

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 131**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 131, as amended, would permit the issuance of a sports waiver for certain health care professionals; would establish the No Patient Left Alone Act (Act); and would amend a provision in the Pharmacy Act of the State of Kansas to add pharmacy technicians, who meet age and supervision oversight parameters, to the list of those authorized to administer vaccinations after successfully completing an appropriate course of study and training.

Sports Waiver (New Section 1)

The bill would authorize certain health care professionals licensed in a home state other than Kansas and traveling with a sports team to practice their profession within Kansas for a short period of time during certain sporting events under a sports waiver issued by the State Board of Healing Arts (Board). [Note: Board as referenced throughout means the State Board of Healing Arts.] Health care services could be provided only on behalf of team members and coaching staff during sporting events pursuant to a contract with a sports team to provide such services, upon invitation by a national sports governing body to provide medical services at a national sports training center in Kansas, or at events or competitions sanctioned by a national sport governing body.

The bill would establish a process for sports waivers for health care professionals licensed by the Board, authorize the

*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>

Board to issue such waivers, set limitations on the frequency and duration of the waivers, and address scope of practice requirements, compliance with Kansas rules and regulations, and reporting of any potential violation of the Healing Arts Act or other applicable practice act to the Board. Additionally, the bill would provide the Board with rules and regulations authority to implement the bill's provisions, authorize the Board to establish procedures to allow sports waivers for other health care professions, and make the provisions of the bill part of and supplemental to the Healing Arts Act.

Sports Waiver Process and Requirements for Physicians

The bill would require the Board to issue a sports waiver to an out-of-state physician within 15 days from receipt of a complete application if the physician:

- Submits a complete application;
- Holds an unrestricted license in another state and is not the subject of any investigation or disciplinary action;
- Has professional liability insurance coverage for the duration of the sporting event at the minimum required levels to practice in Kansas; and
 - Has entered into a written agreement with a sports team to provide medical care to team members and coaching staff traveling with the team for a specific sporting event in Kansas; or
 - Has been invited by a national sport governing body to provide medical services to team members and coaching staff at a national sports training center in Kansas, or to provide medical services at an event or competition sanctioned by a national sport governing body.

Health Care Provider Practice Requirements

The bill would require any individual who has been issued a sports waiver by the Board to practice within the scope of practice as defined by Kansas law for their health care profession and would limit health care services to be provided only for team members and coaching staff as required by written agreement with a sports team or health care services required by a national sport governing body.

The bill would also require a health care provider issued a sports waiver by the Board to adhere to all the rules and regulations pertaining to the health care profession in Kansas and would consider the health care professional to be a licensee of the Board.

Practice Restrictions

The bill would prohibit a physician exempt from state licensure due to the issuance of a sports waiver from providing health care or consultation to any individual residing in Kansas, other than those specifically authorized under the bill to receive health care services. The bill would also prohibit the practice of an individual's health care profession at a licensed health care facility in this state.

Sports Waiver Limitations

The bill would specify that a sports waiver would be valid for the duration of a sporting event, not to exceed 30 days, and would limit an individual to no more than 5 sports waivers per calendar year, except during an extenuating, unforeseen circumstance as approved by the Board.

Reporting Requirements

The bill would require an individual under a sports waiver or an out-of-state sports team to report to the Board

any potential violation of the Healing Arts Act or other applicable practice act, including but not limited to unprofessional conduct or professional incompetence.

Sports Waiver Denial

The bill would authorize the Board to deny an application for a sports waiver if the individual did not meet the technical qualifications or if granting the sports waiver could endanger the health and safety of the public.

Sports Waiver Rules and Regulations

The bill would authorize the Board to adopt rules and regulations necessary to implement the provisions of the bill, including procedures for reporting potential medical violations.

Sports Waivers for Other Board Licensed Health Care Professionals

The bill would authorize the Board to adopt procedures to allow other health care professionals licensed and regulated by the Board to be issued a sports waiver to ensure patient safety.

Inclusion in Healing Arts Act

The bill would add provisions of the bill pertaining to sports waivers to the Healing Arts Act.

No Patient Left Alone Act (New Section 2)

The bill would also create the No Patient Left Alone Act (Act), which 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 provide

parameters for patient care facilities as to what restrictions may be asked of visitors when visiting a patient.

Definitions

The bill would define terms for the Act, 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;
- “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 care at or is a resident of 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, 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 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 preventing a patient who is terminally ill or receiving end-of-life care from receiving in-person visitation from two 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 Care Facilities

The bill would provide that patient care facilities may establish visitation policies by September 1, 2023, 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. Further, the bill would 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, if established, 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 medical 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 specifies the Department of Health and Environment must publish on its website an explanation of visitation requirements and a link to report complaints alleging violations by a patient care facility.

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 prohibit a patient care facility from taking the steps necessary to ensure eligibility with federal programs or financial participation and would not supersede any federal law, rules, regulations, or guidance regarding patient care facilities.

***Pharmacy Act Amendments—Vaccine Administration
(Section 3)***

The bill would amend a provision in the Pharmacy Act of the State of Kansas to add pharmacy technicians, at least 18 years of age and under the direct supervision and control of a pharmacist, to the list of those authorized to administer vaccinations after successfully completing a course of study and training in vaccination storage, protocols, injection technique, emergency procedures, recordkeeping, and cardiopulmonary resuscitation (CPR).

The bill would require a pharmacist, pharmacy student, or pharmacy intern to be at least 18 years of age to administer a vaccine.

Pharmacy technicians would be added to pharmacists, pharmacy students, and pharmacy interns as:

- Authorized to administer:
 - The influenza vaccine to persons six years of age or older; and
 - Vaccines, other than the influenza vaccine, to persons 12 years of age or older pursuant to a vaccination protocol;
- Required to record the immunization to the appropriate physician for the individual receiving the immunization; and
- Prohibited from delegating authority to administer a vaccination.

Background

SB 131 was introduced by Senators Pittman, Doll, and Erickson. The Senate Committee on Public Health and Welfare recommended its amendments to the bill, as introduced, be incorporated into a substitute bill. The House Committee on Health and Human Services amended the substitute bill. The House Committee of the Whole amended the bill to add HB 2263 as amended by the House Committee on Health and Human Services (Pharmacy Act amendments) and HB 2264 as amended by the House Committee on Health and Human Services (No Patient Left Alone Act).

Sub. for SB 131 (Sports Waiver)

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on February 17, 2023, **proponent** testimony was provided by Senator Pittman who stated Kansas is one of four states without a sports waiver. He stated a sports waiver would permit sports teams to utilize team-affiliated health care professionals to provide health care services to the athletes when sports teams are in Kansas for sporting events, without requiring the health care professional to obtain a license to practice medicine for a short term.

Proponent testimony was provided by a representative of the Kansas Chiropractic Association, who requested an amendment to include all health care providers licensed by the Board, which would include doctors of chiropractic. Proponent testimony was also heard from a representative of the Kansas Academy of Family Physicians who indicated that a sports waiver would reduce the administrative burden to find local health care professionals to assist during the sporting event.

Written-only proponent testimony was provided by representatives of the American Medical Society for Sports Medicine.

Neutral testimony was provided by a representative of the Board who, in general, was in support of the bill but offered amendments for consideration.

Written-only neutral testimony was provided by a representative of the Kansas Medical Society.

No other testimony was provided.

The Senate Committee recommended a substitute bill incorporating the following amendments:

- Provide a process for the Board to issue a sports waiver to an out-of-state physician;
- Address scope of practice requirements;
- Require a physician to have a written agreement with a sports team to provide health care services for team members and coaching staff;
- Require any person practicing on a sports waiver to adhere to all the rules and regulations pertaining to the health care profession in Kansas and the health care professional be considered a licensee of the Board;
- Establish limits on the duration and frequency of a sports waiver and provide for an exception;
- Require any individual practicing under a sports waiver or an out-of-state sports team to report to the Board any potential violation of the Healing Arts Act or other applicable practice act, including but not limited to unprofessional conduct or professional incompetence;
- Authorize the Board to deny an application for a sports waiver under certain conditions; and
- Authorize the Board to adopt procedures to allow other health care professionals licensed and regulated by the Board to be issued a sports waiver to ensure patient safety.

House Committee on Health and Human Services

In the House Committee hearing on March 13, 2023, **proponent** testimony was provided by Senator Pittman, who stated Kansas is one of four states without a sports waiver. He stated a sports waiver would permit sports teams to utilize team-affiliated health care professionals to provide health care services to the athletes when sports teams are in Kansas for sporting events. The sports waiver would allow the health care professional to obtain a Kansas license to practice medicine for a short term.

Proponent testimony was heard from a representative of the Board, who was generally in favor of the waiver but offered two amendments for consideration. Proponent testimony was also heard from representatives of the Kansas Academy of Family Physicians and the American Medical Society for Sports Medicine, who indicated that a sports waiver would streamline the process for medical professionals when their teams participate in an event in Kansas.

Written-only proponent testimony was provided by a representative of the Kansas Chiropractic Association.

No other testimony was provided.

The House Committee amended the bill as follows:

- To replace the word “physician” with “any individual” in provisions limiting the practice of sports waiver participants in Kansas, to reflect that a sports waiver may be issued to more types of health care providers; and,
- To delete provisions stating the Board may enter into agreements with medical and osteopathic licensing boards.

House Committee of the Whole

The House Committee of the Whole (HCOW) amended the bill to:

- Insert the contents pertaining to vaccine administration (HB 2263, as recommended by the House Committee on Health and Human Services); and
- Insert the contents pertaining to the No Patient Left Behind Act (HB 2264, as recommended by the House Committee on Health and Human Services).

HB 2263 (Pharmacy Act Amendments—Vaccine Administration)

House Committee on Health and Human Services

In the House Committee hearing, a representative of the KPhA provided **proponent** testimony, stating that the bill would allow pharmacy technicians to continue to administer vaccinations after completing training as had been permitted under the federal Public Readiness and Emergency Preparedness Act (PREP Act) after it expires in October 2024. The representative noted that an amendment was requested to clarify that pharmacy technicians needed to be 18 years of age or older to administer vaccinations.

Additional proponent testimony was heard from a pharmacy technician and a pharmacist who stated the number of vaccines they had been able to administer in their communities due to the PREP Act and how adding pharmacy technicians would continue to benefit their communities.

Written-only proponent testimony was submitted by a representative of the Kansas Board of Pharmacy .

Neutral testimony was offered by a representative of Kansas Medical Society who also expressed support for specifying an age requirement.

The House Committee amended the bill to add “18 years of age or older” as a requirement for those permitted to administer vaccinations.

HB 2264 (No Patient Left Alone Act)

House Committee on Health and Human Services

In the House Committee hearing on February 7, 2023, **proponent** testimony was provided by two private citizens who practice in the medical community stating that the bill addresses the main issue of ensuring that patients in a facility are permitted to have in-person visits during their stay in the facility.

Written-only proponent testimony was received from representatives of HCA Healthcare and the Kansas Medical Society.

Opponent testimony was provided by a representative of LeadingAge Kansas, who suggested amendments to the bill, particularly regarding the need for patient care facilities to adhere to federal laws, rules, and other guidance in order to remain eligible for federal funding and programs.

Neutral testimony was provided by a representative of Kansas Health Care Association and Kansas Center for Assisted Living. Neutral written-only testimony was received from representatives of the Kansas Hospital Association and Kansas Adult Care Executives.

The House Committee amended the bill to:

- Specify that a patient care facility could not prevent a patient from receiving in-person visitation from

any person designated by the patient or, if the patient does not have the capacity to make such a designation, by the patient's agent for health care decisions established by a durable power of attorney;

- Add domestic partners and significant others to the list of individuals that would be allowed in-person visitation of a patient;
- Specify that patient care facilities may, rather than shall, establish visitation policies and procedures and that such policies and procedures would not be limited to those listed in the bill;
- Provide that patient care facilities would be able to require a visitor to adhere to infection control procedures, including wearing personal protective equipment, though such protocols could not be more stringent for visitors than those providing direct care to patients;
- Provide for civil liability from damages to patient care facilities acting in compliance with the Act unless such actions would constitute gross negligence or willful, wanton, or reckless conduct; and
- Specify the Act would not supersede any federal law, rules, regulations, or guidance regarding patient care facilities and would not prohibit a patient care facility from taking actions necessary to ensure eligibility for federal financial participation, federal funds, participation in federal programs, and reimbursement for services provided.

Fiscal Information

Sub. for SB 131 (Sports Waiver)

According to the fiscal note prepared by the Division of the Budget on SB 131, as introduced, the State Board of Healing Arts indicates enactment of the bill would not generate any additional revenue for the agency. The bill could result in an increase of complaints, but the agency would not have jurisdiction to investigate providers licensed in another state if they are not also licensed in Kansas. The agency notes that the home state of licensure would likely not initiate an investigation as the practice is determined by where the patient is located, so the bill could leave patients unprotected. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

HB 2263 (Pharmacy Act Amendments—Vaccine Administration)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Board of Pharmacy states the bill would expand state authority to match current federal authority, which has been in place for two and half years. The Board of Pharmacy anticipates enactment of the bill would have no fiscal effect on the Board of Pharmacy.

HB 2264 (No Patient Left Alone Act)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, both the Department of Health and Environment and the Kansas Department for Aging and Disability Services (KDADS) indicate that enactment of the bill would have no fiscal effect. KDADS' regulatory role for adult care homes, subject to federal regulation, would continue under the provisions of the bill. If the federal Centers for Medicare and Medicaid Services

(CMS) impose a requirement for infection control procedures or limits on visitation for all Medicaid and Medicare providers, those federal mandates would supersede the requirements of the bill as a condition of participation for payment. KDADS would survey and enforce the federal requirements under its agreement with CMS.

Health; sports waiver; State Board of Healing Arts; physician; health care services; No Patient Left Alone Act; health care provider; patient care facilities; in-person visits; patient; pharmacy technician; pharmacist; vaccine