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February 24, 2020

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1833

By: Stanley of the Senate

and

Roe of the House

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

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

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

11 2. If the patient is an adult:

12 a. the spouse, unless the patient has no spouse, or is
13 separated, or the spouse is physically or mentally
14 incapable of giving consent, or the spouse's location
15 is unknown or the spouse is overseas, or the spouse is
16 otherwise not available~~†~~,

17 ~~2. An~~

18 b. an adult son or daughter~~†~~,

19 ~~3. Either~~

20 c. either parent~~†~~,

21 ~~4. An~~

22 d. an adult brother or sister~~†~~, or

23 ~~5. A~~

24 e. a relative by blood or marriage.

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

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

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

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

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

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

8 4. Obtaining informed consent is not feasible because:

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

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

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

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

22 6. The research has been approved by an accredited local
23 institutional review board and is in accordance with the federal
24

1 regulations for exemption from informed consent requirements for
2 emergency research.

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
8 February 24, 2020 - DO PASS AS AMENDED
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