

**Substitute for HOUSE BILL No. 2069**

By Committee on Judiciary

2-22

1 AN ACT enacting the Kansas adverse medical outcome transparency act;  
2 concerning evidence in civil actions; expression of apology, sympathy,  
3 compassion or benevolent acts by health care providers or health care  
4 administrators not admissible as evidence of an admission of liability  
5 or as evidence of an admission against interest.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) This section may be cited as the Kansas adverse  
9 medical outcome transparency act.

10 (b) A health care administrator or such administrator's designee may  
11 convene a facilitated conference for the purpose of the health care  
12 provider or providers and the health care administrator expressing  
13 benevolence, sorrow, regret, mistake, error, sympathy, apology,  
14 commiseration, condolence, compassion or a general sense of  
15 benevolence to a patient, patient's family or patient's representatives  
16 allegedly experiencing an adverse outcome of medical care in a medical  
17 care facility. Attorneys for the health care administrator, health care  
18 provider, patient, patient's family or patient's representative may attend  
19 the facilitated conference if there is a prior written agreement signed by  
20 all participants in the facilitated conference approving of such attorney's  
21 attendance. The facilitated conference shall not be electronically  
22 recorded.

23 (c) In any claim or civil action concerning an alleged adverse  
24 outcome of medical care in a medical care facility:

25 (1) Any verbal statements made in such facilitated conference shall  
26 be inadmissible as evidence and shall not constitute an admission of  
27 liability or an admission against interest. The fact that a facilitated  
28 conference was or was not convened shall be inadmissible.

29 (2) waiver of charges for medical care provided shall be inadmissible  
30 as evidence and shall not constitute an admission of liability or an  
31 admission against interest.

32 (d) A defendant in a medical malpractice action may waive the  
33 inadmissibility of verbal statements that are attributable to such defendant  
34 by expressly stating, in writing, the intent to make such a waiver. If a  
35 defendant waives such inadmissibility of a verbal statement, such waiver  
36 shall not be construed to be a failure to assist with such defendant's

1 medical malpractice insurance carrier in the defense of the claim.

2 (e) As used in this section:

3 (1) "Health care provider" has the meaning prescribed in K.S.A. 65-  
4 4915, and amendments thereto.

5 (2) "Health care administrator" means the individual directly  
6 responsible for planning, organizing, directing and controlling the  
7 operation of a medical care facility.

8 (3) "Adverse outcome" means the outcome of a medical treatment  
9 or procedure, whether or not resulting from an intentional act, that differs  
10 from an intended result of such medical treatment or procedure.

11 (4) "Facilitated conference" means a specially called conference by a  
12 health care administrator or such administrator's designee with a health  
13 care provider or providers and the patient, patient's family or patient's  
14 representatives for the purpose of facilitating an open and compassionate  
15 dialogue among the participants in the facilitated conference.

16 (5) "Medical care facility" means a general hospital, special hospital,  
17 ambulatory surgery center or recuperation center, as defined by K.S.A.  
18 65-425, and amendments thereto, and any psychiatric hospital licensed  
19 under K.S.A. 75-3307b, and amendments thereto.

20 (6) "Verbal statements" means any statements, affirmations,  
21 gestures, activities or conduct.

22 Sec. 2. This act shall take effect and be in force from and after its  
23 publication in the statute book.