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 rules and regulations establishing the standardized format for a Kansas transportable physician orders for patient preferences (TPOPP) form in accordance with the provisions in section 2, and amendments thereto, adhering to the directions, sequence and wording in those provisions. The rules and regulations shall be prepared in accordance with the 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 rules and regulations.

(b) A Kansas transportable physician orders for patient preferences (TPOPP) 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 rules and 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 45 days following that effective date or after 10 days following the admission of the patient to a Kansas medical care facility, whichever is later, except 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 10 days following the admission of the patient to a Kansas medical care facility, except 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: "HIPAA 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 "Kansas Transportable 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. Any section not completed indicates full treatment for that section. Photocopy or fax copy of this form is legal and valid." The right block 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 this 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 comfort measures. Transfer to hospital if indicated. Include intensive care." Following this, 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, and comfort measures. Do not use intubation or mechanical ventilation."
Transfer to hospital if indicated. Avoid intensive care." Following this, 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. Do not transfer to hospital unless comfort needs cannot be met in the patient's current location (e.g., hip fracture)."

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, "Determine use or limitation of antibiotics when infection occurs."

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

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 "Medically Administered Fluids and Nutrition," 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" followed by "Goal(s) for trial period" followed by an underlined space. Below this there shall be a checkbox followed by, in bold, "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" followed by "Goal(s) for trial period" followed by an underlined space. Below this there shall be a checkbox followed by, in bold, "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" followed by "Goal(s) for trial period" followed by an underlined space. Below this there shall be a checkbox followed by, in bold, "No IV fluids."

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

(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 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 words "Date of execution" followed by an underlined space. Below that shall be the words, "If TPOPP not being executed by patient: I 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)" and "Signature."

(2) 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

(3) 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"; 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 health-care 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, "Directions
for Completing and Implementing Form," shall include the following four
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. 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 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.

(3) The third subdivision, entitled "REVIEWSING 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 patient's treatment preferences change.

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

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.

(j) Section H of the form, which shall have the heading, "REVIEWS
SECTION: 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) Reviewer
(3) Physician Signature
(4) Location of Review
(5) Outcome of Review.

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

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 health-care
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 health-care 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 or actual
damages resulting from the action, whichever is greater, plus reasonable
attorney fees.
(c) 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.