

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 12:00 p.m. on April 12, 2002 in Room 313-S of the Capitol.

All members were present except:  
Representative Peggy Long - Excused

Committee staff present:  
Jerry Ann Donaldson, Department of Legislative Research  
Sherman Parks, Department of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

The discussion on **SB 521 - Departure sentencing procedure under sentencing guidelines act**, led committee members to be concerned with the bifurcated system proposed in the bill due to the burden it would place on the courts.

Barbara Tombs, Executive Director, Kansas Sentencing Commission, proposed a system that would let the court determine which process they wanted to use, the bifurcated system or a jury form questionnaire. They could use the bifurcated system when there might be evidence that the jury shouldn't have. She estimated that 50% of departures could be solved with a jury form.

She was directed by the Chairman to work with the Revisers on a draft.

**SB 377- Access to health care records by patients and authorized representatives**

Representative Newton provided the committee with two balloons:

- A. Had the Golden Rule Letter requirement but gives 30 days for the licensing agency to try and resolve the dispute (Attachment 1)
- B. Tied the costs to the Workers Compensation Advisory Board for adjustments purposes (Attachment 2)

Representative Newton moved to adopt both balloons. Representative Lloyd seconded the motion.

Representative Newton was asked why there was the need for the costs being set by the Workers Compensation Advisory Board. He responded that with a set fee in statute the legislature would have to revisit the fees every several years.

Representative Loyd didn't believe that two notices needed to be sent and opposed the last sentence which states the "courts shall award the costs of the action or"...the "or" was originally was "an". He was not concerned with the fees "getting out of line" because the Workers Compensation Advisory Board fees have been on target for that industry.

With the permission of the second, Representative Newton modified his motion to delete the request for the Golden Rule, and resort the last sentence to how it originally was.

Representative DiVita questioned the need for the bill when it was only concerned with "copies" being made. In today's business world records are now being sent by e-mails or copied on disks and was concerned how those would be charged since they are not "copied per page" items.

Representative Newton requested his motion be divided as follows:

- A. Balloon A with section 4 amendment
- B. Workers Compensation Advisory Board setting the fees
- C. New Section 3

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 12:00 p.m. on April 12, 2002 in Room 313-S of the Capitol.

Motion on part A carried.

The committee recessed at 12:45 p.m. and meet at the Rail at 4:30 p.m.

Representative Patterson made the motion to adopt balloons A & B as previously distributed and discussed and balloon C (Attachment 3) which sets the fees at \$20 for cost of supplies, \$.50 for each page for the first two hundred fifty pages and \$.35 per page thereafter. Representative DiVita seconded the motion. The motion failed 8-11.

The Chairman adjourned the meeting at 4:45 p.m. No further meetings have been scheduled.

Committee minutes from March 12, 13, 14, 18, 20, 25, 26, April 1, 2, 4, 11, and 12 were distributed on May 2, 2002. If no changes are requested by May 31, 2002 they will stand approved.

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. ~~(a)~~ Subject to applicable law, copies of health care records shall be furnished to a patient, ~~or~~ a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient, ~~or~~ the patient's authorized representative, upon the payment of charges not to exceed a \$15 handling or service fee and \$0.05 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on

or any other person or entity authorized by law to obtain or reproduce such records.

A health care provider may withhold copies of health care records if the health care provider reasonably believes that providing copies of the requested records will cause substantial harm to the patient or another person.

or any other person or entity authorized by law to obtain or reproduce such records,

1 a standard photocopy machine.

2 ~~(b) The limits provided in subsection (a) shall be increased or de-~~  
3 ~~creased on an annual basis effective January 1 of each year in accordance~~  
4 ~~with the centers for medicare and medicaid services market basket survey.~~

5 ~~Sec. 3. Any health care provider, patient or authorized representative~~  
6 ~~of a patient may bring a claim or action to enforce the provisions of this~~  
7 ~~act, and any court having jurisdiction of such claim or action, upon a~~  
8 ~~showing that the failure to comply with this act was without just cause or~~  
9 ~~excuse, shall award the costs of the action and order the patient's health~~  
10 ~~care records produced without cost or expense to the requesting party.~~

1 ~~Sec. 4. Nothing in this act shall be construed to prohibit the~~  
2 ~~state board of healing arts from adopting and enforcing rules and~~  
3 ~~regulations that require licensees of the board to furnish health care~~  
4 ~~records to patients or to their authorized representative. To the~~  
5 ~~extent that the board determines that an administrative disciplinary~~  
6 ~~remedy is appropriate for violation of such rules and regulations,~~  
7 ~~that remedy is separate from and in addition to the provisions of~~  
8 ~~this act.~~

9 Sec. 4.5. This act shall take effect and be in force from and after its  
10 publication in the Kansas register.

Sec. 3. Any health care provider, patient, authorized representative or any other entity authorized by law to obtain or reproduce such records may bring a claim or action to enforce the provisions of this act. The petition shall include an averment that the party bringing the action has in good faith conferred or attempted to confer with the other party concerning the matter in dispute without court action. Upon a showing that the failure to comply with this act was without just cause or excuse, the court shall award the costs of the action or order the records produced without cost or expense to the prevailing party.

not inconsistent with this act

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(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient or a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a \$15 handling or service fee and \$.35 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on

1 a standard photocopy machine.

2 ~~(b) The limits provided in subsection (a) shall be increased or de-~~  
3 ~~creased on an annual basis effective January 1 of each year in accordance~~  
4 ~~with the centers for medicare and medicaid services market basket survey.~~

(b) The limits provided for in subsection (a)  
shall be adjusted pursuant to K.S.A. 44-510i.

5 ~~Sec. 3. Any health care provider, patient or authorized representative~~  
6 ~~of a patient may bring a claim or action to enforce the provisions of this~~  
7 ~~act, and any court having jurisdiction of such claim or action, upon a~~  
8 ~~showing that the failure to comply with this act was without just cause or~~  
9 ~~excuse, shall award the costs of the action and order the patient's health~~  
10 ~~care records produced without cost or expense to the requesting party.~~

New Sec. 3:

Any health care provider, patient, authorized  
representative or any other entity authorized  
by law to obtain or reproduce such records  
may bring an action to enforce the provisions  
of this act. The claimant shall provide written  
notice of the dispute to the state agency which  
licenses or registers the health care provider.  
The agency shall have thirty days to resolve  
the dispute before a claim may be brought in  
district court. Upon a showing that the failure  
to comply with this act was without just cause  
or excuse, the court shall award the costs of the  
action or order the records produced without  
cost or expense to the prevailing party.

11 *Sec. 4. Nothing in this act shall be construed to prohibit the*  
12 *state board of healing arts from adopting and enforcing rules and*  
13 *regulations that require licensees of the board to furnish health care*  
14 *records to patients or to their authorized representative. To the*  
15 *extent that the board determines that an administrative disciplinary*  
16 *remedy is appropriate for violation of such rules and regulations,*  
17 *that remedy is separate from and in addition to the provisions of*  
18 *this act.*

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