

CHAPTER 133  
HOUSE BILL No. 2010

AN ACT concerning state board of healing arts; relating to storage, maintenance and transfer of medical records and delegation of practice; creating medical records maintenance trust fund; amending K.S.A. 2008 Supp. 65-28,127 and 65-28,128 and repealing the existing sections.

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

New Section 1. (a) For the purpose of paying for storage, maintenance and transfer of medical records by the board of healing arts, there is hereby established the medical record maintenance trust fund. All payments and disbursements from the medical records maintenance trust fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director of the board or by any person designated by the board.

(b) The board may certify to the director of accounts and reports that a specific amount, but not more than \$10, of each fee for the issuance or renewal of a license be credited to the medical records maintenance trust fund until such time the balance exceeds \$100,000. At any time the balance in the medical records trust fund falls below \$100,000, the board shall certify again to the director of accounts and reports that a specific amount, but not to exceed \$10, of each fee for the issuance or renewal of a license be deposited in the state treasury and credited to the medical records maintenance trust fund. The board may order a licensee to reimburse the amount of expenses incurred by the board in a case when such licensee failed to designate a custodian or provide for the storage, maintenance, transfer and access to such licensee's medical records upon becoming inactive. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medical records maintenance trust fund.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the medical records maintenance trust fund interest earnings based on: (1) The average daily balance of moneys in the medical records maintenance trust fund for the preceding month; and (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) The board of healing arts shall adopt rules and regulations establishing the procedures and standards necessary to implement the provisions of this section within one year of the effective date of this section.

(e) This section shall be part of and supplemental to the Kansas healing arts act.

Sec. 2. K.S.A. 2008 Supp. 65-28,127 is hereby amended to read as follows: 65-28,127. (a) Every responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons shall:

(1) Be actively engaged in the practice of the healing arts in Kansas;

(2) review and keep current any required practice protocols between the responsible licensee and such persons, as may be determined by the board;

(3) direct, supervise, order, refer, enter into a practice protocol with, or delegate to such persons only those acts and functions which the responsible licensee knows or has reason to believe ~~such person is competent and authorized by law to perform~~ *can be competently performed by such person and is not in violation of any other statute or regulation;*

(4) direct, supervise, order, refer, enter into a practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the responsible licensee;

(5) provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and practice protocols with such persons when the responsible licensee is temporarily absent;

(6) comply with all rules and regulations of the board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery.

(b) "Responsible licensee" means a person licensed by the state board of healing arts to practice medicine and surgery or chiropractic who has accepted responsibility for the actions of persons who perform acts pur-

suant to practice protocols with, or at the order of, or referral, direction, supervision or delegation from such responsible licensee.

(c) Except as otherwise provided by rules and regulations of the board implementing this section, the physician assistant licensure act shall govern the direction and supervision of physician assistants by persons licensed by the state board of healing arts to practice medicine and surgery.

(d) Nothing in subsection (a)(4) shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing anesthesia care by a registered nurse anesthetist pursuant to K.S.A. 65-1158 and amendments thereto.

(e) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing physical therapy services pursuant to K.S.A. 65-2901 et seq. and amendments thereto.

(f) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from entering into a co-management relationship with an optometrist pursuant to K.S.A. 65-1501 et seq. and amendments thereto.

(g) The board may adopt rules and regulations establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery.

(h) This section shall be part of and supplemental to the Kansas healing arts act.

Sec. 3. K.S.A. 2008 Supp. 65-28,128 is hereby amended to read as follows: 65-28,128. (a) As used in this section:

(1) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a podiatrist licensed by the state board of healing arts, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection.

(2) "Board" means the state board of healing arts.

(b) The board shall immediately petition the court for appointment of a custodian of a health care provider's health care records if the board is notified or has independent knowledge that a health care provider: (1) Has abandoned health care records, abandoned the health care provider's practice, had the health care provider's license suspended or revoked, had a license canceled or dissolved a business entity and the health care provider is unable or refuses to allow patients access to their health care records as authorized by law or (2) has died and the health care provider's patients are unable to access their health care records as authorized by law. The petition shall nominate a person or business entity who is capable and willing to serve as the custodian of health care records. *The district court shall expedite an action brought by the board. The court's findings may be made solely on a review of the documentation or affidavits attached to the petition and without hearing any testimonial evidence. The district court's review may be made ex parte without delay or notice of any kind. An appellate court shall expedite review of a district court's findings as provided in this section.*

(c) Notice of hearing on the petition shall be served on the health care provider at the last known address and if the health care provider is a business entity, on the registered agent of such business entity. If the health care provider has died and an administrator of the estate has been appointed, notice shall be served on such administrator. Notice shall be served as in civil cases.

(d) At the hearing, if the court finds the health care records have been abandoned, the court shall appoint a person or business entity as the custodian of the health care records and responsible for the safe-keeping thereof, and shall order the delivery and possession of the health care records to the appointed custodian of health care records. The court may make all additional orders necessary to protect the health care pro-

vider's property interests in the records.

(e) The record's custodian:

(1) Shall be a fiduciary and act in the place of the health care provider to furnish to the patient or the patient's authorized representative copies of health care records, pursuant to K.S.A. 65-4970 through 65-4973, and amendments thereto, and shall be authorized to collect any fee for disclosure authorized by K.S.A. 65-4971, and amendments thereto;

(2) shall have exclusive possession of the health care records until further order of the court;

(3) may destroy the records in the ordinary course of business when the health care provider's duty to maintain such records has ceased;

(4) shall act in the place of the health care provider to maintain confidentiality of records and shall be liable if the custodian maliciously breaches the confidentiality;

(5) shall not guarantee or be liable for the accuracy or completeness of the health care records;

(6) shall not be liable in a civil action for damages or other relief arising from the performance of the responsibilities set forth in this section except upon clear and convincing evidence that the custodian of records maliciously altered or destroyed health care records; and

(7) shall act as the health care provider for the purposes of physician-patient privilege, pursuant to K.S.A. 60-427, and amendments thereto, and shall assert any privilege acting as the physician.

(f) At any time after the appointment of a custodian, the health care provider, administrator of the health care provider's estate or board may petition the court to amend, modify or dissolve the order concerning the custodian of health care records. The court shall amend the order when it reasonably appears the health care provider or administrator of the health care provider's estate is prepared to assume the duties of the health care provider relating to the records.

(g) Nothing in this act shall prohibit the health care provider or the health care provider's authorized representative from gaining access and copying a record created by the health care provider.

(h) This section shall be part of and supplemental to the Kansas healing arts act.

Sec. 4. K.S.A. 2008 Supp. 65-28,127 and 65-28,128 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 2009.