facility must not impede transfer of the patient to another provider or facility willing to implement the orders and must provide at least requested care in the meantime unless, in reasonable medical judgment, denial of requested care would not result in or hasten the patient's death. If a minor protests a directive to deny the minor life-preserving medical treatment, the denial of treatment may not be implemented pending issuance of a judicial order resolving the conflict. A direction to "preserve life" means the relevant treatment is to be

provided whenever, in reasonable medical judgment, its withholding or withdrawal would result in or hasten the patient's death.

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

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

- The patient is admitted to or discharged from a medical care facility;
- There is a substantial change in the patient's health status; or
- The treatment preferences of the patient or patient's representative change.

The same requirements for participation of the patient or patient's representative, and signature by both a physician and the patient or the patient's representative, that are described under "COMPLETING TPOPP" also apply when TPOPP is reviewed, and must be documented in Section I.

(j) Section G of the form, which shall have the heading, in bold, "**REVOCAATION OF TPOPP**," shall have the following language, with the word in bold below appearing in bold on the form:

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

(k) Section H of the form, which shall have the heading, in bold, "**REVIEW SECTION**", followed by "Periodic review confirms current form or may require completion of new form," shall include the following columns and a number of rows determined by the department of health and environment:

- (1) Date of Review
- (2) Location of Review
- (3) Patient or Representative Signature
- (4) Physician Signature
- (5) Outcome of Review.

Each row in column (5) shall include: a checkbox followed by "FORM CONFIRMED - No Change", below which there shall be a checkbox followed by "FORM VOIDED, see updated form", below which there shall be a checkbox followed by "FORM VOIDED, no new form."

(l) A final section of the form, which shall have the heading, in bold, "**Contact Information**", shall include two rows of four columns. In the first column, the first row shall include "Patient/Representative" followed by an adequate space for such information and the second column shall include "Health Care Professional Preparing Form" followed by an adequate space for such information. In the second column both rows shall include "Relationship" followed by an adequate space for such information; in the third column both rows shall include "Phone Number" followed by an adequate space for such information; and in the fourth column both rows shall include "Email Address" followed by an adequate space for such information.

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

- (1) Executing a Kansas standardized format transportable physician orders for patient

preferences form in compliance with a healthcare decision of a person apparently having authority to make a healthcare decision for a patient, including a decision to provide, withhold or withdraw health care;

(2) declining to execute a transportable physician orders for patient preferences in compliance with a healthcare decision of a person based on a reasonable belief that the person then lacked authority; or

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

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's transportable physician orders for patient preferences without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give a Kansas standardized format transportable physician orders for patient preferences, is subject to liability to that individual for damages of \$200,000.00 or actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

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

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