

HOUSE BILL No. 2171

By Committee on Judiciary

1-25

1 AN ACT concerning healthcare providers; relating to peer review;
2 providing that privilege does not apply to factual information;
3 amending K.S.A. 65-4925 and K.S.A. 2022 Supp. 65-4915 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2022 Supp. 65-4915 is hereby amended to read as
8 follows: 65-4915. (a) As used in this section:

9 (1) "Healthcare provider" means:

10 (A) Those persons and entities defined as a healthcare provider under
11 K.S.A. 40-3401, and amendments thereto; and

12 (B) a dentist licensed by the Kansas dental board, a dental hygienist
13 licensed by the Kansas dental board, a professional nurse licensed by the
14 board of nursing, a practical nurse licensed by the board of nursing, a
15 mental health technician licensed by the board of nursing, a physical
16 therapist licensed by the state board of healing arts, a physical therapist
17 assistant certified by the state board of healing arts, an occupational
18 therapist licensed by the state board of healing arts, an occupational
19 therapy assistant licensed by the state board of healing arts, a respiratory
20 therapist licensed by the state board of healing arts, a physician assistant
21 licensed by the state board of healing arts and *an* emergency medical
22 service provider and ambulance services certified by the emergency
23 medical services board.

24 (2) "Healthcare provider group" means:

25 (A) A state or local association of healthcare providers or one or more
26 committees thereof;

27 (B) the board of governors created under K.S.A. 40-3403, and
28 amendments thereto;

29 (C) an organization of healthcare providers formed pursuant to state
30 or federal law and authorized to evaluate medical and healthcare services;

31 (D) a review committee operating pursuant to K.S.A. 65-2840c, and
32 amendments thereto;

33 (E) an organized medical staff of a licensed medical care facility as
34 defined by K.S.A. 65-425, and amendments thereto, an organized medical
35 staff of a private psychiatric hospital licensed under K.S.A. 39-2001 et
36 seq., and amendments thereto, or an organized medical staff of a state

1 psychiatric hospital or state institution for people with intellectual
2 disability, as follows: Larned state hospital, Osawatomie state hospital,
3 Rainbow mental health facility, Kansas neurological institute and Parsons
4 state hospital and training center;

5 (F) a healthcare provider;

6 (G) a professional society of healthcare providers or one or more
7 committees thereof;

8 (H) a Kansas corporation whose stockholders or members are
9 healthcare providers or an association of healthcare providers, which
10 corporation evaluates medical and healthcare services;

11 (I) an insurance company, health maintenance organization or
12 administrator of a health benefits plan that engages in any of the functions
13 defined as peer review under this section;~~or and~~

14 (J) the university of Kansas medical center.

15 (3) "Peer review" means any of the following functions:

16 (A) Evaluate and improve the quality of healthcare services rendered
17 by healthcare providers;

18 (B) determine that health services rendered were professionally
19 indicated or were performed in compliance with the applicable standard of
20 care;

21 (C) determine that the cost of healthcare rendered was considered
22 reasonable by the providers of professional health services in this area;

23 (D) evaluate the qualifications, competence and performance of the
24 providers of healthcare or to act upon matters relating to the discipline of
25 any individual provider of healthcare;

26 (E) reduce morbidity or mortality;

27 (F) establish and enforce guidelines designed to keep within
28 reasonable bounds the cost of healthcare;

29 (G) conduct of research;

30 (H) determine if a hospital's facilities are being properly utilized;

31 (I) supervise, discipline, admit, determine privileges or control
32 members of a hospital's medical staff;

33 (J) review the professional qualifications or activities of healthcare
34 providers;

35 (K) evaluate the quantity, quality and timeliness of healthcare
36 services rendered to patients in the facility; *and*

37 (L) evaluate, review or improve methods, procedures or treatments
38 being utilized by the medical care facility or by healthcare providers in a
39 facility rendering healthcare.

40 (4) "Peer review officer or committee" means:

41 (A) An individual employed, designated or appointed by, or a
42 committee of or employed, designated or appointed by, a healthcare
43 provider group and authorized to perform peer review;~~or and~~

1 (B) a healthcare provider monitoring the delivery of healthcare at
2 correctional institutions under the jurisdiction of the secretary of
3 corrections.

4 (b) Except as provided by K.S.A. 60-437, and amendments thereto,
5 and by subsections (c) ~~and~~, (d), (e), (f) and (g), the reports, statements,
6 *witness testimony, affidavits*, memoranda, proceedings, findings and other
7 records *or data* submitted to, *considered by* or generated by peer review
8 committees or officers, *whether oral or written*, shall be privileged and
9 shall not be *disclosed to any person or entity, be admissible in any civil*
10 *action, administrative proceeding or disciplinary board of this state, be*
11 subject to discovery, subpoena or other means of legal compulsion for
12 their release to any person or entity or be admissible in evidence in any
13 judicial or administrative proceeding. Information contained in such
14 records shall not be discoverable or admissible at trial in the form of
15 testimony by an individual who participated in the peer review process.
16 The peer review officer or committee creating or initially receiving the
17 record is the holder of the privilege established by this section. This
18 privilege may be claimed by the legal entity creating the peer review
19 committee or officer, or by the commissioner of insurance for any records
20 or proceedings of the board of governors.

21 (c) Subsection (b) shall not apply to proceedings in which a
22 healthcare provider contests the revocation, denial, restriction or
23 termination of staff privileges or the license, registration, certification or
24 other authorization to practice of the healthcare provider. A licensing
25 agency in conducting a disciplinary proceeding in which admission of any
26 peer review committee report, record or testimony is proposed shall hold
27 the hearing in closed session when any such report, record or testimony is
28 disclosed. Unless otherwise provided by law, a licensing agency
29 conducting a disciplinary proceeding may close only that portion of the
30 hearing in which disclosure of a report or record privileged under this
31 section is proposed. In closing a portion of a hearing as provided by this
32 section, the presiding officer may exclude any person from the hearing
33 location except the licensee, the licensee's attorney, the agency's attorney,
34 the witness, the court reporter and appropriate staff support for either
35 counsel. The licensing agency shall make the portions of the agency record
36 in which such report or record is disclosed subject to a protective order
37 prohibiting further disclosure of such report or record. *Except as provided*
38 *in subsections (d) and (e)*, such report or record shall not be subject to
39 discovery, subpoena or other means of legal compulsion for their release to
40 any person or entity. *Except as provided in subsections (d) and (e)*, no
41 person in attendance at a closed portion of a disciplinary proceeding shall,
42 at a subsequent civil, criminal or administrative hearing, be required to
43 testify regarding the existence or content of a report or record privileged

1 under this section that was disclosed in a closed portion of a hearing, nor
2 shall such testimony be admitted into evidence in any subsequent civil,
3 criminal or administrative hearing. A licensing agency conducting a
4 disciplinary proceeding may review peer review committee records,
5 testimony or reports but must prove its findings with independently
6 obtained testimony or records that shall be presented as part of the
7 disciplinary proceeding in open meeting of the licensing agency. Offering
8 such testimony or records in an open public hearing shall not be deemed a
9 waiver of the peer review privilege relating to any peer review committee
10 testimony, records or report.

11 (d) Nothing in this section shall limit the authority that may otherwise
12 be provided by law of the commissioner of insurance, the state board of
13 healing arts or other healthcare provider licensing or disciplinary boards of
14 this state to require a peer review committee or officer to report to it any
15 disciplinary action or recommendation of such committee or officer; to
16 transfer to it records of such committee's or officer's proceedings or actions
17 to restrict or revoke the license, registration, certification or other
18 authorization to practice of a healthcare provider; or to terminate the
19 liability of the fund for all claims against a specific healthcare provider for
20 damages for death or personal injury pursuant to K.S.A. 40-3403(i), and
21 amendments thereto. *Except as provided in subsection (g)*, reports and
22 records so furnished shall not be subject to discovery, subpoena or other
23 means of legal compulsion for their release to any person or entity and
24 shall not be admissible in evidence in any judicial or administrative
25 proceeding other than a disciplinary proceeding by the state board of
26 healing arts or other healthcare provider licensing or disciplinary boards of
27 this state.

28 (e) A peer review committee or officer may report to and discuss its
29 activities, information and findings to other peer review committees or
30 officers or to a board of directors or an administrative officer of a
31 healthcare provider without waiver of the privilege provided by subsection
32 (b) and the records of all such committees or officers relating to such
33 report shall be privileged as provided by subsection (b).

34 (f) Nothing in this section shall be construed to prevent an insured
35 from obtaining information pertaining to payment of benefits under a
36 contract with an insurance company, a health maintenance organization or
37 an administrator of a health benefits plan.

38 (g) *Factual information is not protected under subsection (b) as part*
39 *of the peer review process, whether independently discoverable from other*
40 *sources or not, including the names and addresses of persons whom any*
41 *peer review committee or officer knows to have direct knowledge of the*
42 *provision of healthcare in question, statements or testimony of witnesses*
43 *with direct knowledge, incident reports, occurrence reports, memoranda,*

1 written or electronic communications, statements or similar reports that
2 contain facts concerning a specific situation, and shall not include records
3 made in the regular course of business by a hospital or other provider of
4 healthcare, including patient medical records. Original sources of
5 information, data, documents or records shall not be construed as being
6 immune from discovery or use in any claim or civil proceeding solely
7 because they were reviewed or considered by a medical provider for
8 submission to, or were submitted to or reviewed by, a peer review
9 committee or peer review officer. The deliberations, analyses, findings,
10 conclusions and recommendations of any peer review committee or officer
11 shall remain protected under subsection (b) and shall not be subject to
12 discovery in any claim process or civil action.

13 Sec. 2. K.S.A. 65-4925 is hereby amended to read as follows: 65-
14 4925. (a) *Except as provided in subsection (f):*

15 (1) The reports and records made pursuant to K.S.A. 65-4923 or 65-
16 4924, and amendments thereto, shall be confidential and privileged,
17 including:

18 ~~(A)~~(A) Reports and records of executive or review committees of
19 medical care facilities or of a professional society or organization;

20 ~~(B)~~(B) reports and records of the chief of the medical staff, chief
21 administrative officer or risk manager of a medical care facility;

22 ~~(C)~~(C) reports and records of any state licensing agency or impaired
23 provider committee of a professional society or organization; and

24 ~~(D)~~(D) reports made pursuant to this act to or by a medical care
25 facility risk manager, any committee, the board of directors, administrative
26 officer or any consultant.

27 (2) Such reports and records shall not be subject to discovery,
28 subpoena or other means of legal compulsion for their release to any
29 person or entity and shall not be admissible in any civil or administrative
30 action other than a disciplinary proceeding by the appropriate state
31 licensing agency.

32 (b) *Except as provided in subsection (f),* no person in attendance at
33 any meeting of an executive or review committee of a medical care facility
34 or of a professional society or organization while such committee is
35 engaged in the duties imposed by K.S.A. 65-4923 shall be compelled to
36 testify in any civil, criminal or administrative action, other than a
37 disciplinary proceeding by the appropriate licensing agency, as to any
38 committee discussions or proceedings.

39 (c) *Except as provided in subsection (f),* no person in attendance at
40 any meeting of an impaired provider committee shall be required to testify,
41 nor shall the testimony of such person be admitted into evidence, in any
42 civil, criminal or administrative action, other than a disciplinary
43 proceeding by the appropriate state licensing agency, as to any committee

1 discussions or proceedings.

2 (d) Any person or committee performing any duty pursuant to this act
3 shall be designated a peer review committee or officer pursuant to K.S.A.
4 65-4915 and amendments thereto.

5 (e) A licensing agency in conducting a disciplinary proceeding in
6 which admission of any peer review committee report, record or testimony
7 is proposed shall hold the hearing in closed session when any such report,
8 record or testimony is disclosed. Unless otherwise provided by law, a
9 licensing agency conducting a disciplinary proceeding may close only that
10 portion of the hearing in which disclosure of a report or record privileged
11 under this section is proposed. In closing a portion of a hearing as
12 provided by this section, the presiding officer may exclude any person
13 from the hearing location except the licensee, the licensee's attorney, the
14 agency's attorney, the witness, the court reporter and appropriate staff
15 support for either counsel. The licensing agency shall make the portions of
16 the agency record in which such report or record is disclosed subject to a
17 protective order prohibiting further disclosure of such report or record.
18 Such report or record shall not be subject to discovery, subpoena or other
19 means of legal compulsion for their release to any person or entity. No
20 person in attendance at a closed portion of a disciplinary proceeding shall
21 at a subsequent civil, criminal or administrative hearing, be required to
22 testify regarding the existence or content of a report or record privileged
23 under this section which was disclosed in a closed portion of a hearing, nor
24 shall such testimony be admitted into evidence in any subsequent civil,
25 criminal or administrative hearing. A licensing agency conducting a
26 disciplinary proceeding may review peer review committee records,
27 testimony or reports but must prove its findings with independently
28 obtained testimony or records which shall be presented as part of the
29 disciplinary proceeding in open meeting of the licensing agency. Offering
30 such testimony or records in an open public hearing shall not be deemed a
31 waiver of the peer review privilege relating to any peer review committee
32 testimony, records or report.

33 (f) *Factual information protected from disclosure under subsection*
34 *(a) as part of the risk management review process is not protected from*
35 *disclosure, whether independently discoverable from other sources or not,*
36 *including the names and addresses of persons whom any peer review*
37 *committee or officer knows to have direct knowledge of the provision of*
38 *healthcare in question, statements or testimony of witnesses with direct*
39 *knowledge, incident reports, occurrence reports, memoranda, written or*
40 *electronic communications, statements or similar reports that contain*
41 *facts concerning a specific situation, and shall not include records made*
42 *in the regular course of business by a hospital or other provider of*
43 *healthcare, including patient medical records. Original sources of*

1 *information, data, documents or records shall not be construed as being*
2 *immune from discovery or use in any claim or civil proceeding solely*
3 *because they were reviewed or considered by a medical provider for*
4 *submission to, or were submitted to or reviewed by, a peer review*
5 *committee or peer review officer. The deliberations, analyses, findings,*
6 *conclusions and recommendations of any peer review committee or officer*
7 *shall remain protected under subsection (a) and shall not be subject to*
8 *discovery in any claim process or civil action.*

9 Sec. 3. K.S.A. 65-4925 and K.S.A. 2022 Supp. 65-4915 are hereby
10 repealed.

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