

HOUSE BILL No. 2829

By Committee on Health and Human Services

2-6

9 AN ACT concerning the secretary of health and environment; providing
10 for regulation of clinics and facilities where office-based surgeries and
11 special procedures are performed.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. As used in this act:

15 (a) "Board" means the state board of healing arts.

16 (b) "Local anesthesia" means the administration of an anesthetic
17 agent into a localized part of the human body by topical application or
18 local infiltration in close proximity to a nerve, which produces a transient
19 and reversible loss of sensation.

20 (c) "Minimal sedation" means the administration of oral sedative or
21 oral analgesic drugs in doses appropriate for the unsupervised treatment
22 of insomnia, anxiety or pain.

23 (d) "Minor surgery" means surgery which can be safely and com-
24 fortably performed on a patient who has received local or topical anes-
25 thesia, without more than minimal sedation and where the likelihood of
26 complications requiring hospitalization is remote.

27 (e) "Office-based surgery" means any surgery or other special pro-
28 cedure requiring anesthesia, analgesia or sedation which is performed by
29 a physician in a clinical location other than a medical facility licensed
30 pursuant to K.S.A. 65-425, and amendments thereto, and which results
31 in a patient stay of less than 24 hours. The term does not include minor
32 surgery.

33 (f) "Physician" means a person licensed to practice medicine and sur-
34 gery in the state of Kansas.

35 (g) "Secretary" means the secretary of health and environment.

36 (h) "Special procedure" means a patient care service which requires
37 contact with the human body with or without instruments in a potentially
38 painful manner, for a diagnostic or therapeutic procedure requiring an-
39 esthesia services. The term does not include minor surgery.

40 (i) "Surgery" means a manual or operative procedure which involves
41 the excision or resection, partial or complete, destruction, incision or
42 other structural alteration of human tissue by any means, including the
43 use of lasers, performed upon the human body for the purpose of pre-

1 serving health, diagnosing or treating disease, repairing injury, correcting
2 deformity or defects, prolonging life or relieving suffering, or for aes-
3 thetic, reconstructive or cosmetic purposes. Surgery includes, but is not
4 limited to, incision or curettage of tissue or an organ, suture or other
5 repair of tissue or an organ, a closed or open reduction of a fracture,
6 extraction of tissue from the uterus and insertion of natural or artificial
7 implants.

8 (j) “Topical anesthesia” means an anesthetic agent applied directly or
9 by spray to the skin or mucous membranes, intended to produce a tran-
10 sient and reversible loss of sensation to a circumscribed area.

11 Sec. 2. (a) The secretary, by rules and regulations, shall establish
12 standards for clinics and other facilities, in consultation with the state
13 board of healing arts, where office-based surgery or special procedures,
14 or both, are performed. Such standards shall promote the safety of pa-
15 tients, including, but not limited to, standards addressing:

- 16 (1) Qualifications and supervision of nonphysician personnel;
- 17 (2) facility safety and sanitation;
- 18 (3) equipment requirements, sanitation, testing and maintenance;
- 19 (4) patient screening, assessment and monitoring;
- 20 (5) selection of procedures to be performed;
- 21 (6) anesthesia services;
- 22 (7) peri-operative care;
- 23 (8) emergencies and patient transfers; and
- 24 (9) quality assurance and peer review.

25 (b) In adopting standards pursuant to this section, the secretary, in
26 consultation with the state board of healing arts, shall give consideration
27 to standards adopted for the purposes of regulating ambulatory surgical
28 centers licensed pursuant to K.S.A. 65-425 et seq. and amendments
29 thereto and shall give consideration to the guidelines for office-based
30 surgery and special procedures approved by the Kansas medical society
31 house of delegates on May 5, 2002, and any subsequently approved guide-
32 lines, and to guidelines for office-based surgery and special procedures
33 approved by the state board of healing arts.

34 (c) Any rules and regulations adopted by the secretary pursuant to
35 this act shall provide for protection of the identities of patients and health
36 care providers. Rules and regulations adopted under this section shall
37 allow a reasonable time for compliance as specified by the rule and
38 regulation.

39 Sec. 3. (a) A correction order may be issued by the secretary or the
40 secretary’s designee to a clinic or facility which performs office-based
41 surgery or special procedures, or both, whenever a duly authorized rep-
42 resentative of the secretary inspects or investigates such clinic or facility
43 and determines that the clinic or facility is not in compliance with the

1 standards adopted by the secretary by rule and regulation pursuant to
2 section 2 and amendments thereto. The correction order shall be served
3 upon the clinic or facility either personally or by certified mail, return
4 receipt requested. The correction order shall be in writing, shall state the
5 specific deficiency and shall specify a time of 30 days for correction of
6 the deficiency, unless the deficiency is of such an extreme hazard to the
7 health and safety of a patient that immediate correction is required. In
8 such an extreme case correction of the deficiency in less than 30 days
9 may be ordered by the secretary or the secretary's designee.

10 (b) When the time period set forth in the correction order has passed,
11 the clinic or facility shall be reinspected for compliance. If the clinic or
12 facility is still in noncompliance, the secretary or the secretary's designee
13 may restrict the performance of any office-based surgeries or special pro-
14 cedures, or both, at the noncompliant clinic or facility until compliance
15 is found and may level a civil penalty against such clinic or other facility
16 pursuant to section 4, and amendments thereto. If the secretary deter-
17 mines that the continued performance of office-based surgeries and spe-
18 cial procedures at the noncompliant clinic or facility poses a threat of
19 potential harm to patients, the secretary may exercise injunctive authority
20 until such time as a hearing may be conducted in accordance with the
21 provisions of the Kansas administrative procedure act.

22 Sec. 4. (a) Any clinic or facility which remains noncompliant to the
23 correction order and continues to violate any provision of the rules and
24 regulations adopted under this act may incur a civil penalty in an amount
25 not more than \$5,000 for every such violation. In the case of a continuing
26 violation, every day such violation continues shall be deemed a separate
27 violation.

28 (b) The secretary, upon a finding that a clinic or facility has violated
29 any provision of rules and regulations adopted under this act may impose
30 a penalty within the limits provided in this section. In determining the
31 amount of the civil penalty, the secretary shall take into consideration all
32 relevant circumstances, including, but not limited to, the extent of harm
33 caused by the violation, the nature and persistence of the violation, the
34 length of time over which the violation occurs and any corrective actions
35 taken.

36 (c) No penalty shall be imposed under this section until written notice
37 and an opportunity for hearing have been provided to the clinic or facility
38 alleged to have committed the violation. Such notice shall state the vio-
39 lation, the penalty to be imposed and the right of the clinic or facility to
40 a hearing on the matter. Such clinic or facility, within 15 days after service
41 of the order, may make written request to the secretary for a hearing
42 thereon. The hearing shall be conducted in accordance with the provi-
43 sions of the Kansas administrative procedure act.

1 (d) Any action of the secretary pursuant to this section is subject to
2 review in accordance with the act for judicial review and civil enforcement
3 of agency actions.

4 Sec. 5. Any clinic or facility where office-based surgery or special
5 procedures, or both, are performed at the time rules and regulations
6 adopted under this act take effect shall be given reasonable time, as de-
7 termined by the secretary under the particular circumstances, but not to
8 exceed 30 days from the effective date of such rules and regulations,
9 within which to comply with such rules and regulations.

10 Sec. 6. (a) The secretary shall conduct unannounced inspections of
11 any clinic or facility where office-based surgery or special procedures are
12 performed at least every five years on a routine basis. As soon as possible
13 after the effective date of this act, the secretary shall conduct unannoun-
14 ced inspections of any clinic or facility in which abortions are performed.
15 Upon receipt of a complaint, the secretary shall conduct an inspection in
16 a timely manner. The secretary shall certify to the board of healing arts
17 the cost of inspections under this act, and the board of healing arts shall
18 pay to the department of health and environment from the healing arts
19 fee fund the amount of such certified costs.

20 (b) The board of healing arts shall forward all complaints it receives
21 regarding clinics or facilities where office-based surgery or special pro-
22 cedures are performed to the secretary.

23 (c) The secretary shall forward the results of all inspections to the
24 board of healing arts or the state board of nursing, or both, as appropriate,
25 when such clinic or facility is out of compliance.

26 Sec. 7. This act shall take effect and be in force from and after its
27 publication in the statute book.