STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1833 By: Stanley

COMMITTEE SUBSTITUTE

An Act relating to medical care; amending 63 O.S. 2011, Section 3102A, which relates to experimental treatments, tests or drugs; authorizing parent or legal guardian to provide informed consent for incapacitated minor; modifying certain condition; providing for experimental treatment, test or drug without informed consent under certain conditions; providing certain construction; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2011, Section 3102A, is amended to read as follows:

Section 3102A. A. When ~~an adult person~~ a patient, because of a medical condition, is treated by a licensed medical doctor or doctor of osteopathy holding a faculty appointment at a medical school accredited by the Liaison Committee on Medical Education or American Osteopathic Association, or holding clinical privileges at a healthcare institution that conducts human subject research approved by ~~local~~ an accredited institutional review board, and such ~~person~~

patient is incapable of giving informed consent for ~~a local-institutional-review-board-approved~~ an accredited-institutional-review-board-approved experimental treatment, test or drug, then the administration of such treatment, test or drug may proceed upon obtaining informed consent of a parent, legal guardian, attorney-in-fact with health care decision authority, or a family member in the following order of priority:

1. ~~The~~ If the patient is a minor, the parent or legal guardian; and

2. If the patient is an adult:

a. the spouse, unless the patient has no spouse, or is separated, or the spouse is physically or mentally incapable of giving consent, or the spouse's location is unknown or the spouse is overseas, or the spouse is otherwise not available~~;~~,

~~2. An~~

b. an adult son or daughter~~;~~,

~~3. Either~~

c. either parent~~;~~,

~~4. An~~

d. an adult brother or sister~~;~~, or

~~5. A~~

e. a relative by blood or marriage.

B. ~~Nothing~~ If the patient is an adult, nothing in this section shall authorize such legal guardian, attorney-in-fact or family member to consent to treatment in contravention to such incapacitated ~~person's~~ patient's expressed permission or prohibition regarding such treatment.

C. Notwithstanding any other provision of this section, a local-institutional-review-board-approved experimental treatment, test or drug may be provided without informed consent of the patient, legal guardian, attorney-in-fact or family member as provided by paragraph 2 of subsection A of this section when all of the following criteria are met and documented in the patient's record:

1. The patient is treated in response to a call for transport via emergency transportation to a licensed health care institution and placed under the care of a licensed medical doctor or doctor of osteopathy who is either on the faculty at a medical school accredited by the Liaison Committee on Medical Education or American Osteopathic Association, or holds clinical privileges at a healthcare institution conducting human subjects research approved by an accredited institutional review board;

2. The patient is in a life-threatening situation that necessitates urgent intervention, available treatments are unproven or unsatisfactory, the experimental treatment, test, or drug has the prospect of direct benefit to the patient, and the collection of

valid scientific evidence which may include evidence obtained through randomized placebo-controlled investigations is necessary to determine the safety and effectiveness of particular interventions;

3. The emergency clinical investigator, with the concurrence of the providing licensed medical doctor or doctor of osteopathy, believes the situation necessitates the use of an experimental treatment, test, or drug;

4. Obtaining informed consent is not feasible because:

a. the patient is unable to give his or her informed consent as a result of the life-threatening medical condition,

b. the intervention under investigation must be administered before consent from the patient's legally authorized representative, or parent or guardian in the case of a minor, is feasible, and

c. there is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the emergency research clinical investigation;

5. Full written consent is sought as soon as reasonably possible once the patient is stabilized; and

6. The research has been approved by an accredited local institutional review board and is in accordance with the federal

regulations for exemption from informed consent requirements for emergency research.

D. Nothing in this section shall permit a parent, legal guardian, attorney-in-fact, or family member to authorize the use of an experimental treatment, test, or drug on a pregnant patient.

SECTION 2. This act shall become effective November 1, 2020.

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