

SENATE BILL No. 360

By Committee on Ways and Means

3-30

AN ACT concerning credentialing of health care providers; allowing health care providers to apply for credentialing with the appropriate state agency; amending K.S.A. 65-5001, 65-5002, 65-5003, 65-5005, 65-5006, 65-5007, 65-5008, 65-5009 and 65-5011 and repealing the existing sections.

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

Section 1. K.S.A. 65-5001 is hereby amended to read as follows: 65-5001. As used in this act unless the context requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Credentialing" or "credentialed" means the formal recognition of professional or technical competence through the process of registration, licensure or other statutory regulation.

(b) "Certification" means the process by which a nongovernmental agency or association or the federal government grants recognition to an individual who has met certain predetermined qualifications specified by the nongovernmental agency or association or the federal government.

(c) "Registration" means the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title.

(d) "Licensure" means a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful.

(e) "Health care personnel" means those persons whose principal functions, customarily performed for remuneration, are to render services, directly or indirectly, to individuals for the purpose of:

- (1) Preventing physical, mental or emotional illness;
- (2) detecting, diagnosing and treating illness;
- (3) facilitating recovery from illness; or
- (4) providing rehabilitative or continuing care following illness; and

who are qualified by training, education or experience to do so.

(f) "Provider of health care" means an individual:

1 (1) Who is a direct provider of health care (including but not limited
2 to a person licensed to practice medicine and surgery, licensed dentist,
3 registered professional nurse, licensed practical nurse, licensed podiatrist,
4 or physician's assistant) in that the individual's primary current activity is
5 the provision of health care to individuals or the administration of facilities
6 or institutions (including medical care facilities, long-term care facilities,
7 outpatient facilities, and health maintenance organizations) in which such
8 care is provided and, when required by state law, the individual has re-
9 ceived professional training in the provision of such care or in such ad-
10 ministration and is licensed or certified for such provision or
11 administration;

12 (2) who holds a fiduciary position with, or has a fiduciary interest in,
13 any entity described in subsection (f)(3)(B) or subsection (f)(3)(D) other
14 than an entity described in either such subsection which is also an entity
15 described in section 501(c)(3) of the internal revenue code of 1954, as
16 amended and supplemented, and which does not have as its primary
17 purpose the delivery of health care, the conduct of research, the conduct
18 of instruction for health professionals or the production of drugs or arti-
19 cles described in subsection (f)(3)(C);

20 (3) who receives, either directly or through a spouse, more than $\frac{1}{5}$
21 of such person's gross annual income from any one or combination of the
22 following:

23 (A) Fees or other compensation for research into or instruction in
24 the provision of health care;

25 (B) entities engaged in the provision of health care or in such research
26 or instruction;

27 (C) producing or supplying drugs or other articles for individuals or
28 entities for use in the provision of or in research into or instruction in the
29 provision of health care; or

30 (D) entities engaged in producing drugs or such other articles;

31 (4) who is a member of the immediate family of an individual de-
32 scribed in subsection (f)(1), (f)(2) or (f)(3); or

33 (5) who is engaged in issuing any policy or contract of individual or
34 group health insurance or hospital or medical service benefits. An indi-
35 vidual shall not be considered a provider of health care solely because
36 the individual is a member of the governing board of an entity described
37 in subsection (f)(3)(B) or subsection (f)(3)(D).

38 (g) "Consumer of health care" means an individual who is not a pro-
39 vider of health care.

40 (h) ~~"Secretary" means the secretary of health and environment~~ "Ap-
41 propriate state agency" means any state agency which regulates the ap-
42 plicant occupational or professional group of health care personnel. If the
43 state agency chosen does not regulate the applicant occupational or pro-

1 *essional group, then such state agency may enter into an agreement with*
2 *the regulating state agency to continue with the credentialing process. If*
3 *no state agency regulates the applicant occupational or professional group*
4 *of health care personnel, then the request shall be made to the legislature*
5 *and the legislature shall adopt a concurrent resolution directing a state*
6 *agency to review the credentialing application of the applicant occupa-*
7 *tional or professional group of health care personnel.*

8 Sec. 2. K.S.A. 65-5002 is hereby amended to read as follows: 65-
9 5002. (a) Health care personnel seeking to be credentialed by the state
10 shall submit a credentialing application to the ~~secretary~~ *appropriate state*
11 *agency* upon forms approved by the ~~secretary~~ *appropriate state agency*.
12 The application shall be accompanied by an application fee of \$1,000.
13 The ~~secretary~~ *appropriate state agency* shall not accept a credentialing
14 application unless such application is accompanied by the application fee
15 and is signed by 100 or more Kansas resident proponents of credentialing
16 the health care occupation or profession seeking to be credentialed. All
17 credentialing applications accepted by the ~~secretary~~ *appropriate state*
18 *agency* shall be referred to the technical committee for review and rec-
19 ommendation in accordance with the provisions of this act and rules and
20 regulations adopted by the ~~secretary~~ *appropriate state agency*. The ap-
21 plication fee established under this subsection (a) shall apply to every
22 group of health care personnel which submits a credentialing application
23 to the ~~secretary~~ *appropriate state agency* on and after the effective date
24 of this act and to every group of health care personnel which has not filed
25 both a notice of intention and a fully answered application before the
26 effective date of this act.

27 (b) The ~~secretary~~ *appropriate state agency* shall remit all moneys re-
28 ceived from fees under this section to the state treasurer at least monthly.
29 Upon receipt of each such remittance, the state treasurer shall deposit
30 the entire amount thereof in the state treasury to the credit of the state
31 general fund.

32 Sec. 3. K.S.A. 65-5003 is hereby amended to read as follows: 65-
33 5003. (a) A technical committee shall be appointed by the ~~secretary~~ *ap-*
34 *propriate state agency* to examine and investigate each credentialing ap-
35 plication referred by the ~~secretary~~ *appropriate state agency*. Seven
36 persons shall be appointed to each technical committee and such persons
37 shall be appointed for a term of one year. Within 120 days after the
38 expiration of such term, the ~~secretary~~ *appropriate state agency* shall ap-
39 point a successor to fill such vacancy. The chairperson of the technical
40 committee shall be designated by the ~~secretary~~ *appropriate state agency*.
41 Three members of the technical committee shall be health care personnel
42 currently credentialed under the laws of this state. Four members of the
43 technical committee shall be consumers of health care who are not also

1 providers of health care. No member of the technical committee shall
2 have a direct economic or personal interest in the credentialing or non-
3 credentialing of health care personnel whose application for credentialing
4 will be reviewed by the technical committee. If a member of the technical
5 committee has a direct economic or personal interest in the credentialing
6 or noncredentialing of health care personnel whose application for cre-
7 dentialing will be reviewed by the technical committee or otherwise has
8 a conflict of interest concerning the credentialing or noncredentialing of
9 health care personnel whose application for credentialing will be reviewed
10 by the technical committee, the ~~secretary~~ *appropriate state agency* shall
11 replace such member on the technical committee by appointing a new
12 member to the technical committee. The new member shall serve for the
13 remainder of the term of the original member. A vacancy on the technical
14 committee shall be filled by appointment within 120 days after such va-
15 cancy by the ~~secretary~~ *appropriate state agency* for the remainder of the
16 unexpired term of the vacant position.

17 (b) Each technical committee, as soon as possible after appointment
18 of the members thereof, shall organize and review any credentialing ap-
19 plication assigned to such committee by the ~~secretary~~ *appropriate state*
20 *agency*. The technical committee shall conduct fact-finding hearings and
21 shall otherwise investigate the credentialing application.

22 (c) The technical committee shall attempt to obtain evidence and
23 testimony from persons in support of the application and from persons
24 opposed to the application, but evidence and testimony shall not be lim-
25 ited only to such persons. All interested persons shall have an opportunity
26 to give evidence and testimony subject to such reasonable conditions as
27 may be established by the technical committee in the conduct of the
28 hearing and subject to applicable rules and regulations established under
29 this act. A notice of all meetings of the technical committee shall be
30 published in the Kansas register at least 30 days prior to the day of the
31 meeting. The notice shall state the time and place of the meeting.

32 (d) The technical committee shall make findings in an objective, un-
33 biased manner based on the criteria established in K.S.A. 65-5006 and
34 amendments thereto. Credentialing applicants shall have the burden of
35 bringing forth evidence upon which findings may be made and shall have
36 the burden of proving by clear and convincing evidence that the health
37 care provider occupation or profession should be credentialed by the
38 state. The evidence required to sustain this burden of proof shall be more
39 than hypothetical examples or testimonials. The technical committee shall
40 detail its findings in a report and shall file the report with the ~~secretary~~
41 *appropriate state agency*. The technical committee shall complete hear-
42 ings and shall file a report for any applicant group of health care personnel
43 that has begun the process.

1 (e) If the technical committee determines after consideration of the
2 evidence and testimony that all the criteria established by law or by rules
3 and regulations for credentialing have not been met and that credentialing
4 is not appropriate, the technical committee shall recommend that an ap-
5 plication for credentialing be denied. If the technical committee deter-
6 mines after consideration of the evidence and testimony that clear and
7 convincing evidence has been presented that an occupational or profes-
8 sional group of health care personnel has met all the criteria established
9 by law or by rules and regulations for credentialing and that credentialing
10 by the state is appropriate, the technical committee shall recommend the
11 application for credentialing be approved. If the technical committee rec-
12 ommends that the application for credentialing be approved, there shall
13 be included in the committee's report a recommendation of the level or
14 levels of credentialing, and such recommendation shall be based upon a
15 finding by the technical committee, stated in the report, that all criteria
16 established by law or by rules and regulations for the recommended level
17 or levels of credentialing have been met. This recommendation shall be
18 based on the criteria established in K.S.A. 65-5007 and amendments
19 thereto.

20 Sec. 4. K.S.A. 65-5005 is hereby amended to read as follows: 65-
21 5005. (a) Within 120 days after receiving the report and recommendations
22 of the technical committee relating to a credentialing application, the
23 ~~secretary~~ *appropriate state agency* shall prepare a final report for the
24 legislature. In preparing the final report, the ~~secretary~~ *appropriate state*
25 *agency* shall apply the criteria established by K.S.A. 65-5006 and 65-5007
26 and amendments to these sections. The final report shall be submitted
27 to the speaker of the house of representatives, to the president of the
28 senate and to the chairpersons of the ~~committees~~ *senate committee* on
29 public health and welfare *and the house committee on health and human*
30 *services* for consideration by their respective committees. The ~~secretary~~
31 *appropriate state agency* shall include the report of the technical com-
32 mittee in the final report prepared for submission to the legislature. The
33 ~~secretary~~ *appropriate state agency* need not be bound by the recommen-
34 dations of a technical committee.

35 (b) If the ~~secretary~~ *appropriate state agency* determines after consid-
36 eration of the report of the technical committee and the evidence and
37 testimony presented to the technical committee that all criteria estab-
38 lished by law or by rules and regulations for credentialing have not been
39 met and that credentialing is not appropriate, the ~~secretary~~ *appropriate*
40 *state agency* shall recommend that no legislative action be taken on a
41 credentialing application. If the ~~secretary~~ *appropriate state agency* de-
42 termines that clear and convincing evidence which was more than hy-
43 pothetical examples or testimonials was presented to the technical com-

1 mittee that the applicant occupational or professional group of health care
2 personnel should be credentialed by the state, that the applicant occu-
3 pational or professional group of health care personnel has met all the
4 criteria established by law or by rules and regulations for credentialing
5 and that credentialing by the state is appropriate, the ~~secretary~~ *appro-*
6 *pr**iate state agency* shall recommend that the occupational or professional
7 group of health care personnel be credentialed. If the ~~secretary~~ *appro-*
8 *pr**iate state agency* recommends that an occupational or professional
9 group of health care personnel be credentialed, the ~~secretary~~ *appropriate*
10 *state agency* shall recommend: (1) The level or levels of credentialing,
11 and such recommendation shall be based upon a finding by the ~~secretary~~
12 *appropriate state agency*, stated in the report, that all criteria established
13 by law or by rules and regulations concerning the recommended level or
14 levels of credentialing have been met; (2) an agency to be responsible for
15 the credentialing process and the level or levels of credentialing; and (3)
16 such matters as the ~~secretary~~ *appropriate state agency* deems appropriate
17 for possible inclusion in legislation relating to the recommendation for
18 credentialing.

19 (c) No group of health care personnel shall be credentialed except
20 by an act of the legislature. The final report of the ~~secretary~~ *appropriate*
21 *state agency* and the report and recommendations of the technical com-
22 mittee shall constitute recommendations to the legislature and shall not
23 be binding upon the legislature. The legislature may dispose of such rec-
24 ommendations and reports as it deems appropriate.

25 Sec. 5. K.S.A. 65-5006 is hereby amended to read as follows: 65-
26 5006. (a) The technical committee appointed pursuant to K.S.A. 65-5003
27 and amendments thereto and the ~~secretary~~ *appropriate state agency* shall
28 apply the following criteria to each credentialing application:

29 (1) The unregulated practice of the occupation or profession can
30 harm or endanger the health, safety or welfare of the public and the
31 potential for such harm is recognizable and not remote;

32 (2) the practice of the occupation or profession requires an identifi-
33 able body of knowledge or proficiency in procedures, or both, acquired
34 through a formal period of advanced study or training, and the public
35 needs and will benefit by assurances of initial and continuing occupational
36 or professional ability;

37 (3) if the practice of the occupation or profession is performed, for
38 the most part, under the direction of other health care personnel or in-
39 patient facilities providing health care services, such arrangement is not
40 adequate to protect the public from persons performing noncredentialed
41 functions and procedures;

42 (4) the public is not effectively protected from harm by certification
43 of members of the occupation or profession or by means other than

1 credentialing;

2 (5) the effect of credentialing of the occupation or profession on the
3 cost of health care to the public is minimal;

4 (6) the effect of credentialing of the occupation or profession on the
5 availability of health care personnel providing services provided by such
6 occupation or profession is minimal;

7 (7) the scope of practice of the occupation or profession is
8 identifiable;

9 (8) the effect of credentialing of the occupation or profession on the
10 scope of practice of other health care personnel, whether or not creden-
11 tialled under state law, is minimal; and

12 (9) nationally recognized standards of education or training exist for
13 the practice of the occupation or profession and are identifiable.

14 (b) Reports of the technical committee, and the ~~secretary~~ *appropriate*
15 *state agency* shall include specific findings on the criteria set forth in
16 subsection (a). No report of the technical committee or the ~~secretary~~
17 *appropriate state agency* shall recommend credentialing of any occupa-
18 tional or professional group of health care personnel unless all the criteria
19 set forth in subsection (a) have been met.

20 Sec. 6. K.S.A. 65-5007 is hereby amended to read as follows: 65-
21 5007. (a) All recommendations of the technical committee and the ~~see-~~
22 ~~retary~~ *appropriate state agency* which relate to the level or levels of cre-
23 dentialing regulation of a particular group of health care personnel shall
24 be consistent with the policy that the least regulatory means of assuring
25 the protection of the public is preferred and shall be based on alternatives
26 which include, from least regulatory to most regulatory, the following:

27 (1) Statutory regulation, other than registration or licensure, by the
28 creation or extension of statutory causes of civil action, the creation or
29 extension of criminal prohibitions or the creation or extension of injunc-
30 tive remedies is the appropriate level when this level will adequately pro-
31 tect the public's health, safety or welfare.

32 (2) Registration is the appropriate level when statutory regulation un-
33 der paragraph (a)(1) is not adequate to protect the public's health, safety
34 or welfare and when registration will adequately protect the public health,
35 safety or welfare by identifying practitioners who possess certain mini-
36 mum occupational or professional skills so that members of the public
37 may have a substantial basis for relying on the services of such
38 practitioners.

39 (3) Licensure is the appropriate level when statutory regulation under
40 paragraph (a)(1) and registration under paragraph (a)(2) is not adequate
41 to protect the public's health, safety or welfare and when the occupational
42 or professional groups of health care personnel to be licensed perform
43 functions not ordinarily performed by persons in other occupations or

1 professions.

2 (b) Reports of the technical committee and the ~~secretary~~ *appropriate*
3 *state agency* shall include specific findings on the criteria set forth in
4 subsection (a). No report of the technical committee or the ~~secretary~~
5 *appropriate state agency* shall recommend the level or levels of creden-
6 tialing of any occupational or professional group of health care personnel
7 unless all the criteria set forth in subsection (a) for the recommended
8 level or levels of credentialing have been met.

9 Sec. 7. K.S.A. 65-5008 is hereby amended to read as follows: 65-
10 5008. The ~~secretary~~ *appropriate state agency* shall periodically schedule
11 for review the credentialing status of health care personnel who are cre-
12 dentialled pursuant to existing laws. The procedures to be followed, the
13 criteria to be applied and the reports to be submitted for credentialing
14 applications filed pursuant to K.S.A. 65-5002 and amendments thereto
15 shall apply to credentialing reviews conducted pursuant to this section.

16 Sec. 8. K.S.A. 65-5009 is hereby amended to read as follows: 65-
17 5009. (a) The ~~secretary~~ *appropriate state agency* shall provide all neces-
18 sary professional and clerical services to the technical committee. Records
19 of all official actions and minutes of all business coming before the tech-
20 nical committee shall be kept. The ~~secretary~~ *appropriate state agency*
21 shall be the custodian of all records, documents and other property of
22 the technical committee.

23 (b) The ~~secretary~~ *appropriate state agency* shall adopt rules and reg-
24 ulations necessary to implement the provisions of this act including, but
25 not limited to, rules and regulations establishing the policies and proce-
26 dures to be followed by the technical committee in the consideration of
27 credentialing applications under this act.

28 (c) Members of the technical committee appointed pursuant to
29 K.S.A. 65-5003 and amendments thereto shall be paid subsistence allow-
30 ances, mileage and other expenses as provided in K.S.A. 75-3223 and
31 amendments thereto when in attendance at a meeting of the technical
32 committee authorized by the ~~secretary~~ *appropriate state agency*.

33 Sec. 9. K.S.A. 65-5011 is hereby amended to read as follows: 65-
34 5011. Except as otherwise provided in this act, the review of an applica-
35 tion for credentialing commenced prior to the effective date of this act
36 shall be governed by the provisions of this act which apply to that part of
37 the review of such application which was not completed prior to the
38 effective date of this act. The ~~secretary~~ *appropriate state agency* shall
39 authorize an original application for credentialing filed prior to the effec-
40 tive date of this act, to be amended to address the standards and criteria
41 established under this act. Nothing in this section shall be construed to
42 require the filing of a new application with the ~~secretary~~ *appropriate state*
43 *agency*.

1 Sec. 10. K.S.A. 65-5001, 65-5002, 65-5003, 65-5005, 65-5006, 65-
2 5007, 65-5008, 65-5009 and 65-5011 are hereby repealed.

3 Sec. 11. This act shall take effect and be in force from and after its
4 publication in the statute book.

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