

HOUSE BILL No. 2879

By Committee on Federal and State Affairs

2-13

9 AN ACT concerning certain medical procedures; providing for adoption
10 of standards relating thereto; providing remedies for violations.

11

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

13 Section 1. As used in this act:

14 (a) "Local anesthesia" means the administration of an anesthetic
15 agent into a localized part of the human body by topical application or
16 local infiltration in close proximity to a nerve, which produces a transient
17 and reversible loss of sensation.

18 (b) "Minimal sedation" means the administration of oral sedative or
19 oral analgesic drugs in doses appropriate for the unsupervised treatment
20 of insomnia, anxiety or pain.

21 (c) "Minor surgery" means surgery which can be safely and comfort-
22 ably performed on a patient who has received local or topical anesthesia,
23 without more than minimal sedation and where the likelihood of com-
24 plications requiring hospitalization is remote.

25 (d) "Office-based surgery" means any surgery or other special pro-
26 cedure requiring anesthesia, analgesia or sedation which is performed by
27 a physician in a clinical location other than a medical facility licensed
28 pursuant to K.S.A. 65-425, and amendments thereto, and which results
29 in a patient stay of less than 24 hours. The term does not include minor
30 surgery.

31 (e) "Physician" means a person licensed to practice medicine and
32 surgery or osteopathic medicine and surgery in the state of Kansas.

33 (f) "Secretary" means the secretary of health and environment.

34 (g) "Special procedure" means a patient care service which requires
35 contact with the human body with or without instruments in a potentially
36 painful manner, for a diagnostic or therapeutic procedure requiring an-
37 esthesia services (i.e., diagnostic or therapeutic endoscopy, invasive ra-
38 diologic procedures, manipulation under anesthesia or endoscopic ex-
39 amination). The term does not include minor surgery.

40 (h) "Surgery" means a manual or operative procedure which involves
41 the excision or resection, partial or complete, destruction, incision or
42 other structural alteration of human tissue by any means, including the
43 use of lasers, performed upon the human body for the purpose of pre-

1 serving health, diagnosing or treating disease, repairing injury, correcting
2 deformity or defects, prolonging life or relieving suffering, or for aes-
3 thetic, reconstructive or cosmetic purposes. Surgery includes, but is not
4 limited to, incision or curettage of tissue or an organ, suture or other
5 repair of tissue or an organ, a closed or open reduction of a fracture,
6 extraction of tissue from the uterus and insertion of natural or artificial
7 implants.

8 (i) “Topical anesthesia” means an anesthetic agent applied directly or
9 by spray to the skin or mucous membranes, intended to produce a tran-
10 sient and reversible loss of sensation to a circumscribed area.

11 Sec. 2. (a) The secretary, by rules and regulations, shall establish
12 standards for clinics and other locations where office-based surgery or
13 special procedures, or both, are performed. Such standards shall include
14 such requirements as the secretary determines necessary to promote the
15 safety of patients, including, but not limited to, standards addressing:

16 (1) Qualifications of physicians and other personnel and supervision
17 of non-physician personnel;

18 (2) facility safety and sanitation;

19 (3) equipment requirements, sanitation, testing and maintenance;

20 (4) patient screening, assessment and monitoring;

21 (5) selection of procedures to be performed;

22 (6) anesthesia services;

23 (7) peri-operative care;

24 (8) emergencies and patient transfers; and

25 (9) quality assurance and peer review.

26 (b) In adopting standards pursuant to this section, the secretary shall
27 give consideration to the guidelines for office-based surgery and special
28 procedures approved by the Kansas medical society house of delegates
29 on May 5, 2002.

30 (c) Any rules and regulations adopted by the secretary pursuant to
31 this act shall provide for protection of the identities of patients and health
32 care providers.

33 Sec. 3. (a) Any person who violates any provision of the rules and
34 regulations adopted under this act shall incur a civil penalty in an amount
35 not more than \$5,000 for every such violation. In the case of a continuing
36 violation, every day such violation continues shall be deemed a separate
37 violation.

38 (b) The secretary, upon a finding that a person has violated any pro-
39 vision of rules and regulations adopted under this act may impose a pen-
40 alty within the limits provided in this section. In determining the amount
41 of the civil penalty, the secretary shall take into consideration all relevant
42 circumstances, including, but not limited to, the extent of harm caused
43 by the violation, the nature and persistence of the violation, the length of

- 1 time over which the violation occurs and any corrective actions taken.
- 2 (c) No penalty shall be imposed under this section until written notice
3 and an opportunity for hearing have been provided to the person alleged
4 to have committed the violation. Such notice shall state the violation, the
5 penalty to be imposed and the right of the person to a hearing on the
6 matter. Such person, within 15 days after service of the order, may make
7 written request to the secretary for a hearing thereon. The hearing shall
8 be conducted in accordance with the provisions of the Kansas adminis-
9 trative procedure act.
- 10 (d) Any action of the secretary pursuant to this section is subject to
11 review in accordance with the act for judicial review and civil enforcement
12 of agency actions.
- 13 Sec. 4. Any clinic or other location where office-based surgery or
14 special procedures, or both, are performed at the time rules and regula-
15 tions adopted under this act take effect shall be given reasonable time,
16 as determined by the secretary under the particular circumstances, but
17 not to exceed one year from the effective date of such rules and regula-
18 tions, within which to comply with such rules and regulations.
- 19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.