

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2225**

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

Senate Sub. for HB 2225 would add law to specify a medical retainer agreement is not insurance and is not subject to insurance provisions in Chapter 40 of the Kansas statutes. The bill also would amend the Kansas Healing Arts Act, the Physician Assistant Licensure Act, the Kansas Pharmacy Act, the Controlled Substances Act, and the Do Not Resuscitate Directives Act, including technical amendments to such Acts.

Medical Retainer Agreement

A health care provider would not be required to obtain a certificate of authority or license under Chapter 40 to market, sell, or offer to sell a medical retainer agreement.

The bill would define the following:

- “Health care provider” means a person licensed under the Healing Arts Act;
- “Medical retainer agreement” means a contract between a health care provider and an individual patient in which the health care provider agrees to provide to the patient routine health care services for an agreed-upon fee and period of time; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Routine health care service” means only the following:
 - Screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury;
 - Medical supplies and prescription drugs that are dispensed in a health care provider’s office or facility site; and
 - Laboratory work including routine blood screening or routine pathology screening performed by a laboratory meeting certain requirements.

The bill would state the requirements of a medical retainer, as follows:

- Be in writing;
- Be signed by the health care provider and the individual patient;
- Allow either party to terminate the agreement upon written notice;
- Describe and quantify the routine health care services;
- Specify the fee for the agreement;
- Specify the period of time under the agreement;
- Prominently state the agreement is not health insurance;
- Prohibit the health care provider and the patient from billing an insurer or other third-party payer for the services provided under the agreement; and

- Prominently state in writing the patient must pay the health care provider for all services not covered under the agreement and not otherwise covered by insurance.

The bill would require the following provision to be prominently stated in writing, in boldface type in 10 point font or greater, all words capitalized, on the front page of the medical retainer, and would require the patient or patient's legal representative to initial below the provision:

Notice: This Medical Retainer Agreement does not constitute insurance, is not a medical plan that provides health insurance coverage for purposes of the Federal Patient Protection and Affordable Care Act and covers only limited routine health care services as designated in this agreement.

Healing Arts Act

Licenses and Fees

The bill would add the term "active" to reentry license to clarify a reentry license must be a reentry active license. A reentry active license would be subject to continuing education requirements and licensure fees. The bill also would create a "resident active license."

Resident Active License

Under the bill, a resident active license would be created and could be issued to a person who makes written application; remits the required fee; has successfully completed at least one year of approved postgraduate training; is engaged in a full-time, approved postgraduate training program; and has passed the examinations for licensure. The Board of Healing Arts (Board) would be

required to adopt rules and regulations regarding issuance, maintenance, and renewal of the license. A resident active licensee would be entitled to all privileges attendant to the branch of the healing arts for which such license is used.

A statutory cap of \$500 on fees for reinstatement of a canceled license, for a reentry active license or renewal of a reentry active license, and for a resident active license would be created.

Patient Records

The bill would define the following terms:

- “Health care provider” to mean any person licensed by the Board;
- “Authorized representative” to mean the person designated in writing by the patient to obtain the health care records on behalf of the patient or the person otherwise authorized by law to obtain the health care records of the patient; and
- “Authorization” to mean a written or printed document signed by a patient or a patient’s authorized representative containing:
 - A description of the health care records a provider is authorized to produce;
 - The patient’s name, address, and date of birth;
 - A designation of the person or entity authorized to obtain copies of the health care records;
 - A date or event upon which the force of the authorization shall expire, not to exceed one year;
 - If signed by a patient’s authorized representative, the representative’s name,

- address, telephone number, and relationship to patient; and
- A statement declaring the right of the person signing the authorization to revoke it in writing.

The bill would set forth the requirements of health care providers to provide copies of patient records to the patient, patient's authorized representative, or other authorized person or entity within 30 days of receipt of the authorization. If the records are not available, the health care provider would be required to notify the patient or the patient's authorized representative of the reasons the copies are not available.

The law requires a covered entity to provide a patient or patient's representative with access to the patient's health information; however, the bill would require a covered entity defined by the bill as a health care provider to furnish copies of health care records to a patient, a patient's authorized representative, or other person or entity authorized by law.

The bill also would allow a provider to withhold requested records if the provider reasonably believed providing copies would cause substantial harm to the patient or another person. If a request were denied, a patient would be authorized to file a claim against the provider to enforce the request. Upon a court finding the failure to comply with the request for records was without just cause or excuse, the court would be required to award costs of the action and order the records produced at no expense to the prevailing party.

The bill would require charges for furnishing the records be established in rules and regulations. In establishing charges, the Board would be required to consider the All-Items Consumer Price Index published by the U.S. Department of Labor.

The bill would permit the Board to adopt rules and regulations requiring providers to furnish health care records to patients or their authorized representative.

Special Permit

The bill would expand the scope of the “special permit” to include the practice of medicine and surgery that could be issued by the Board to any person who has completed undergraduate training at the University of Kansas School of Medicine or the Kansas City University of Medicine and Biosciences College of Osteopathic Medicine who has not yet commenced a full-time approved postgraduate training program. The holder of the special permit would be allowed to be compensated by a supervising physician, but not allowed to charge patients a fee for services rendered; would not be allowed to engage in private practice; would be allowed to prescribe drugs, but not controlled substances; would be required to clearly identify oneself as a physician in training; would not be deemed to be rendering professional service as a health care provider for the purposes of professional liability insurance; would be subject to all provisions of the Healing Arts Act, except as otherwise provided in the bill; and would require supervision by a physician who is physically present within the healthcare facility and would be immediately available.

The special permit would expire the day the holder of the permit becomes engaged in a full-time approved postgraduate training program or one year from issuance. The permit could be renewed one time. The Board would be allowed to adopt rules and regulations to carry out the provisions related to the special permit holder.

Discipline

The bill would eliminate private censure as a disciplinary option for Board licensees. The law states the Board may deny licensure in instances where a licensee had a license to

practice the healing arts revoked, suspended, or limited in another jurisdiction. The bill would eliminate providing a certified copy of the record of a disciplinary action of another jurisdiction as conclusive evidence thereof.

Definitions

The term “supervising physician” would have the same meaning as set forth in the Physician Assistant Licensure Act.

Physician Assistant Licensure Act

Licenses and Fees

The bill would create a designation of “exempt license” and of “federally active license” and would establish a statutory cap on the fees, not more than \$150 and \$200 respectively, for such licenses.

Exempt License

The Board would be allowed to issue an “exempt license” to a licensed physician assistant who makes written application, remits the required fee, and is not regularly engaged in physician assistant practice in Kansas and who does not hold oneself out publicly to be engaged in such practice. An exempt licensee would be entitled to all privileges of a physician assistant and would be subject to all provisions of the Physician Assistant Licensure Act. Continuing education requirements for this designation would be established by rules and regulations adopted by the Board. The exempt license would be eligible for renewal.

Exempt licensees would be allowed to apply for an active license by filing a written application and remitting required fees for an active license. The requirements to be issued an active license would vary depending on the time a person has held an exempt license. If a person has held an

exempt license for more than two years the testing, training, or education could be greater than someone who has held the exempt license less than two years. The requirements would be established by rules and regulations adopted by the Board.

Exempt licensees would be allowed to be a paid employee of a local health department or an indigent health care clinic.

Federally Active License

The Board would be allowed to issue a “federally active license” to a licensed physician assistant who makes a written application, remits the required fee, and who practices as a physician assistant solely in the course of employment or active duty in the U.S. government. Under this designation a person could engage in limited practice outside the course of federal employment consistent with the scope of practice of the exempt licensees except that the scope would be limited to the following:

- Performing administrative functions;
- Providing direct patient care services gratuitously or providing supervision, direction, or consultation for no compensation;
 - Except payment for subsistence allowances or actual and necessary expenses incurred in providing such services would be allowed; and
- Rendering professional services as a charitable health care provider.

Federally active licensees would be subject to licensure fees and continuing education requirements. A person practicing under this designation would not be deemed to be

rendering professional services for the purpose of KSA 2014 Supp. 40-3402, relating to professional liability insurance.

Do Not Resuscitate Directives Act

The bill would allow a physician assistant to write do not resuscitate (DNR) orders if delegated the authority by a physician and would revise the DNR statutory form to include a physician assistant signature line.

“Physician assistant” would be defined to mean a person licensed by the Board to practice as a physician assistant.

Pharmacy Act

After January 11, 2016, the bill would change “written protocol” to “written agreement” and “responsible physician” to “supervising physician” as it relates to the authority of a physician assistant to prescribe drugs.

Implementation

The bill would revert language specified below to terms in law prior to July 1, 2014, but only until January 11, 2016, when new terms would become effective.

- “Agreement” would mean “protocol” until July 11, 2016, when it would mean “agreement,” and “supervising physician” would mean “responsible physician” until July 11, 2016, when it would mean “supervising physician.” “Supervising physician” would mean a physician who has accepted responsibility for the medical services rendered and actions of the physician assistant while performing under the direction and supervision of the supervising physician. “Responsible physician” would mean a physician who has accepted continuous and ultimate responsibility for the

medical services rendered and actions of the physician assistant while performing under the direction and supervision of the responsible physician. These distinctions would be applicable to:

- A physician who has accepted responsibility for the medical services rendered and actions of a physician assistant. (This change would amend the Physician Assistant Licensure Act, the Controlled Substances Act, and KSA 2014 Supp. 72-8252 relating to school districts adopting policies to allow students to self-medicate.) and
- A statute, contract, or other document referencing a supervising physician and a physician assistant;
- The Board would be required to adopt rules and regulations to be effective January 11, 2016 governing the practice of physician assistants;
- Physician assistants would be allowed to dispense prescription-only drugs on and after January 11, 2016; and
- The Board would limit the number of physician assistants a responsible physician could supervise at any one time to two until January 11, 2016.

Background

The Senate Committee on Public Health and Welfare amended HB 2225 (as amended by House Committee), inserted the contents of SB 285, and created a substitute bill. SB 285 contains the language of Sub. for HB 2362, as recommended by the House Committee.

HB 2225

The bill was introduced in the House Committee on Health and Human Services. In the House Committee, a doctor from Atlas MD Concierge Family Practice and an insurance agent testified in support of the bill. The proponents stated the direct care model is affordable, removes the necessity for insurance for the bulk of outpatient care, and emphasized medical retainers do not constitute insurance. No opponent or neutral testimony was provided.

The House Committee amended the bill to require a notice would be placed on the first page of a retainer agreement to emphasize a retainer agreement would not constitute insurance and the limited scope of routine health care services provided would be designated in a retainer agreement.

In the Senate Public Health and Welfare Committee, a private attorney testified in support of the bill. The proponent stated the bill was necessary to exclude direct practice care from insurance laws to avoid potential state and federal regulatory control issues, address stakeholder concerns, and avoid the risk of unfavorable administrative action. He indicated bills similar to the one proposed have been enacted by several other states to exclude the direct primary care from insurance laws. Written testimony was provided by a doctor from Atlas MD Concierge Family Practice. No opponent or neutral testimony was provided.

The Senate Committee amended the bill to require the notice on the first page of the retainer agreement to be in 10 point font or greater.

In the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board states enactment of the bill could result in additional complaints and investigations requiring Board staff to be increased by 8.0 FTE positions at a cost of \$634,464. The Division of the Budget considers the fiscal estimate of the Board to be excessive, stating any

increase in caseload activity would be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

SB 285

The bill was introduced in the Senate Committee on Public Health and Welfare. In the Senate Committee, the Executive Directors of the Board , the Kansas Medical Society, and the Kansas Academy of Physician Assistants testified in support of the bill. Proponents generally testified the bill would update and enhance the Healing Arts Act and the Physician Assistant Licensure Act and make necessary additional changes to the comprehensive provisions enacted when the Acts were modernized in 2014. No opponent or neutral testimony was provided.

In the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board indicates it is unable to estimate a fiscal effect resulting from the passage of the bill.