

## HOUSE BILL No. 2867

By Committee on Health and Human Services

2-13

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9 AN ACT concerning adult care homes; providing for a medical review  
10 panel.

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

13 Section 1. (a) The legislature finds that the number of lawsuits,  
14 claims for damages and the large judgments and settlements has precip-  
15 itated a malpractice insurance crisis which affects the entire health care  
16 system including health care providers in the adult care home industry.  
17 Additionally, increased delays in the litigation process delays recovery by  
18 claimants with meritorious cases and increased the overall costs to all  
19 parties involved in a lawsuit.

20 (b) To identify and encourage the early resolution of meritorious  
21 claims and the withdrawal or dismissal of non-meritorious claims the leg-  
22 islature finds it is in the best interests of the state and the parties involved  
23 to have such claims heard by a medical review panel.

24 Sec. 2. As used in this act:

25 (a) "Adult care home" means any nursing facility, nursing facility for  
26 mental health, intermediate care facility for the mentally retarded, as-  
27 sisted living facility, residential health care facility, home plus, boarding  
28 care home and adult day care facility, all of which classifications of adult  
29 care homes are required to be licensed by the secretary of aging.

30 (b) "Health care" means any act or treatment provided, or which  
31 should have been provided, by any health care provider to or on behalf  
32 of a patient during the course of the patient's care or confinement in an  
33 adult care home.

34 (c) "Health care provider" means any individual, partnership, cor-  
35 poration, facility or institution licensed by this state to provide health care  
36 or medical professional services in the field of long-term care including  
37 any officer, employee or agent of an adult care home acting within the  
38 scope of such individual's employment.

39 (d) "Medical malpractice" means any action against a health care pro-  
40 vider alleging personal injuries resulting from health care rendered, the  
41 failure to render health care or any other alleged departure from accepted  
42 standards of health care by the health care provider.

43 (e) "Resident" means all individuals kept, cared for, treated, boarded

1 or otherwise accommodated in any adult care home.

2 Sec. 3. (a) No action against a health care provider may be com-  
3 menced in any court of this state before the claimant's complaint has  
4 been presented to a medical review panel and an opinion is rendered by  
5 this panel. Any action commenced without a determination by the panel  
6 shall be dismissed without prejudice for failure to comply with this  
7 section.

8 (b) Submission of a medical malpractice claim to a medical review  
9 panel shall toll the running of the applicable statute of limitation period  
10 for that claim until 90 days after the panel's final decision is delivered to  
11 the claimant and the claimant's attorney by certified mail.

12 Sec. 4. The commissioner of insurance shall administer the provi-  
13 sions of this act and shall adopt rules and regulations as may be necessary  
14 to implement the provisions of this act.

15 Sec. 5. (a) A claim of medical malpractice against a health care pro-  
16 vider within the meaning of this act shall be filed with the commissioner  
17 of insurance.

18 (b) Within 10 days of the filing of a notice of a medical malpractice  
19 claim with the department of insurance together with proof of service on  
20 the respondent health care provider, the commissioner of insurance shall  
21 select a medical review panel composed of:

22 (1) A geriatric-trained clinician from a state accredited school;

23 (2) a health care provider as defined in section 2, and amendments  
24 thereto;

25 (3) a licensed physician of medicine and surgery who shall be from  
26 the same field of medicine as the individual against whom the claim is  
27 filed; and

28 (4) a non-voting attorney who shall be a practitioner with experience  
29 in the trial of personal injury cases and who shall serve as the panel  
30 chairperson.

31 (c) The commissioner of insurance shall select the panel members  
32 from a list of such professionals maintained by the department of insur-  
33 ance. The licensing agency for each profession shall submit a list of names  
34 to the insurance commissioner from which medical review panel mem-  
35 bers may be selected.

36 (d) Members of the medical review panel shall be paid amounts as  
37 provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

38 Sec. 6. (a) The notice of claim filed with the department of insurance  
39 shall contain a brief statement of facts of the claim, the names of the  
40 persons involved and the dates and circumstances of the alleged act or  
41 acts of medical malpractice.

42 (b) A health care provider named by the claimant in the notice of  
43 claim shall respond within 10 days of receiving the service of the notice

1 of claim. The response shall be served upon the claimant, or the claimant's  
2 attorney if claimant has hired an attorney, and filed with the department  
3 of insurance together with proof of service.

4 (c) The parties shall submit to the screening panel all written eviden-  
5 tiary material, including, but not limited to, medical and hospital reports,  
6 X-rays, laboratory tests, excerpts of treatises and other documents rele-  
7 vant to the claim no less than five days before the hearing. Each party  
8 shall send a copy of all evidence submitted to the panel to the opposing  
9 party.

10 (d) The hearing shall consist of the testimony of witnesses and pres-  
11 entations by the parties or their counsel or both. The hearing shall be  
12 informal and confidential. No stenographic record shall be made of the  
13 hearing. All evidence, documents and exhibits shall, at the close of the  
14 hearing, be returned to the parties or witnesses from whom they were  
15 obtained.

16 (e) The panel shall have the authority to subpoena witnesses and doc-  
17 uments and to administer oaths.

18 (f) Upon application of any party or upon its own discretion, the panel  
19 may request the insurance commissioner to appoint an additional impar-  
20 tial, licensed physician of medicine and surgery having particular expertise  
21 in the medical specialty involved to assist in the determination of the  
22 claim. Such physician may conduct a physical examination of the claimant  
23 upon the request of a party or of the panel. The panel shall determine  
24 the fee and expenses to be paid to such physician. The parties to the  
25 hearing shall share equally in paying such fee and expenses.

26 (g) The panel shall render a written decision on the claim no later  
27 than 30 days after completion of the hearing.

28 Sec. 7. (a) The medical review panel by a majority of its members  
29 shall render one or more of the following opinions:

30 (1) The evidence does not support a conclusion that the health care  
31 provider failed to comply with the appropriate standard of care.

32 (2) The evidence supports a conclusion that the health care provider  
33 failed to comply with the appropriate standard of care and such failure  
34 was a proximate cause of the alleged damages.

35 (3) The evidence supports a conclusion that the health care provider  
36 failed to comply with the appropriate standard of care but such failure  
37 was not the proximate cause of the alleged damages.

38 (4) The evidence indicates that there is a material issue of fact, not  
39 requiring expert opinion, bearing on liability for consideration by a court  
40 or jury.

41 (5) If the panel's opinion is that set forth in paragraph (2) of subsec-  
42 tion (a), the panel may determine whether the claimant suffered any  
43 disability or impairment and the extent and duration of the disability or

- 1 the percentage of the impairment.
- 2 (b) If the panel's opinion is that set forth in paragraph (2) of subsection (a), the panel may decide the amount, if any, which in its recommendation should reasonably be offered for settlement of the claim. The amount shall specify which portion of the amount recommended is attributable to economic losses and which is attributable to non-economic losses. The panel may not recommend punitive damages.
- 8 (c) The panel's decision shall be in writing. Any member of the panel who does not agree with the panel's decision may file a dissenting opinion.
- 10 (d) The panel shall sit as an expert advisory board. The panel's decision shall be without administrative or judicial authority and shall not be binding on any party.
- 13 Sec. 8. (a) The opinion reached by the screening panel shall be admissible as evidence in any action subsequently brought by the claimant in a court of law on the same claim, however, any amount recommended by the panel in settlement of the claim shall be inadmissible. Any dissenting opinion filed with the panel decision shall be admissible into evidence in such action. The opinion of the screening panel shall be of evidentiary value only and not conclusive as to the merits of the case.
- 20 (b) No member of the panel shall be deposed for or testify at a subsequent trial of the same claim.
- 22 (c) Panel members shall have absolute immunity from civil liability for all communications, findings, opinions, conclusions and recommendations made in the course and scope of duties prescribed by this act.
- 25 Sec. 9. (a) If the medical review panel finds in favor of the claimant and the respondent makes an offer of settlement to the claimant in at least the amount recommended by the panel for settlement of the claim, but such offer is rejected by the claimant, the claimant may file an action in a court of law. If the claimant does not obtain a judgment that is at least 25% higher than the amount offered in settlement by the defendant, the claimant shall be liable for the defendant's reasonable costs and attorney fees incurred in the court action.
- 33 (b) If the medical review panel finds in favor of the claimant and the defendant fails to make an offer of settlement to the claimant in at least the amount recommended by the panel for settlement of the claim, the claimant may file an action in a court of law. If the defendant does not obtain a favorable judgment in court, the defendant shall be liable for the claimant's reasonable costs and attorney fees incurred in court action.
- 39 (c) If the panel decision is not in favor of the claimant, the claimant may file an action in a court of law. If the claimant does not obtain a favorable judgment in court, the claimant shall be liable for the defendant's reasonable costs and attorney fees incurred in the court action.
- 43 Sec. 10. (a) Presentation of a medical malpractice claim to a state

1 screening panel involving health care providers pursuant to this act shall  
2 be a condition precedent to commencement of an action on the same  
3 claim in federal district court. No such action shall be commenced in  
4 federal district court without the medical review panel having previously  
5 rendered its opinion.

6 (b) Any report of the opinion reached by the panel shall be admissible  
7 as evidence in any action subsequently brought by the claimant on the  
8 same claim in federal district court, however, any amount recommended  
9 by the medical review panel in settlement of the claim shall be inadmis-  
10 sible in the federal court.

11 Sec. 11. This act shall be part of and supplemental to the adult care  
12 home act.

13 Sec. 12. This act shall take effect and be in force from and after its  
14 publication in the statute book.