

Charitable Healthcare Providers; Acupuncture Practice Act; Physical Therapy Practice Act; Behavioral Sciences Regulatory Board; Interstate Medical Licensure Compact; Independent Practice of Midwifery Act; HB 2615

HB 2615 amends and creates law regarding charitable healthcare providers, the Acupuncture Practice Act and the Physical Therapy Practice Act, the Behavioral Sciences Regulatory Board, the Interstate Medical Licensure Compact, and the Independent Practice of Midwifery Act. The bill takes effect upon publication in the statute book, unless otherwise noted.

Charitable Healthcare Providers

The bill allows charitable healthcare providers and dentists to fulfill one hour of continuing education credit for performance of two hours of gratuitous service to medically indigent persons if the provider signs an agreement with the Secretary of Health and Environment (Secretary) to provide gratuitous services. Healthcare providers are allowed to fulfill a maximum of 20 continuing educational credits through gratuitous service per licensure period, and dentists are allowed to fulfill a maximum of 6 continuing educational credits through gratuitous service per licensure period.

The bill requires the Kansas State Board of Healing Arts (Board of Healing Arts) to provide an annual measurement report, starting January 15, 2017, to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services. The report will detail, by profession, the number of gratuitous continuing education units used compared to the number of continuous education units required.

Additionally, the bill requires the Secretary to report, annually starting January 15, 2017, to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, what types of charitable health care providers have signed agreements under the bill and how many are using it to provide gratuitous care.

Further, the bill exempts charitable healthcare providers who sign an agreement with the Secretary to provide gratuitous service from liability under the Kansas Tort Claims Act, notwithstanding statutory provisions requiring professional liability insurance to be maintained by healthcare providers as a condition of active licensure to render services in the state.

The bill also exempts community mental health centers and employees of those centers from liability under the Kansas Tort Claims Act. It defines the term “community mental health center” as any community mental health center organized pursuant to KSA 19-4001 through KSA 19-4015 or a mental health clinic organized pursuant to KSA 65-211 through KSA 65-215 and licensed in accordance with KSA 75-3307b.

The Acupuncture Practice Act and the Physical Therapy Practice Act

The bill creates the Acupuncture Practice Act, provides for the licensure of individuals by the Board of Healing Arts, and exempts licensed physical therapists from the Acupuncture Practice Act when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act. The bill also amends the Physical Therapy

Practice Act to include the practice of dry needling within the scope of practice for licensed physical therapists, defines dry needling, and exempts licensed acupuncturists from the Physical Therapy Practice Act. Additionally, the Board of Healing Arts is required to adopt rules and regulations applicable to dry needling.

With regard to the Acupuncture Practice Act, the bill defines key terms; outlines the treatments included and excluded in the practice of acupuncture; establishes penalties for violation of the Acupuncture Practice Act; establishes requirements for the licensure of acupuncturists and the licensure application, renewal, and reinstatement procedures for reciprocal, active, exempt, and inactive licenses, and for the grandfathering of individuals currently practicing acupuncture; establishes licensure fees; provides for the discipline of the licensees, including non-disciplinary resolutions; exempts certain individuals from licensure; and provides for the deposit of fees, charges, and penalties in the State Treasury, with a portion of the funds deposited in the State General Fund.

The bill also establishes an Acupuncture Advisory Council (Council) and sets out the Council's duties, membership requirements, meeting days, and compensation, and it defines the duties and authority of the Board of Healing Arts.

Additionally, with regard to the Acupuncture Practice Act, the bill provides for the assessment of civil fines; ensures protection from civil damages for good faith reporting; authorizes injunctions; addresses the confidentiality of patient and complaint information; and amends law to clarify the practice of healing arts does not include acupuncturists. Finally, the bill includes a severability clause.

The Acupuncture Practice Act and the Physical Therapy Practice Act take effect on publication in the statute book, but the effective date of certain provisions of the Acupuncture Practice Act are delayed, as outlined in the bill details that follow.

Acupuncture Practice Act

Definitions

The following are among the terms defined in the Acupuncture Practice Act:

- “ACAOM” means the national accrediting agency recognized by the U.S. Department of Education that provides accreditation for educational programs for acupuncture and oriental medicine [the Accreditation Commission for Acupuncture and Oriental Medicine]. For purposes of the Acupuncture Practice Act, the term ACAOM also includes any entity deemed by the Board of Healing Arts to be the equivalent of ACAOM;
- “Acupuncture” means the use of needles inserted into the human body by piercing of the skin and related modalities for the assessment, evaluation, prevention, treatment, or correction of any abnormal physiology or pain by means of controlling and regulating the flow and balance of energy in the body and stimulating the body to restore itself to its proper functioning and state of health;

- “National Certification Commission for Acupuncture and Oriental Medicine” (NCCAOM) is a national organization that validates entry-level competency in the practice of acupuncture and oriental medicine through the administration of professional certification examinations. For purposes of the Acupuncture Practice Act, NCCAOM also includes any entity deemed by the Board of Healing Arts to be the equivalent of the NCCAOM; and
- “Physician” is defined as a person licensed to practice medicine and surgery or osteopathy in the state.

Practice of Acupuncture

The practice of acupuncture includes, but is not limited to:

- Techniques sometimes called “dry needling,” “trigger point therapy,” “intramuscular therapy,” “auricular detox treatment,” and similar terms;
- Mechanical, thermal, pressure, suction, friction, electrical, magnetic, light, sound, vibration, manual treatment, and electromagnetic treatment;
- The use, application, or recommendation of therapeutic exercises, breathing techniques, meditation, and dietary and nutritional counselings; and
- The use and recommendation of herbal products and nutritional supplements, according to the acupuncturist’s level of training and certification by the NCCAOM, or its equivalent.

The practice of acupuncture does not include:

- Prescribing, dispensing, or administering of any controlled substances as defined in KSA 2015 Supp. 65-4101 *et seq.* or any prescription-only drugs; or
- The practice of:
 - Medicine and surgery including obstetrics and the use of lasers or ionizing radiation;
 - Osteopathic medicine and surgery or osteopathic manipulative treatment;
 - Chiropractic;
 - Dentistry; or
 - Podiatry.

License Required for Practice of Acupuncture

Beginning July 1, 2017, the practice of acupuncture will be prohibited unless the individual possesses a current and valid acupuncture license issued under the Acupuncture Practice Act. Only a person licensed as an acupuncturist under the Acupuncture Practice Act will be entitled to use the terms “licensed acupuncturist” or the designated letters “L.Ac.” A violation of this section will be a class B misdemeanor.

Use of Needles

Needles used in acupuncture are required to be prepackaged, single-use, sterile, and used only on an individual patient in a single treatment session.

Individuals Exempt from Acupuncture Licensure

Effective July 1, 2017, the bill will exempt the following health professionals from acupuncture licensure:

- Any person licensed to practice medicine and surgery, osteopathy, dentistry, or podiatry; a licensed chiropractor; or a licensed naturopathic doctor when acting or practicing within each licensed professional’s scope of practice and not representing oneself as being licensed under the Acupuncture Practice Act;
- Any herbalist or herbal retailer if not holding oneself out as a licensed acupuncturist;
- Any health care provider in the U.S. armed forces, federal facilities, and other military service when acting in the line of duty in the state;
- Any student, trainee, or visiting teacher of acupuncture, oriental medicine, or herbology while participating in a course of study or training under the supervision of an acupuncturist licensed under the Acupuncture Practice Act in a Council-approved program, including continuing education programs and any acupuncture or herbology programs recognized by the NCCAOM or its equivalent as a route to certification;
- Any person rendering assistance in an emergency or disaster relief;
- Any person practicing self-care or any family member providing gratuitous care not holding oneself out to the public as an acupuncturist;
- Any person who massages, if such person does not practice acupuncture or hold oneself out as a licensed acupuncturist;

- Any person whose professional services are performed pursuant to delegation by and under the supervision of a practitioner licensed under the Acupuncture Practice Act;
- Any team acupuncturist or herbology practitioner traveling with and treating individuals associated with an out-of-state or national team that is temporarily in the state for training or competition purposes; and
- Any person licensed as a physical therapist when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act.

Licensure Requirements

Applications for Licensure

Any applicant for licensure as an acupuncturist is required to file an application, on forms provided by the Board of Healing Arts, and show to the satisfaction of the Board of Healing Arts the applicant:

- Is at least 21 years of age;
- Has successfully completed secondary schooling or its equivalent;
- Has satisfactorily completed a course of study involving acupuncture from an accredited school of acupuncture which the Board of Healing Arts has determined to have educational standards substantially equivalent to the minimum educational standards for acupuncture colleges as established by the ACAOM or NCCAOM;
- Has satisfactorily passed a license examination approved by the Board of Healing Arts;
- Has the reasonable ability to communicate in English; and
- Has paid all fees required for licensure pursuant to the fees section of the bill.

Applications for Reciprocal License

The bill allows reciprocal licensure for individuals in the active practice of acupuncture in another state, territory, District of Columbia, or other country upon certification from the proper licensing authority that the applicant is duly licensed; has never had his or her license limited, suspended, or revoked; has never been censured or received other disciplinary actions; and, as far as the records of such authority are concerned, the applicant is entitled to such licensing authority's endorsement.

Additionally, the applicant is required to present the following proof satisfactory to the Board of Healing Arts:

- The other jurisdiction in which the applicant last practiced has and maintains standards at least equal to those maintained in Kansas;
- The applicant's original license was based on an examination at least equal in quality to the examination required in this state and the passing grade required to obtain such original license was comparable to that required in this state;
- The date of the applicant's original license and all endorsed licenses and the date and place from which any license was attained;
- The applicant has been actively engaged in practice under such license or licenses since issued (the Board of Healing Arts may adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice);
- The applicant has a reasonable ability to communicate in English; and
- The applicant has paid all application fees prescribed by the fees section of the bill.

Applicants for license by endorsement are required to have qualifications substantially equivalent to the Kansas requirements for licensure under the Acupuncture Practice Act.

Grandfathered License

The Board of Healing Arts is required to waive the education and examination requirements for an applicant for an acupuncture license who submits an application on or before January 1, 2018, and who, on or before July 1, 2017:

- Is 21 years of age or older;
- Has successfully completed secondary schooling or its equivalent;
- Has met both of these requirements:
 - Has completed a minimum of 1,350 hours of study (excluding online study) in acupuncture; and
 - Has been engaged in the practice of acupuncture with a minimum of 1,500 patient visits during at least 3 of the 5 years immediately preceding July 1, 2017, which requires documentation in the form of 2 affidavits from office partners, clinic supervisors, or other individuals approved by the Board of Healing Arts, who have personal knowledge of the years of practice and number of patients visiting the applicant for acupuncture.

The Board is authorized to adopt rules and regulations for further verification of the applicant's practice of acupuncture; or

- Has satisfactorily passed an examination approved by the Board of Healing Arts;
- Has the reasonable ability to communicate in English; and
- Has paid all fees required for licensure as prescribed by the fees section of the bill.

Annual License Process

The licensure process for an acupuncturist established by the bill will take effect on July 1, 2017. Licenses will be issued annually and will be canceled on March 31 of each year unless renewed in the manner prescribed by the Board of Healing Arts. The Board will be authorized to prorate the amount of the fee established under the fees section of the bill when a license is renewed for less than 12 months. License renewal will be requested on a form provided by the Board of Healing Arts and accompanied by the established renewal fee to be paid by the renewal date of the license.

Active License

The bill creates a designation of an active license. The Board of Healing Arts will be authorized to issue an active license upon written application on a form provided by the Board and payment of fees established pursuant to the fees section of the bill. Every active licensee will be required to submit evidence of satisfactory completion of continuing education required by the Board of Healing Arts, with such continuing education requirements required to be established by rules and regulations adopted by the Board.

Prior to license renewal, active licensees will be required to submit to the Board of Healing Arts evidence of maintenance of professional liability insurance. The Board is required to fix by rules and regulations the minimum level of professional liability insurance coverage.

Renewal Notice

At least 30 days before the renewal date of a licensee's license, the Board of Healing Arts will be required to notify the licensee of the renewal date by mail to the licensee's last known mailing address. A licensee who fails to submit the renewal application and pay the renewal fee by the renewal date will be required to be given notice that:

- The licensee has failed to submit the application and pay the renewal fee by the renewal date;
- The license will be deemed canceled if not renewed within 30 days following the renewal date;

- The license will not be canceled if, within the 30-day period, the renewal application, the renewal fee, and an additional late fee established by rules and regulations not to exceed \$500 is received; and
- The license will be deemed canceled by operation of law and without further proceedings if both fees are not received within the 30-day period.

Reinstatement of License

The bill allows for the reinstatement of any acupuncturist license within two years of cancellation for failure to renew upon recommendation of the Board of Healing Arts, payment of renewal fees, and proof of compliance of continuing education requirements established by the Board of Healing Arts by rules and regulations. The Board will be authorized to require a person who has not been in the active practice of acupuncture and seeks reinstatement or has not been engaged in a formal educational program during the two years preceding the application for reinstatement to complete additional testing, training, or education as deemed necessary by the Board of Healing Arts to establish the licensee's present ability to practice with reasonable skill and safety.

Exempt License

The bill creates a designation of an exempt license. The Board of Healing Arts will be authorized to issue an exempt license to any licensee who makes written application on a form provided by the Board and pays the fee established by the fees section of the bill. The Board of Healing Arts will be authorized to issue an exempt license to a person who is not regularly engaged in the practice of acupuncture in the state and who does not hold oneself out as being professionally engaged in such practice. An exempt licensee will be entitled to all privileges attendant to the practice of acupuncture for which the license is issued. An exempt license may be renewed and will be subject to all provisions of the Acupuncture Practice Act, except as otherwise provided.

The Board of Healing Arts will be authorized to require the holder of an exempt license to provide evidence of satisfactory completion of continuing education requirements, which shall be established by rules and regulations of the Board.

An exempt licensee will be allowed to apply for an active license to regularly engage in the active practice of acupuncture upon filing a written application with the Board of Healing Arts on a form provided by the Board of Healing Arts and submission of the license fee established in the fees section of the bill. The Board is required to adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees whose licenses have been exempt for less than two years to become licensed to regularly practice acupuncture in the state. For a licensee whose license has been exempt for more than two years and who has not been in the active practice of acupuncture since the license has been exempt, the Board of Healing Arts will be authorized to require completion of such additional testing, training, or education as the Board deems necessary to establish the licensee's present ability to practice with reasonable skill and safety. A person holding an exempt license will not be prohibited from serving as a paid employee of a local health department or an indigent health care clinic.

Inactive License

Effective on and after July 1, 2017, the bill will create the designation of an inactive license, which may be issued by the Board of Healing Arts upon written application and payment of the requisite fee. The bill will allow the Board to issue an inactive license only to persons who are not regularly engaged in the practice of acupuncture in the state and do not hold themselves out to the public as being professionally engaged in such practice. The holder of an inactive license will not be entitled to practice acupuncture in the state. Provisions will be made for the renewal of an inactive license, and an inactive licensee will be subject to all provisions of the Acupuncture Practice Act, unless otherwise noted. A holder of an inactive license will not be required to submit evidence of completion of the continuing education requirements.

An inactive licensee will be allowed to apply for an active license upon filing a written application with the Board of Healing Arts on a form provided by the Board of Healing Arts and submitting the license fee established in the fees section of the bill. The Board is required to adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees whose licenses have been exempt for less than two years to become licensed to regularly practice acupuncture in the state. For a licensee whose license has been exempt for more than two years and has not been in the active practice of acupuncture or engaged in a formal education program since the license has been inactive, the Board of Healing Arts will be authorized to require completion of such additional testing, training, or education as the Board deems necessary to establish the licensee's present ability to practice with reasonable skill and safety.

Reinstatement of Revoked License

The bill will allow a person whose acupuncture license has been revoked to apply for reinstatement after the expiration of three years from the effective date of the revocation. An application for reinstatement will have to be made on a form provided by the Board of Healing Arts and accompanied by the fee set out in the fees section of the bill. The applicant will have to prove by clear and convincing evidence sufficient rehabilitation to justify reinstatement. If the Board does not reinstate a license, the applicant will be ineligible to reapply for reinstatement for three years from the effective date of denial. Proceedings for an application for reinstatement will be conducted according to the Kansas Administrative Procedure Act (KAPA) and reviewable under the Kansas Judicial Review Act (KJRA). The Board of Healing Arts, on its own motion, will be authorized to stay the effectiveness of a revocation order.

Fees

The Board of Healing Arts will be required to charge and collect in advance nonrefundable fees for acupuncturists as established by the Board through rules and regulations in amounts not to exceed the fees specified in the bill.

Deposit of Fees, Charges, and Penalties

Moneys received by the Board of Healing Arts for fees, charges, and penalties will be deposited in the State Treasury, with 10.0 percent of the amount credited to the State General Fund and the balance credited to the Healing Arts Fee Fund.

Acupuncture Advisory Council

An Acupuncture Advisory Council is established to assist the Board of Healing Arts in carrying out the provisions of the Acupuncture Practice Act. The Council consists of five members appointed, as follows:

- The Board of Healing Arts appoints one member who is a physician licensed to practice medicine and surgery or osteopathy, and the member serves at the pleasure of the Board of Healing Arts;
- The Governor appoints three acupuncturists who have at least three years of experience in acupuncture preceding the appointment and are actively engaged in the state in the practice or teaching of acupuncture (at least two of these appointments will be made from a list of four nominees submitted by the Kansas Association of Oriental Medicine). The appointments are for a term of four years and until a successor has been appointed; and
- One member, appointed by the Governor from the public who is not engaged, directly or indirectly, in the provision of health services.

The bill requires, insofar as possible, that the members appointed to the Council by the Governor be from different geographic areas.

The bill addresses the filling of vacancies and quorum. The Council is required to meet at least once each year at a time of its choosing at the Board of Healing Arts' main office and at such other times as may be necessary on the call of the chairperson or on the request of a majority of the Council's members. A majority of the Council constitutes a quorum.

The Board of Healing Arts' members receive compensation for attending the meetings of the Council, or a subcommittee of the Council, as provided in KSA 75-3223(e), from the Healing Arts Fee Fund.

Duties of the Council

The Council is tasked with advising the Board of Healing Arts regarding examination, licensing and other fees; rules and regulations to be adopted to carry out provisions of the Acupuncture Practice Act; the annual continuing education requirements to maintain an active license; changes and new requirements taking place in the area of acupuncture; and such other duties and responsibilities as the Board of Healing Arts may assign.

Duties of the Board of Healing Arts

The Board of Healing Arts shall promulgate rules and regulations necessary to administer the provisions of the Acupuncture Practice Act.

Grounds for Disciplinary Action

Provisions dealing with grounds for disciplinary action and administrative review take effect on July 1, 2017. The bill establishes 13 grounds for which a licensee's license may be revoked, suspended, limited, or placed on probation, or the licensee publicly censured, or an application for a license or for reinstatement denied. The grounds for disciplinary action outlined in the bill include unprofessional conduct; obtaining a license by means of fraud or misrepresentation in applying for or securing an original, renewal or reinstated license; professional incompetency; felony conviction; violation of any provisions of the Acupuncture Practice Act; violation of a lawful order or rule and regulation of the Board of Healing Arts; failure to report to the Board of Healing Arts information regarding adverse action taken against the licensee; and the inability to practice due to impairment by reason of physical or mental illness, or condition, or use of alcohol, drugs, or controlled substances. The Board will be authorized to take action in accordance with KSA 2015 Supp. 65-2842 when a reasonable suspicion of impairment exists. Information relating to impairment is to be confidential and not subject to discovery by or release to any person or entity outside a Board of Healing Arts proceeding. The bill requires the provision regarding confidentiality expire on July 1, 2022, unless the Kansas Legislature reviews and reenacts the provision prior to its expiration date.

The Board of Healing Arts will be authorized to order the denial, refusal to renew, suspension, limitation, probation or revocation of a license, or other sanction, on a finding of a violation of the Acupuncture Practice Act. Administrative proceedings will be conducted in accordance with KAPA and reviewable under KJRA.

Board of Healing Arts Jurisdiction in Disciplinary Actions

The bill grants the Board of Healing Arts jurisdiction in proceedings for disciplinary action against any licensee practicing under the Acupuncture Practice Act, and such action will be required to comply with KAPA. Before or after formal charges have been filed, the bill will authorize the Board and licensee to enter into a stipulation that is to be binding on both parties. An enforcement order based on a stipulation will allow for the ordering of any disciplinary action. Additionally, the Board of Healing Arts will be authorized to temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings provisions under KAPA if the Board determines grounds exist for disciplinary action and the licensee's continuation of practice constitutes imminent danger to public health and safety. Judicial review and civil enforcement of any agency actions under the Acupuncture Practice Act will be in accordance with KJRA.

Non-Disciplinary Resolution

The Board of Healing Arts or a committee of the Board is authorized to implement non-disciplinary resolutions concerning a licensed acupuncturist consistent with KSA 2015 Supp. 65-2838a.

Assessment of a Civil Fine

The Board of Healing Arts, in addition to any other penalty prescribed by the Acupuncture Practice Act, will be authorized to assess a civil fine against a licensee for violation

of such Act, after proper notice and an opportunity for the licensee to be heard. The civil fine shall not exceed \$2,000 for the first violation, \$5,000 for the second violation, and \$10,000 for the third and for each subsequent violation. All civil fines collected will be deposited in the State Treasury to the credit of the State General Fund. Fines collected under this section will be considered administrative fines pursuant to federal law (11 USC § 523).

Confidentiality of Complaint Information

Any complaint or report, record, or other information relating to a complaint in the possession of the Board of Healing Arts is deemed confidential, and disclosure by the Board in a manner which identifies or enables identification of the person who is the subject or source of the information is prohibited, except the disclosure is permitted as specifically outlined in the bill. Re-disclosure by an agency authorized to receive the information disclosed by the Board of Healing Arts is prohibited unless otherwise authorized by law. These provisions regarding confidentiality expire on July 1, 2022, unless the Kansas Legislature reviews or reenacts the provisions before their expiration.

Protection from Civil Damages for Good Faith Reporting

No person reporting in good faith to the Board of Healing Arts concerning alleged incidents of malpractice or the qualifications, fitness, or character of or disciplinary action taken against a person licensed, registered, or certified by the Board will be subject to a civil action for damages as a result of reporting the information. Likewise, any state, regional, or local association composed of persons licensed to practice acupuncture and the individual members of any associated committees, which in good faith investigates or communicates the same type of information regarding a licensee, will be immune from liability in a civil action based on the information disclosed in good faith.

Patient Confidentiality

Effective July 1, 2017, confidential relations and communications between a licensed acupuncturist and a patient will be on the same basis as that provided by law between a physician and a patient.

Injunctions

On and after July 1, 2017, the Board of Healing Arts will be authorized to seek an injunction against any person violating the provisions of the Acupuncture Practice Act, without regard to whether proceedings have been or may be instituted before the Board or criminal proceedings have been or will be instituted.

Severability Clause

If any provision of the Acupuncture Practice Act or its application to any person or circumstance is held invalid, such invalidity shall not affect the remainder of the provisions or

applications of such Act which could be given effect without the invalid provision or application. Accordingly, the provisions of the Acupuncture Practice Act shall be considered severable.

Exclusion from the Practice of Healing Arts

The bill adds acupuncturists licensed and practicing in accordance with the Acupuncture Practice Act, amendments to such Act, rules and regulations adopted, and their interpretations by the Kansas Supreme Court to the list of persons not included in the practice of healing arts.

Physical Therapy Practice Act Amendments

The Board of Healing Arts shall be required to adopt rules and regulations establishing minimum education and training requirements for the practice of dry needling by a licensed physical therapist. The bill also replaces references to “Article 29 of Chapter 65 of the *Kansas Statutes Annotated*, and amendments thereto” with “the Physical Therapy Practice Act.”

Dry needling is added to the definition of “physical therapy.” The bill defines “dry needling” to mean “a skilled intervention using a thin filiform needle to penetrate into or through the skin and stimulate underlying myofascial trigger points or muscular or connective tissues for the management of neuromuscular pain or movement impairments.”

Additionally, the bill exempts from the Physical Therapy Practice Act licensed acupuncturists practicing their profession, when licensed and practicing in accordance with the Acupuncture Practice Act. The licensed acupuncturist exemption will take effect and be in force on and after July 1, 2016.

Behavioral Sciences Regulatory Board

The bill standardizes regulatory statutes administered by the Behavioral Sciences Regulatory Board (BSRB) that apply to psychologists, professional counselors, social workers, addiction counselors, and marriage and family therapists. The standardized provisions pertain to licensure by reciprocity, the reasons for disciplinary action against a licensee, and the licensure fees charged by the BSRB. The bill allows the BRSB to require fingerprinting and background checks on licensees; place licensed psychologists and social workers under the KAPA; establish supervisory training standards for professional counselors and marriage and family therapists; and create a new category of licensure for Masters Level Addiction Counselors. Additionally, the bill requires a two-thirds majority vote of the BSRB to issue or reinstate the license of an applicant with a felony conviction. The bill updates several statutes by deleting the terms “state certified alcohol and drug abuse counselor” and “counselor” from applicable statutes and inserting “licensed addiction counselor,” “licensed master’s addiction counselor,” and “licensed clinical addiction counselor” into applicable statutes. Additionally, the bill grandfathers credentialed or registered alcohol and other drug counselors who comply with specific requirements prior to July 1, 2017. Specific bill details follow.

Fingerprinting and Background Checks

The bill allows the BSRB to require a person be fingerprinted and submit to a national criminal history record check as part of an original application for or reinstatement of any license, registration, permit, or certificate or in connection with any investigation of any holder of a license, registration, permit, or certificate. The BSRB is authorized to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The BSRB is allowed to use the information obtained from fingerprinting and the criminal history to verify the identification of the person and to officially determine the qualifications and fitness of the person to be issued or to maintain a license, registration, permit, or certificate.

Local and state law enforcement officers and agencies are required to assist the BSRB in taking and processing the applicant fingerprints and are required to release all records of adult convictions and non-convictions and adult convictions or adjudications of another state or country to the BSRB. The BSRB is authorized to fix and collect a fee in an amount equal to the cost of fingerprinting and the criminal history record check. The funds collected are credited to the BSRB Fee Fund.

Change of Address Notice

A licensee is required to notify the BSRB within 30 days after any change of permanent address.

Licensure by Reciprocity

The bill amends the requirements for licensure by reciprocity to require the applicant to demonstrate registration, certification, or licensure to practice from another jurisdiction for at least 60 of the last 66 months immediately preceding the application.

Fees

The bill makes the fixing of fees through the rules and regulations process by the BSRB permissive, allowing for the elimination of a fee. The fee for the licensure of a clinical professional counselor is set at not more than \$175 and maximum fees are established for reinstatement and replacement of license and for a wallet card license.

The bill removes the ceiling on the examination fees and allows the licensee to pay the fees directly to the exam company.

Disciplinary Action

The bill makes changes to the reasons to deny, suspend, revoke, or censure a licensee to standardize such disciplinary action across all professions. The changes made in the disciplinary action across the professions include:

- Allowing the BSRB to impose a fine not to exceed \$1,000 per violation for the itemized violations cited in the bill;
- Defining incompetence as:
 - One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the BSRB;
 - Repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the BSRB; or
 - A pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to practice;
- Authorizing disciplinary action for failure to demonstrate sufficient rehabilitation to merit the public trust after a conviction for a felony offense, a misdemeanor against persons, or being currently listed on a child abuse registry or an adult protective services registry as the result of a substantiated finding of abuse or neglect;
- Requiring a two-thirds majority vote of the BSRB for the issuance of a new license or reinstatement of a revoked or suspended license for a licensee or applicant for licensure with a felony conviction; and
- Providing for administrative proceedings and disciplinary actions regarding licensure for licensed psychologists and social workers to be conducted in accordance with KAPA.

Supervisory Training Standards

Effective July 1, 2017, licensed professional counselors and marriage and family therapists providing postgraduate supervision for those working toward clinical licensure will be required to be BSRB-approved clinical supervisors. The bill establishes application procedures for obtaining this approval. Each applicant will be required to provide evidence of training and practice with no disciplinary action prohibiting providing clinical supervision, and to have completed coursework related to the enhancement of supervision skills approved by the BSRB or completed the minimum number of continuing education hours related to the enhancement of supervision skills approved by the BSRB. The continuing education requirement includes at least three hours related to the enhancement of supervisory skills, with at least one hour focusing on the ethics of supervision.

Licensed Master's Addiction Counselors

The bill creates a new category of Licensed Master's Addiction Counselor. The term is defined as a person who engages in the practice of addiction counseling limited to substance use disorders and who is licensed under the Addiction Counselor Licensure Act. The person is allowed to diagnose substance use disorders only under the direction of a licensed clinical

addiction counselor, a licensed psychologist, a person licensed to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of substance use disorders or mental disorders.

Effective September 1, 2016, no person will be allowed to engage in the practice of addiction counseling or represent oneself as a licensed master's addiction counselor, a master's addiction counselor, master's substance abuse counselor, or a master's alcohol and drug counselor without having first obtained a license as a master's addiction counselor.

The requirements for licensure as a master's addiction counselor are established by the bill, as follows:

- Meets the following requirements:
 - Attained the age of 21;
 - Completed at least a master's degree from an addiction counseling program approved by the BSRB; completed at least a master's degree from a college or university approved by the BSRB (as part of or in addition to the master's degree coursework, the applicant also has completed a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the BSRB); or currently is licensed in Kansas as a licensed master social worker, licensed professional counselor, licensed marriage and family therapist, or licensed master's level psychologist;
 - Passed an examination approved by the BSRB;
 - Satisfied the BSRB that the applicant is a person who merits the public trust; and
 - Paid the requisite application fee; or

- Meets the following requirements:
 - On or before July 1, 2016, holds an active license by the BSRB as an addiction counselor and completed at least a master's degree in a related field; and
 - Completed six hours of continuing education in the diagnosis and treatment of substance use disorders during the three years immediately preceding the application date.

A licensed master's addiction counselor is authorized to use the initials LAC or LMAC to designate that profession.

The bill makes provisions for a temporary license to practice as a licensed master's addiction counselor for persons waiting to take the examination for such licensure.

The requirement to practice only in a facility licensed by the Kansas Department for Aging and Disability Services is eliminated by the bill.

Temporary Licenses for Psychologists

A temporary license not to exceed two years is allowed to be issued to persons who have completed all requirements for a doctoral degree approved by the BSRB but have not received such degree conferral and who provide documentation of such completion.

BSRB Duties

The bill clarifies the duties, powers, and functions of the BSRB as involving the regulation of individuals under the Social Workers Licensure Act, the Licensure of Master's Level Psychologists Act, the Applied Behavior Analysis Licensure Act, the Marriage and Family Therapists Licensure Act, and the Addiction Counselor Licensure Act.

Interstate Medical Licensure Compact

The bill allows Kansas to join the Interstate Medical Licensure Compact (Compact). The Compact is governed by the Interstate Medical Licensure Compact Commission (Commission) and the Commission has the authority to develop rules to implement the provisions of the Compact. Once effective, the Compact remains in force unless a member state withdraws from the Compact by repealing the statute that enacted the Compact into law; however, the withdrawal does not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given to the governor of each other member state.

The bill establishes the 24 sections of the Compact, as follows:

Purpose

The purpose of the Compact is for the member states of the Compact to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process for physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. Joining the Compact does not change a state's existing medical practice act and does not require the physician to be under the jurisdiction of the state medical board where the patient is located. Participating state medical boards retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.

Definitions

A number of terms are defined, including the following:

- “Expedited license” means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact;
- “Interstate commission” means the interstate commission created pursuant to Section 11 (of the Compact provisions);
- “License” means the authorization by a state for a physician to engage in the practice of medicine, which is unlawful without the authorization;
- “Member board” means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians, as directed by the state government;
- “Member state” means a state that has enacted the Compact; and
- “State of principal license” means a member state where a physician holds a license to practice medicine and that has been designated as such by the physician for purposes of registration and participation in the Compact.

Eligibility

A physician is eligible to receive an expedited license if the physician meets the requirements in the Compact’s definition of physician. A physician who does not meet the Compact’s definition of physician is eligible to receive a license in a member state if the physician complies with all laws and requirements relating to the issuance of a license to practice medicine in that state.

Designation of State of Principal License

A physician is required to designate a member state as the state of principal license for purposes of registration for expedited licensure through the Compact if the physician possesses a full and unrestricted license to practice medicine in that state and the state is:

- The state of primary residence for the physician;
- The state where at least 25 percent of the practice of medicine occurs;
- The location of the physician’s employer; or
- If no state meets the above qualifications, the state designated as state of residence for purposes of federal income tax.

Application and Issuance of Expedited Licensure

A physician seeking an expedited license is required to file an application with the member board of the state selected by the physician as the state of principal license. Upon receipt of the application, such member board is required to evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification verifying or denying the physician's eligibility to the Commission. The member board is required to perform a criminal background check of the applicant in compliance with the requirements of the Federal Bureau of Investigation. If a physician is deemed eligible, the physician is required to submit applicable fees and complete the registration process. [Note: See the following section regarding fees for expedited licensure.] Upon receipt of the completed registration, a member state is required to issue the applying physician an expedited license, which allows the physician to practice medicine in the issuing state.

Fees for Expedited Licensure

A member state issuing an expedited license is allowed to impose a fee for a license issued or renewed through the Compact.

Renewal and Continued Participation

A physician seeking to renew an expedited license granted in a member state is required to complete a renewal process with the Commission and pay applicable renewal fees. A physician also is required to comply with all continuing education requirements.

Coordinated Information System

The Commission is required to establish a database of all physicians licensed or who have applied for licensure. Member states are required to report to the Commission complaints against a licensed physician who has applied for or received an expedited license. Member boards also are required to report disciplinary or investigatory information determined as necessary by rule of the Commission.

Joint Investigations

A member board is allowed to participate with other member boards in joint investigations of physicians licensed by the member boards and is allowed to share investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

Disciplinary Actions

Any member board is allowed to take disciplinary action against a physician licensed through the Compact. This section sets forth the implications to a license granted to a physician through the Compact when such license is revoked, surrendered or relinquished in lieu of discipline, or suspended by any member board.

Interstate Medical Licensure Compact Commission

This section creates the Commission; sets forth its purpose as the administrator of the Compact; and sets forth the Commission membership, rules, and meeting schedule.

The Commission consists of two voting representatives appointed by each member state who serve as Commissioners. A Commissioner is:

- An allopathic or osteopathic physician appointed to a member board;
- An executive director, executive secretary, or similar executive of a member board; or
- A member of the public appointed to a member board.

Powers and Duties of the Commission

The powers and duties of the Commission are set forth, including the following:

- Oversee and maintain the administration of the Compact;
- Promulgate rules;
- Enforce compliance with the Compact;
- Employ an executive director;
- Accept donations and grants;
- Establish a budget and make expenditures;
- Conduct business as it relates to the Commission's real and personal property; and
- Report annually to the legislatures and governors of the member states concerning the activities of the Commission during the preceding year. Such reports include reports of financial audits and any recommendations adopted by the Commission.

Finance Powers

The Commission is allowed to collect an annual assessment from each member state to cover the cost of the operations and activities of the Commission and its staff. The Commission is subject to a yearly financial audit, and the report of the audit is included in the annual report of the Commission.

Organization and Operation of the Commission

The Compact sets forth the following operational procedures of the Commission:

- Adopt bylaws within 12 months of the first Commission meeting;
- Elect or appoint annually from among the commissioners a chairperson, a vice-chairperson, and a treasurer; and
- Defend the executive director, its employees, and, in some instances, Commission representatives in legal matters, as specified in the Compact.

Rule-Making Functions of the Commission

The Commission is required to promulgate reasonable rules in order to effectively achieve the purposes of the Compact, and such rules are subject to judicial review upon the filing of a petition by any person.

Oversight of Interstate Compact

The executive, legislative, and judicial branches of state government in each member state are required to enforce the Compact and take all actions necessary to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

Enforcement of Interstate Compact

The Commission is required to enforce the provision and rules of the Compact. In its discretion, the Commission is allowed to initiate legal action and avail itself of any other remedies available under state law or the regulation of a profession.

Default Procedures

The grounds for default include failure of a member state to perform obligations or responsibilities imposed upon it by the Compact or the rules and bylaws of the Commission.

The Commission is required to do the following if it determined a member state had defaulted:

- Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Commission. The Commission is required to specify the conditions by which the defaulting state must cure its default; and
- Provide remedial training and specific technical assistance regarding the default.

If the defaulting state fails to cure the default, the defaulting state shall be terminated from the Compact upon an affirmative vote of the majority of the Commissioners.

Notice of intent to terminate is given by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states. The terminated state is responsible for all dues, obligations, and liabilities incurred through the effective date of termination. The defaulting state is allowed to appeal the action of the Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its offices.

Dispute Resolution

The Commission shall promulgate rules providing for mediation and binding dispute resolution.

Member States, Effective Date and Amendment

The Compact becomes effective and binding upon legislative enactment of the Compact into law by no less than 7 states (there are more than 15 member states, at present). Thereafter, it becomes effective and binding on a state upon enactment of the Compact into law by that state.

The Commission is allowed to propose amendments to the Compact for enactment by member states; however, no amendment is effective and binding unless and until it is enacted into law by unanimous consent of the member states.

Withdrawal

Once effective, the Compact continues in force and remains binding upon every member state. A member state is allowed to withdraw from the Compact by the enactment of a repealing statute; however, the withdrawal will not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state. The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of the withdrawal.

Dissolution

The Compact dissolves effective upon the date of the withdrawal or default of the member state which reduces the membership in the Compact to one member state.

Severability and Construction

The provisions of the Compact are severable and liberally construed to effectuate the purpose of the Compact.

Binding Effect of Compact and Other Laws

The Compact addresses the binding effect of the Compact and the potential conflict of laws as follows:

- Nothing in the Compact prevents enforcement of any other law of a member state that is not inconsistent with the Compact;
- All laws in a member state in conflict with the Compact are superseded to the extent of the conflict;
- All lawful actions of the Commission are binding upon the member states;
- All agreements between the Commission and the member states are binding in accordance with the terms; and
- In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, such provision is ineffective to the extent of the conflict with that constitutional provision in question in that member state.

Independent Practice of Midwifery Act

The bill creates the Independent Practice of Midwifery Act (Midwifery Act). Effective January 1, 2017, the Act will allow certified nurse-midwives to practice without a collaborative practice agreement with a person licensed to practice medicine and surgery within a limited scope practice as set forth in the bill. The bill also prohibits nurse-midwives engaged in the independent practice of midwifery from performing or inducing abortions or from prescribing drugs for an abortion.

Definitions

The following terms will become effective January 1, 2017:

- “Certified nurse-midwife” to mean an individual who:
 - Is educated in the two disciplines of nursing and midwifery;
 - Is currently certified by a certifying board approved by the Kansas State Board of Nursing (Board of Nursing); and
 - Is currently licensed under the Kansas Nurse Practice Act;

- “Independent practice of midwifery” to mean the provision of clinical services by a certified nurse-midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery when such clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including:
 - The prescription of drugs and diagnostic tests;
 - The performance of an episiotomy or a repair of a minor vaginal laceration;
 - The initial care of the normal newborn; and
 - Family planning services, including treatment or referral of a male partner for sexually transmitted infections;

- Professional incompetency to mean:
 - One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the Board of Healing Arts;
 - Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the Board of Healing Arts; or
 - A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to engage in the independent practice of midwifery.

Authorization and Licensure

In order to obtain authorization to engage in the independent practice of midwifery, a certified nurse-midwife shall meet the following requirements, effective January 1, 2017:

- Be licensed to practice professional nursing under the Kansas Nurse Practice Act;
- Successfully complete a course of study in nurse-midwifery in a school of nurse-midwifery approved by the Board of Healing Arts;
- Successfully complete a national certification approved by the Board of Healing Arts;
- Successfully complete a refresher course if the individual has not been in active midwifery practice for five years immediately preceding the application;
- Be authorized to perform the duties of a certified nurse-midwife by the Board of Nursing;

- Be licensed as an advanced practice registered nurse by the Board of Nursing;
and
- Have paid all fees for licensure prescribed in the Midwifery Act.

The bill specifies, effective January 1, 2017, it will be unlawful for a person to engage in the independent practice of midwifery without a collaborative practice agreement with a person licensed to practice medicine and surgery, unless such certified nurse-midwife holds a license from the Board of Nursing and the Board of Healing Arts.

The bill sets forth the process for obtaining a new or renewal license and the corresponding caps on the fees for such licenses, which will be effective January 1, 2017. The Board of Healing Arts is required to remit all moneys received from fees, charges, or penalties to the State Treasurer. The State Treasurer is required to deposit the entire amount in the State Treasury, and 10.0 percent of each amount shall be credited to the State General Fund and the remaining balance shall be credited to the Healing Arts Fee Fund.

Effective January 1, 2017, the Kansas Bureau of Investigation is required to provide criminal history record information as requested by the Board of Healing Arts for the purpose of the determination of the initial and continuing qualifications of licensees and applicants for licensure by the Board of Healing Arts.

Rules and Regulations

The Board of Healing Arts, in consultation with the Board of Nursing, is required to promulgate rules and regulations no later than January 1, 2017, pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests, diagnostic services, prescribing of drugs, and referral or transfer to physicians in the event of complications or emergencies.

Statutory Oversight

Effective January 1, 2017, a certified nurse-midwife engaging in the independent practice of midwifery will be subject to the provisions of the Midwifery Act with respect to the ordering of tests, diagnostic services, and prescribing of drugs and not subject to the provisions of the statute that governs advanced practice registered nurses on those specific topics.

Standards of Care

The standards of care in the ordering of tests, diagnostics services, and the prescribing of drugs shall be those standards which protect patients and are comparable to those for persons licensed to practice medicine and surgery providing the same services.

Disciplinary Procedures

Effective January 1, 2017, the Board of Healing Arts will be allowed to deny, revoke, limit, or suspend any license or authorization issued to a certified nurse-midwife to engage in the independent practice of midwifery that is issued by the Board or will be allowed to publicly censure a licensee if an applicant or licensee is found after a hearing:

- To be guilty of fraud or deceit in practicing the independent practice of midwifery or in procuring or attempting to procure a license to engage in the independent practice of midwifery;
- To have been guilty of a felony or misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that no license will be granted to a person with a felony conviction for a crime against persons as specified in Kansas law;
- To have committed an act of professional incompetence as defined above;
- To be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment due to physical or mental illness or condition or use of alcohol, drugs, or controlled substances (provisions related to confidentiality of records related to impairment expire on July 1, 2022, unless otherwise enacted upon by the Legislature);
- To be a person who has been adjudged in need of a guardian or conservator, or both, and who has not been restored to capacity under the Midwifery Act for obtaining a guardian or conservator;
- To be guilty of unprofessional conduct as defined by rules and regulations of the Board of Healing Arts;
- To have willfully or repeatedly violated the provisions of the Kansas Nurse Practice Act or any rules or regulations adopted pursuant to that Act;
- To have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited, or suspended; to be publicly or privately censured; or have other disciplinary action taken against the applicant or licensee by a licensing authority of another state; or
- To have assisted suicide in violation of Kansas law.

No person shall be excused from testifying in any proceedings before the Board of Healing Arts under this act or in any civil proceedings under this act on the grounds that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime in Kansas, except perjury.

Nurse-midwives Council

The bill establishes a Nurse-midwives Council to advise the Board of Healing Arts in carrying out the provisions of the Midwifery Act. The Nurse-midwives Council consists of seven members, all residents of Kansas, appointed as follows:

- Two members licensed by the Board of Healing Arts to practice medicine and surgery and whose specialty and customary practice includes obstetrics, appointed by the Board of Healing Arts;
- The president of the Board of Healing Arts, or a Board member designated by the president; and
- Four members who are certified nurse-midwives licensed and appointed by the Board of Nursing.

If a vacancy occurs on the Nurse-midwives Council, the appointing authority of the position that has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.

Finally, the bill amends the definition of “mid-level practitioner” to include a certified nurse-midwife engaging in the independent practice of midwifery under the Midwifery Act.