

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 352**

As Recommended by House Committee on  
Health and Human Services

**Brief\***

House Sub. for SB 352 would establish the No Patient Left Alone Act (Act) regarding end-of-life care. 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 also provide parameters for patient care facilities as to what restrictions may be placed on visitors.

The bill would provide patient 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 and provide for patient care facilities to remain in compliance with federal law, rules, regulations, and guidance.

The bill would also make technical amendments.

***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;

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\*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>

- “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 end-of-life care at a patient care facility; and
- “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, hospital, ambulatory surgical center or recuperation center 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 when providing end-of-life care, 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 receiving in-person visitation from one or more 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 Visitation Policies and Procedures***

The bill would provide that patient care facilities may establish visitation policies by September 1, 2024, including, but not limited to, 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.

The bill would also provide that visitation policies and procedures must allow in-person visitations, unless the patient objects, if the patient is:

- 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.

The bill would require visitation policies and procedures 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 patient 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;
- Modify visitation based on a patient's condition or need for rest;
- 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 also specify that the Department of Health and Environment is required to publish an explanation of visitation requirements and a link for individuals to report complaints alleging violations by a patient care facility on its website.

### ***Civil Liability Immunity; Federal Program Participation***

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.

The bill would not supersede any federal law, rules, regulations, or guidance regarding patient care facilities or prohibit a patient care facility from taking actions necessary to ensure eligibility with federal programs or financial participation and reimbursement for services provided in the patient care facility.

### **Background**

The House Committee on Health and Human Services recommended a substitute bill incorporating provisions of the No Patient Left Alone Act, originally contained in HB 2548, as amended by the House Committee of Health and Human Services. The original provisions of SB 352 were removed from the bill.

[*Note:* SB 352, as amended by the Senate Committee of the Whole, would have established the John D. Springer Patient's Bill of Rights which would have included patient visitation procedures at medical care facilities regarding in-person visitation and parameters for visitors regarding infectious disease control. The bill would have provided 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 also have established 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 Fund moneys. Additionally, the bill would have established patients' rights that medical care facilities would have to protect and promote and provided a civil cause of action against a medical care facility for violations of the bill.]

### ***HB 2548 – No Patient Left Alone Act***

HB 2548 was introduced in the House Committee on Health and Human Services at the request of Representative Eplee.

### ***House Committee on Health and Human Services***

In the House Committee hearing on February 6, 2024, a private citizen who practices in the medical community and representatives of the Kansas Medical Society and LeadingAge Kansas provided **proponent** testimony, stating generally that the bill addresses the individual needs of patient care facilities and ensures visitation for patients receiving end-of-life care.

Written-only proponent testimony was received from a representative of Meadowlark Hospice.

Written-only neutral testimony was provided by representatives of the Kansas Hospital Association and Mountain Region CommonSpirit Health.

The House Committee amended the bill to:

- Insert clarifying language for patient care facility visitation requirements to specify such restrictions would be for instances when these facilities provide end-of-life care;

- Remove the two individual limit for in-person visitors at a time for patients;
- Specify that the link on the Department of Health and Environment website is for individuals to report complaints alleging violations of the visitation policies; and
- Insert language for the term “patient” to clarify that a patient would mean an individual receiving end-of-life care at a patient care facility.

The House Committee amended the bill to remove the contents of SB 352 and insert the contents of HB 2548, as amended.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget, on HB 2548, as introduced, the Kansas Department of Health and Environment and the Kansas Department for Aging and Disability Services (KDADS) indicate the bill would have no fiscal effect on the agencies. KDADS’ regulatory role for adult care homes, subject to federal regulation, would continue under the provisions of the bill. If the Centers for Medicare and Medicaid Services (CMS) imposes a requirement for infection control procedures or limits on visitation for all Medicaid and Medicare providers, those federal mandates would supersede the requirements in the bill as a condition of participation for payment. KDADS would survey and enforce the federal requirements under its agreement with CMS.

Patient care facilities; in-person visits; patient; end-of-life; terminally ill; visitation policies