

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2119**

As Agreed to April 3, 2019

Brief*

HB 2119 would amend the Pharmacy Act of the State of Kansas to require certain prescription orders be transmitted electronically and to permit a licensed pharmacist to administer a drug by injection in certain situations. The bill also would allow a business entity issued a certificate of authorization by the Board of Healing Arts (BOHA) to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensees hold a valid license issued by BOHA.

Electronic Prescription Orders

The bill would require every prescription order issued for a controlled substance in schedule II-V that contains opiate to be transmitted electronically except as follows:

- Electronic prescription orders are not possible due to technological or electronic system failures;
- Electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber or other exceptional circumstances exist as demonstrated by the prescriber;

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- The prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- The prescription order is issued by a licensed veterinarian;
- The prescriber reasonably determines that it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
- The prescription order is issued pursuant to drug research or drug therapy protocols;
- The prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- The U.S. Food and Drug Administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

A prescriber would be allowed to request a waiver from electronically transmitting prescriptions described above for a period not to exceed six months if the prescriber could not comply with the electronic transmitting requirements due to economic hardship, technological limitations, or other circumstance demonstrated by the prescriber. The bill would allow the prescriber to request renewal of a waiver granted by the State Board of Pharmacy, for a period not to exceed six months. The bill would require requests for waivers or renewals to be submitted to the State Board of Pharmacy in a form and manner prescribed by the State Board of Pharmacy and to include the reason for the request and any other information required by the State Board of Pharmacy.

If a prescriber prescribes a controlled substance by non-electronic prescription, the prescriber would be required to indicate the prescription is made pursuant to a waiver. A pharmacist would not be required to verify the validity of the waiver, either with the prescriber or the State Board of Pharmacy, but would be allowed to do so in accordance with continuing law.

The bill provisions requiring every prescription order issued for a controlled substance in schedule II-V that contains opiate to be transmitted electronically would take effect July 1, 2021.

Administration of a Drug by Injection

The bill would also amend the Pharmacy Act of the State of Kansas by permitting a licensed pharmacist to administer a drug by injection that, in the judgment of the prescriber, could safely be self-administered by a patient, to a patient pursuant to a prescription order, unless the prescription order includes the words “not to be administered by a pharmacist,” or words of like effect. The bill would define “medication order” to mean an order by a prescriber for a registered patient of a Kansas licensed medical care facility.

Nothing in the provisions of the bill would replace, repeal, or supersede requirements prescribed in KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas.

Authorization of Business Entities to Hire Physicians and Chiropractors

The bill would allow a business entity issued a certificate of authorization by BOHA to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensees hold a valid

license issued by BOHA. The bill would provide nothing in the Kansas Healing Arts Act would be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization as set forth in the bill. Medical care facilities in compliance with the Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center would be exempt from the provisions in the bill. The bill would not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions of the bill would be part of and supplemental to the Kansas Healing Arts Act.

Definitions

The bill would define the following terms:

- “Business entity” to mean:
 - An employer located in Kansas that utilizes electronic medical records and offers medicine and surgery or chiropractic services solely for its employees and the dependents of such employees at the employer’s work site;
 - An organization licensed to sell accident and sickness insurance in Kansas that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization that provides medical services solely for the organization’s enrollees and dependents of such enrollees; or
 - An information technology company that designs, utilizes, and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or

chiropractic services solely to its employees and the dependents of such employees at the employer's work sites in Kansas;

- "Licensee" to mean a person licensed by BOHA to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited, or placed under probationary conditions; and
- "Physician" to mean a person licensed by BOHA to practice medicine and surgery.

The bill would specify "business entity" does not include medical care facilities, corporations, and professional corporations as defined in current law.

Certificate of Authorization

The bill would allow a business entity to apply to BOHA for a certificate of authorization, on a form and in a manner prescribed by BOHA, and would require the following information be included;

- The name of the business entity;
- A list of the names of the owners and officers of the business entity;
- A description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;
- A list of each responsible official if the business entity is organized as a governmental unit; and
- A list of all licensed physicians and chiropractors to be hired by the business entity.

The bill would require, as a condition of certification, a business entity to provide BOHA evidence of the following:

- The address of the business entity;
- A city or county occupational license; and
- Licensure of all physicians and chiropractors to be employed by the business entity.

The bill would require BOHA to issue a certificate of authorization if it finds that the business entity is in compliance with the requirements stated above. The certificate would designate the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

Application and renewal fee. A business entity would be required to remit an application fee set by BOHA through rules and regulations, not to exceed \$1,000. The bill would require a certificate of authorization to be renewed annually and be accompanied by a fee fixed by BOHA.

Liability

The bill would provide, except as stated in the Health Care Provider Insurance Availability Act (HCPIAA) (KSA 2018 Supp. 40-3403), no business entity issued a certificate of authorization would be relieved of responsibility for the conduct or acts of its agents or employees by reason of its compliance with the provisions of the bill, nor would any individual licensed to practice the healing arts be relieved of responsibility and liability for services performed by reason of employment or relationship with such business entity. The bill would specify nothing in the bill would exempt any business entity from the provision of any other law applicable to the business entity.

Restrictions

The bill would prohibit a business entity from directly or indirectly interfering with, diminishing, restricting, substituting its judgment for, or otherwise exercising control over the independent professional judgment and decisions of its employed licensees as it relates to the care of patients; or from prohibiting or restricting any employed licensee from discussing with or disclosing to any patient or other individual any medically appropriate healthcare information that such licensee deems appropriate regarding the nature of treatment options, the risk or alternatives, the process used or the decision made by the business entity to approve or deny healthcare services, the availability of alternate therapies, consultations or tests, or from advocating on behalf of a patient.

Standards of Professional Conduct

The bill would allow a business entity's certificate of authorization to be revoked, suspended, or limited; publicly censured or placed under probationary conditions; or an application for certificate or reinstatement of a certificate denied upon a finding of the existence of any of the following grounds:

- The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated certificate;
- The business entity has willfully or repeatedly violated the provisions in the bill, the Pharmacy Act of the State of Kansas, or the Uniform Controlled Substances Act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the Secretary of Health and Environment that are relevant to the practice of the healing arts;

- The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended, or limited; has been censured or has had other disciplinary action taken; or an application for a certificate or license denied, by the proper licensing authority of another state;
- The business entity has validated any lawful rule and regulation promulgated by BOHA;
- The business entity has failed to report or reveal the knowledge continuing law requires to be reported or revealed;
- The business entity has failed to report to BOHA any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under provisions of the bill;
- The business entity has engaged in conduct likely to deceive, defraud, or harm the public;
- The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain;
- The business entity has used any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient healthcare record;
- The business entity has failed to furnish BOHA, or its investigators or representatives, any information legally requested by BOHA;

- The business entity has had, or failed to report to BOHA, any adverse judgment, award, or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to the acts or conduct that would constitute grounds for disciplinary action under provisions of the bill; or
- The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

A business entity that holds a certificate of authorization would be allowed to operate under an assumed name.

Health Care Stabilization Fund

The bill would require, for the purposes of determining the impact on the Health Care Stabilization Fund (Fund) of requiring business entities to comply with the provision of the HCPIAA, the Fund to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the finding to the Legislature on or before January 1, 2020.

Rules and Regulations

BOHA would be required to adopt rules and regulations as necessary to implement and administer the provision in the bill.

Effective Date

The provisions of the bill authorizing business entities to hire physicians and chiropractors would take effect on March 1, 2020.

Conference Committee Action

The Conference Committee agreed to remove the contents of HB 2119 and insert the contents of HB 2389, as amended by the House Committee on Health and Human Services and as amended by the Conference Committee, to include Schedule V in the electronic reporting requirement for controlled substances containing an opiate; HB 2082, as amended by the House Committee; and HB 2402, as amended by the House Committee. The Conference Committee also adopted a technical amendment.

Background

HB 2119 previously addressed the Kansas Public Employees Retirement System Board of Trustees and certain authorization for the development of Board policies and procedures to procure goods and services. Those provisions are now contained in the Conference Committee report for HB 2031, which includes pensions-related subject matter.

HB 2389 (Electronic Prescription Orders)

HB 2389 was introduced in the House Committee on Federal and State Affairs at the request of Representative Barker on behalf of a representative of Walmart.

In the House Committee on Health and Human Services hearing, proponent testimony was provided by representatives of the Kansas Association of Chain Drug Stores, State Board of Pharmacy, and Walmart. The proponents generally stated implementing electronic prescription transmittal would increase patient safety and security, reduce prescription errors, improve medication adherence, and reduce administrative burden. A representative of the National Association of Chain Drug Stores submitted written-only proponent testimony.

Neutral testimony was provided by a representative of the Kansas Medical Society (KMS). The representative stated KMS was opposed to the bill as introduced but is in agreement with an amendment offered jointly by stakeholders.

The House Committee adopted amendments agreed upon by stakeholders to delete a definition in the bill of “controlled substance” and to change the electronic prescription requirement from any controlled substance to a controlled substance in schedule II-IV that contains an opiate. The adopted amendment also added exceptions to the electronic transmission requirement, deleted the requirement technological, electrical, or other infrastructure be described in rules and regulations, and changed the effective date from January 1, 2020, to July 1, 2021. [Note: These amendments were retained, except the Conference Committee amended the bill to include Schedule V in the electronic reporting requirement for controlled substances containing an opiate.]

According to the fiscal note prepared by the Division of the Budget on HB 2389, as introduced, the State Board of Pharmacy indicates total staff time associated with complying with the bill could increase annual expenditures by \$51,500 for 0.50 inspector full-time equivalent (FTE) position and \$13,300 for 0.30 licensing FTE position. Licensing staff would be responsible for processing waiver requests and inspector responsibilities would include reviewing the requirements set forth in HB 2389 in pharmacy compliance reviews. The State Board of Pharmacy indicates short-term costs would include a 0.5 FTE position for a six-to-eight-month period for researching guidelines, drafting regulations, and moving regulations through the adoption process. [Note: The rules and regulations requirements were removed in the amended bill.] The State Board of Pharmacy estimates total salary and benefit costs associated with HB 2389 would be \$116,330 for 1.3 FTE positions, but is unable to estimate a precise fiscal effect on other operating expenses.

The Board of Nursing indicates HB 2389 would require revision of some regulations, and communication would be needed between the Board of Nursing and advanced practice registered nurses regarding the provisions of HB 2389, with an estimated fiscal effect of less than \$5,000.

BOHA indicates HB 2389 would result in an increase in complaints and investigations, but a precise fiscal effect could not be determined.

The Kansas Dental Board, the Kansas Board of Veterinary Examiners, and the Kansas Board of Examiners in Optometry indicate enactment of HB 2389 would have minimal to no fiscal effect. Any fiscal effect associated with enactment of HB 2389 is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2082 (Administration of a Drug by Injection)

HB 2389 was introduced in the House Committee on Health and Human Services at the request of Representative Arnberger, on behalf of the Kansas Pharmacists Association.

In the House Committee hearing, proponent testimony was provided by a representative of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores; representatives of Genoa Healthcare, Graves Drug, the State Board of Pharmacy, the University of Kansas Health System, and the University of Kansas School of Pharmacy; and a private citizen.

Proponent written-only testimony was provided by representatives of Balls Food Stores; Currus, Inc.; the Kansas Council of Health-System Pharmacy; Kansas Pharmacists Association, including letters of support from the medical community; the National Association of Chain Drug Stores; the University of Kansas School of Pharmacy; and a private citizen pharmacist.

The proponents generally stated pharmacists are trained and experienced in drug administration techniques and practices, pharmacist medication administration is allowed in 40 states, and allowing pharmacists to administer medication is the right thing to do for patients.

A representative of Kansans For Life provided neutral testimony requesting an amendment that would state nothing in the bill would repeal, replace, or supersede the abortion pill protocol requirements in KSA 65-4a10.

Opponent testimony was provided by a representative of KMS. Written-only opponent testimony was provided by representatives of the the Kansas Academy of Family Physicians and the Kansas Association of Osteopathic Medicine.

The opponents generally stated the bill would expand pharmacists' scope of practice and providers ought to discuss the clinical implications of broadening this scope to ensure patient standard of care is protected.

The House Committee on Health and Human Services amended the bill to specify a pharmacist may administer a drug by injection that, in the judgment of the prescriber, may safely be self-administered by a patient. The House Committee also amended the bill to include language stating nothing in the provisions of the bill would replace, repeal, or supersede requirements prescribed in KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas. [*Note:* The Conference Committee retained these amendments.]

The House Committee recommended the bill favorably for passage, as amended, on February 25, 2019, but the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 28, 2019. The bill was then withdrawn from the House Committee on Appropriations and rereferred to the House Committee on

Health and Human Services on March 6, 2019. The House Committee again recommended the bill favorably for passage, as amended, on March 13, 2019.

According to the fiscal note prepared by the Division of the Budget on HB 2082, as introduced, the State Board of Pharmacy indicates expenditures would increase due to additional staff hours and resources for inspections and investigations to ensure compliance with state law. The State Board of Pharmacy estimates the cost of a licensed pharmacy inspector would be approximately \$11,600 per year. Any fiscal effect associated with enactment of HB 2082 is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2402 (Authorization of Business Entities to Hire Physicians and Chiropractors)

HB 2402 was introduced in the House Committee on Appropriations at the request of Representative Landwehr. In the House Committee on Health and Human Services hearing, proponent testimony was provided by representatives from Blue Cross and Blue Shield of Kansas City, Cerner, and the Kansas Chamber of Commerce. The proponents generally stated enactment of the bill would allow business entities to employ primary care physicians to provide healthcare in stand-alone care clinics in Kansas and would allow physicians to refer patients to specialists and hospital systems who have the best clinical outcomes for the specific patient's needs. A representative from Kansans for Prosperity provided written-only proponent testimony.

Opponent testimony was provided by the Kansas Association of Osteopathic Medicine, Kansas Chiropractic Association, KMS, and Kansas Optometric Association. The opponents generally stated this bill is not necessary, and this bill should hold to the consistent standards regarding independent physician judgment and clinical care for those who practice medicine and employ those who practice medicine. Representatives from the American Academy of

Pediatrics, Kansas Chapter; Kansas Dental Association; Kansas Healthcare Stabilization Fund; and the Kansas Hospital Association provided written-only opponent testimony.

A representative of BOHA provided neutral testimony stating introduction of corporate practice of medicine represents a major policy change for medical practice in Kansas and impacts medical professionals licensed by BOHA. The representative further stated BOHA needs clear legislative direction on important issues to facilitate implementing legislative intent.

The House Committee adopted amendments, as agreed upon by stakeholders, to clarify the provisions of the bill do not apply to medical care facilities defined in continuing law; change the certificate application fee from a maximum of \$500 to a maximum of \$1,000 and change the renewal period from biennially to annually; clarify the language regarding the business entity's role as it relates to the employed licensees and the care of patients; require the use of electronic medical records by business entities; define "licensee"; insert standards of professional conduct and corresponding penalties for failure to meet such standards; and require the Fund conduct such actuarial and operational studies as necessary to determine impact on the Fund of requiring business entities to comply with the provisions of the HCPIAA. [Note: The Conference Committee retained these amendments.]

A fiscal note was not available when the House Committee took action on the bill.

Pharmacy Act of the State of Kansas; Kansas Healing Arts Act; pharmacists; electronic prescriptions; physician; chiropractor; Health Care Stabilization Fund

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