

**House Substitute for Substitute for SENATE BILL No. 286**

By Committee on Judiciary

2-18

1 AN ACT concerning the governmental response to the COVID-19  
2 pandemic in Kansas; extending the extending the expanded use of  
3 telemedicine and expiring such provisions; extending the suspension of  
4 certain requirements related to medical care facilities and expiring such  
5 provisions; modifying the COVID-19 response and reopening for  
6 business liability protection act; extending immunity from civil liability  
7 for certain healthcare providers, certain persons conducting business in  
8 this state and covered facilities for COVID-19 claims until January 20,  
9 2023; amending K.S.A. 2021 Supp. 48-963, 48-964, 60-5503, 60-5504,  
10 60-5508 and 65-468 and repealing the existing sections.

11

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

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14 Section 1. K.S.A. 2021 Supp. 48-963 is hereby amended to read as  
15 follows: 48-963. (a) A physician may issue a prescription for or order the  
16 administration of medication, including a controlled substance, for a  
17 patient without conducting an in-person examination of such patient.

17

18 (b) A physician under quarantine, including self-imposed quarantine,  
19 may practice telemedicine.

19

20 (c) (1) A physician holding a license issued by the applicable  
21 licensing agency of another state may practice telemedicine to treat  
22 patients located in the state of Kansas, if such out-of-state physician holds  
23 a temporary emergency license granted pursuant to K.S.A. 2021 Supp. 48-  
24 965, and amendments thereto.

24

25 (2) The state board of healing arts may extend the provisions of this  
26 subsection to other healthcare professionals licensed and regulated by the  
27 board as deemed necessary by the board to address the impacts of COVID-  
28 19 and consistent with ensuring patient safety.

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29 (d) A physician practicing telemedicine in accordance with this  
30 section shall conduct an appropriate assessment and evaluation of the  
31 patient's current condition and document the appropriate medical  
32 indication for any prescription issued.

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33 (e) Nothing in this section shall supersede or otherwise affect the  
34 provisions of K.S.A. 40-2,215 or 65-4a10, and amendments thereto, ~~or~~  
~~K.S.A. 40-2,215, and amendments thereto.~~

35

(f) As used in this section:

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(1) "Physician" means a person licensed to practice medicine and

1 surgery.

2 (2) "Telemedicine" means the delivery of healthcare services by a  
3 healthcare provider while the patient is at a different physical location.

4 (g) This section shall expire on ~~March 31, 2022~~ *January 20, 2023*.

5 Sec. 2. K.S.A. 2021 Supp. 48-964 is hereby amended to read as  
6 follows: 48-964. (a) (1) A hospital may admit patients in excess of such  
7 hospital's number of licensed beds or inconsistent with the licensed  
8 classification of such hospital's beds to the extent that such hospital  
9 determines is necessary to treat COVID-19 patients and to separate  
10 COVID-19 patients and non-COVID-19 patients.

11 (2) A hospital admitting patients in such manner shall notify the  
12 department of health and environment as soon as practicable but shall not  
13 be required to receive prior authorization to admit patients in such manner.

14 (b) (1) A hospital may utilize non-hospital space, including off-  
15 campus space, to perform COVID-19 testing, triage, quarantine or patient  
16 care to the extent that such hospital determines is necessary to treat  
17 COVID-19 patients and to separate COVID-19 patients and non-COVID-  
18 19 patients.

19 (2) The department of health and environment may impose  
20 reasonable safety requirements on such use of non-hospital space to  
21 maximize the availability of patient care.

22 (3) Non-hospital space used in such manner shall be deemed to meet  
23 the requirements of K.S.A. 65-431(d), and amendments thereto.

24 (4) A hospital utilizing non-hospital space in such manner shall notify  
25 the department of health and environment as soon as practicable but shall  
26 not be required to receive prior authorization to utilize non-hospital space  
27 in such manner.

28 (c) A medical care facility may permit healthcare providers  
29 authorized to provide healthcare services in the state of Kansas to provide  
30 healthcare services at such medical care facility without becoming a  
31 member of the medical care facility's medical staff.

32 (d) As used in this section, "hospital" and "medical care facility"  
33 mean the same as defined in K.S.A. 65-425, and amendments thereto.

34 (e) This section shall expire on ~~March 31, 2022~~ *January 20, 2023*.

35 Sec. 3. K.S.A. 2021 Supp. 60-5503 is hereby amended to read as  
36 follows: 60-5503. (a) Notwithstanding any other provision of law, except  
37 as provided in subsection (c), a healthcare provider is immune from civil  
38 liability for damages, administrative fines or penalties for acts, omissions,  
39 healthcare decisions or the rendering of or the failure to render healthcare  
40 services, including services that are altered, delayed or withheld, as a  
41 direct response to the COVID-19 public health emergency.

42 (b) The provisions of this section shall apply to any claims for  
43 damages or liability that arise out of or relate to acts, omissions or

1 healthcare decisions occurring between March 12, 2020, and ~~March 31,~~  
2 ~~2022~~ *January 20, 2023*, related to the COVID-19 public health emergency.

3 (c) (1) The provisions of this section shall not apply to civil liability  
4 when it is established that the act, omission or healthcare decision  
5 constituted gross negligence or willful, wanton or reckless conduct.

6 (2) The provisions of this section shall not apply to healthcare  
7 services not related to COVID-19 that have not been altered, delayed or  
8 withheld as a direct response to the COVID-19 public health emergency.

9 Sec. 4. K.S.A. 2021 Supp. 60-5504 is hereby amended to read as  
10 follows: 60-5504. (a) Notwithstanding any other provision of law, a  
11 person, or an agent of such person, conducting business in this state shall  
12 be immune from liability in a civil action for a COVID-19 claim if such  
13 person was acting pursuant to and in substantial compliance with public  
14 health directives applicable to the activity giving rise to the cause of action  
15 when the cause of action accrued.

16 (b) The provisions of this section shall expire on ~~March 31, 2022~~  
17 *January 20, 2023*.

18 Sec. 5. K.S.A. 2021 Supp. 60-5508 is hereby amended to read as  
19 follows: 60-5508. (a) The provisions of K.S.A. 2021 Supp. 60-5504, 60-  
20 5505 and 60-5507, and amendments thereto, shall apply retroactively to  
21 any cause of action accruing on or after March 12, 2020.

22 (b) The provisions of K.S.A. 2021 Supp. ~~60-5503 and~~ 60-5506, and  
23 amendments thereto, ~~and the amendments made to K.S.A. 2021 Supp. 60-~~  
24 ~~5506 by section 2 of 2021 House Bill No. 2126, shall apply retroactively~~  
25 ~~to any cause of action accruing on or after March 12, 2020, and prior to~~  
26 ~~termination of the state of disaster emergency related to the COVID-19~~  
27 ~~public health emergency declared pursuant to K.S.A. 48-924, and~~  
28 ~~amendments thereto.~~

29 (c) ~~The provisions of K.S.A. 2021 Supp. 60-5503, and amendments~~  
30 ~~thereto,~~ shall apply retroactively to any cause of action accruing on or after  
31 March 12, 2020, and prior to ~~March 31, 2022~~ *January 20, 2023*.

32 Sec. 6. K.S.A. 2021 Supp. 65-468 is hereby amended to read as  
33 follows: 65-468. As used in K.S.A. 65-468 through 65-474, and  
34 amendments thereto:

35 (a) "Healthcare provider" means any person licensed or otherwise  
36 authorized by law to provide health care services in this state or a  
37 professional corporation organized pursuant to the professional  
38 corporation law of Kansas by persons who are authorized by law to form  
39 such corporation and who are health care providers as defined by this  
40 subsection, or an officer, employee or agent thereof, acting in the course  
41 and scope of employment or agency.

42 (b) "Member" means any hospital, emergency medical service, local  
43 health department, home health agency, adult care home, medical clinic,

1 mental health center or clinic or nonemergency transportation system.

2 (c) "Mid-level practitioner" means a physician assistant or advanced  
3 practice registered nurse who has entered into a written protocol with a  
4 rural health network physician.

5 (d) "Physician" means a person licensed to practice medicine and  
6 surgery.

7 (e) "Rural health network" means an alliance of members, including  
8 at least one critical access hospital and at least one other hospital, that has  
9 developed a comprehensive plan submitted to and approved by the  
10 secretary of health and environment regarding: Patient referral and  
11 transfer; the provision of emergency and nonemergency transportation  
12 among members; the development of a network-wide emergency services  
13 plan; and the development of a plan for sharing patient information and  
14 services between hospital members concerning medical staff credentialing,  
15 risk management, quality assurance and peer review.

16 (f) (1) "Critical access hospital" means a member of a rural health  
17 network that: Makes available 24-hour emergency care services; provides  
18 not more than 25 acute care inpatient beds or in the case of a facility with  
19 an approved swing-bed agreement a combined total of extended care and  
20 acute care beds that does not exceed 25 beds; provides acute inpatient care  
21 for a period that does not exceed, on an annual average basis, 96 hours per  
22 patient; and provides nursing services under the direction of a licensed  
23 professional nurse and continuous licensed professional nursing services  
24 for not less than 24 hours of every day when any bed is occupied or the  
25 facility is open to provide services for patients unless an exemption is  
26 granted by the licensing agency pursuant to rules and regulations. The  
27 critical access hospital may provide any services otherwise required to be  
28 provided by a full-time, on-site dietician, pharmacist, laboratory  
29 technician, medical technologist and radiological technologist on a part-  
30 time, off-site basis under written agreements or arrangements with one or  
31 more providers or suppliers recognized under medicare. The critical access  
32 hospital may provide inpatient services by a physician assistant, advanced  
33 practice registered nurse or a clinical nurse specialist subject to the  
34 oversight of a physician who need not be present in the facility. In addition  
35 to the facility's 25 acute beds or swing beds, or both, the critical access  
36 hospital may have a psychiatric unit or a rehabilitation unit, or both. Each  
37 unit shall not exceed 10 beds and neither unit shall count toward the 25-  
38 bed limit or be subject to the average 96-hour length of stay restriction.

39 (2) Notwithstanding the provisions of paragraph (1), prior to ~~March~~  
40 ~~31, 2022~~ *January 20, 2023*, to the extent that a critical access hospital  
41 determines it is necessary to treat COVID-19 patients or to separate  
42 COVID-19 patients and non-COVID-19 patients, such critical access  
43 hospital shall not be limited to 25 beds or, in the case of a facility with an

1 approved swing bed agreement, to a combined total of 25 extended care  
2 and acute care beds, and shall not be limited to providing acute inpatient  
3 care for a period of time that does not exceed, on an annual average basis,  
4 96 hours per patient.

5 (g) "Hospital" means a hospital other than a critical access hospital  
6 that has entered into a written agreement with at least one critical access  
7 hospital to form a rural health network and to provide medical or  
8 administrative supporting services within the limit of the hospital's  
9 capabilities.

10 Sec. 7. K.S.A. 2021 Supp. 48-963, 48-964, 60-5503, 60-5504, 60-  
11 5508 and 65-468 are hereby repealed.

12 Sec. 8. This act shall take effect and be in force from and after its  
13 publication in the Kansas register.