

SESSION OF 2016

**FOURTH CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2615**

As Agreed to May 1, 2016

**Brief\***

HB 2615 would amend and create law regarding charitable healthcare providers, the Acupuncture Practice Act and the Physical Therapy Practice Act, the Behavioral Sciences Regulatory Board, the Interstate Medical Licensure Compact, and the Independent Practice of Midwifery Act. The bill would be effective upon publication in the statute book, unless otherwise noted. [*Note*: Description of the Conference Committee Action begins on page 44 of this brief.]

**Charitable Healthcare Providers**

The bill would allow charitable healthcare providers and dentists to fulfill one hour of continuing education credit for performance of two hours of gratuitous service to medically indigent persons if the provider signs an agreement with the Secretary of Health and Environment (Secretary) to provide gratuitous services. Healthcare providers would be allowed to fulfill a maximum of 20 continuing educational credits through gratuitous service per licensure period, and dentists would be allowed to fulfill a maximum of 6 continuing educational credits through gratuitous service per licensure period.

The bill also would require the Kansas State Board of Healing Arts (Board of Healing Arts) to provide an annual measurement report, starting on January 15, 2017, to the

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services. The report would detail, by profession, the number of gratuitous continuing education units used compared to the number of continuous education units required.

Further, the bill would exempt charitable healthcare providers who sign an agreement with the Secretary to provide gratuitous service from liability under the Kansas Tort Claims Act, notwithstanding statutory provisions requiring professional liability insurance to be maintained by healthcare providers as a condition of active licensure to render services in the state.

Additionally, the bill would require the Secretary to report, annually starting January 15, 2017, to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, what types of charitable health care providers have signed agreements under the bill and how many are using it to provide gratuitous care.

The bill would exempt community mental health centers and employees of those centers from liability under the Kansas Tort Claims Act. It would define the term “community mental health center” as any community mental health center organized pursuant to KSA 19-4001 through KSA 19-4015 or a mental health clinic organized pursuant to KSA 65-211 through KSA 65-215 and licensed in accordance with KSA 75-3307b.

### **The Acupuncture Practice Act and the Physical Therapy Practice Act**

The bill would create the Acupuncture Practice Act, provide for the licensure of individuals by the Board of Healing Arts, and exempt licensed physical therapists from the Acupuncture Practice Act when performing dry needling, trigger point therapy, or services specifically authorized under

the Physical Therapy Practice Act. The bill also would amend the Physical Therapy Practice Act to include the practice of dry needling within the scope of practice for licensed physical therapists, define dry needling, and exempt licensed acupuncturists from the Physical Therapy Practice Act. Additionally, the Board of Healing Arts would be required to adopt rules and regulations applicable to dry needling.

With regard to the Acupuncture Practice Act, the bill would define key terms; outline the treatments included and excluded in the practice of acupuncture; establish penalties for violation of the Acupuncture Practice Act; establish requirements for the licensure of acupuncturists and the licensure application, renewal, and reinstatement procedures for reciprocal, active, exempt, and inactive licenses, and for the grandfathering of individuals currently practicing acupuncture; establish licensure fees; and provide for the discipline of the licensees, including non-disciplinary resolutions; exempt certain individuals from licensure; and provide for the deposit of fees, charges, and penalties in the State Treasury, with a portion of the funds deposited in the State General Fund.

The bill also would establish an Acupuncture Advisory Council (Council) and set out the Council's duties, membership requirements, meeting days, and compensation; and define the duties and authority of the Board of Healing Arts.

Additionally, with regard to the Acupuncture Practice Act, the bill would provide for the assessment of civil fines; ensure protection from civil damages for good faith reporting; authorize injunctions; address the confidentiality of patient and complaint information; and amend existing law to clarify the practice of healing arts would not include acupuncturists. Finally, the bill would include a severability clause.

The Acupuncture Practice Act and the Physical Therapy Practice Act would take effect on publication in the statute book, but the effective date of certain provisions of the

Acupuncture Practice Act would be delayed, as outlined in the bill details that follow.

## ***Acupuncture Practice Act***

### *Definitions*

The following would be among the terms defined in the Acupuncture Practice Act:

- “ACAOM” would mean the national accrediting agency recognized by the U.S. Department of Education that provides accreditation for educational programs for acupuncture and oriental medicine. For purposes of the Acupuncture Practice Act, the term ACAOM also would include any entity deemed by the Board of Healing Arts to be the equivalent of ACAOM;
- “Acupuncture” would mean the use of needles inserted into the human body by piercing of the skin and related modalities for the assessment, evaluation, prevention, treatment, or correction of any abnormal physiology or pain by means of controlling and regulating the flow and balance of energy in the body and stimulating the body to restore itself to its proper functioning and state of health;
- “National Certification Commission for Acupuncture and Oriental Medicine” (NCCAOM) is a national organization that would validate entry-level competency in the practice of acupuncture and oriental medicine through the administration of professional certification examinations. For purposes of the Acupuncture Practice Act, NCCAOM would also include any entity deemed by

the Board of Healing Arts to be the equivalent of the NCCAOM; and

- “Physician” would be defined as a person licensed to practice medicine and surgery or osteopathy in the state.

### ***Practice of Acupuncture***

The practice of acupuncture would include, but not be limited to:

- Techniques sometimes called “dry needling,” “trigger point therapy,” “intramuscular therapy,” “auricular detox treatment,” and similar terms;
- Mechanical, thermal, pressure, suction, friction, electrical, magnetic, light, sound, vibration, manual treatment, and electromagnetic treatment;
- The use, application or recommendation of therapeutic exercises, breathing techniques, meditation, and dietary and nutritional counselings; and
- The use and recommendation of herbal products and nutritional supplements, according to the acupuncturist’s level of training and certification by the NCCAOM, or its equivalent.

The practice of acupuncture would not include:

- Prescribing, dispensing, or administering of any controlled substances as defined in KSA 2015 Supp. 65-4101 *et seq.* or any prescription-only drugs; or

- The practice of:
  - Medicine and surgery including obstetrics and the use of lasers or ionizing radiation;
  - Osteopathic medicine and surgery or osteopathic manipulative treatment;
  - Chiropractic;
  - Dentistry; or
  - Podiatry.

#### *License Required for Practice of Acupuncture*

Beginning July 1, 2017, the practice of acupuncture would be prohibited unless the individual possesses a current and valid acupuncture license issued under the Acupuncture Practice Act. Only a person licensed as an acupuncturist under the Acupuncture Practice Act would be entitled to use the terms “licensed acupuncturist” or the designated letters “L.Ac.” A violation of this section would be a class B misdemeanor.

#### *Use of Needles*

Needles used in acupuncture would be required to be prepackaged, single-use, sterile, and used only on an individual patient in a single treatment session.

#### *Individuals Exempt from Acupuncture Licensure*

Effective July 1, 2017, the bill would exempt the following health professionals from acupuncture licensure:

- Any person licensed to practice medicine and surgery, osteopathy, dentistry or podiatry, a licensed chiropractor, or a licensed naturopathic

doctor when acting or practicing within each licensed professional's scope of practice and not representing oneself as being licensed under the Acupuncture Practice Act;

- Any herbalist or herbal retailer if not holding oneself out as a licensed acupuncturist;
- Any health care provider in the U.S. armed forces, federal facilities, and other military service when acting in the line of duty in the state;
- Any student, trainee, or visiting teacher of acupuncture, oriental medicine, or herbology while participating in a course of study or training under the supervision of an acupuncturist licensed under the Acupuncture Practice Act in a Council-approved program, including continuing education programs and any acupuncture or herbology programs recognized by the NCCAOM or its equivalent as a route to certification;
- Any person rendering assistance in an emergency or disaster relief;
- Any person practicing self-care or any family member providing gratuitous care not holding oneself out to the public as an acupuncturist;
- Any person who massages, if such person does not practice acupuncture or hold oneself out as a licensed acupuncturist;
- Any person whose professional services are performed pursuant to delegation by and under the supervision of a practitioner licensed under the Acupuncture Practice Act;
- Any team acupuncturist or herbology practitioner traveling with and treating individuals associated with an out-of-state or national team that is

temporarily in the state for training or competition purposes; and

- Any person licensed as a physical therapist when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act.

### ***Licensure Requirements***

#### *Applications for Licensure*

Applicants for licensure as acupuncturists would be required to file an application, on forms provided by the Board of Healing Arts, and show to the satisfaction of the Board of Healing Arts the applicant:

- Is at least 21 years of age;
- Has successfully completed secondary schooling or its equivalent;
- Has satisfactorily completed a course of study involving acupuncture from an accredited school of acupuncture which the Board of Healing Arts would determine to have educational standards substantially equivalent to the minimum educational standards for acupuncture colleges as established by the ACAOM or NCCAOM;
- Has satisfactorily passed a license examination approved by the Board of Healing Arts;
- Has the reasonable ability to communicate in English; and
- Has paid all fees required for licensure pursuant to the fees section of the bill.

### *Applications for Reciprocal License*

The bill would allow reciprocal licensure for individuals in the active practice of acupuncture in another state, territory, District of Columbia, or other country upon certification from the proper licensing authority that the applicant is duly licensed; has never had his or her license limited, suspended, or revoked; has never been censured or received other disciplinary actions; and, as far as the records of such authority are concerned, the applicant is entitled to such licensing authority's endorsement.

Additionally, the applicant would be required to present the following proof satisfactory to the Board of Healing Arts:

- The other jurisdiction in which the applicant last practiced has and maintains standards at least equal to those maintained in Kansas;
- The applicant's original license was based on an examination at least equal in quality to the examination required in this state and the passing grade required to obtain such original license was comparable to that required in this state;
- The date of the applicant's original license and all endorsed licenses and the date and place from which any license was attained;
- The applicant has been actively engaged in practice under such license or licenses since issued (the Board of Healing Arts may adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice);
- The applicant has a reasonable ability to communicate in English; and

- The applicant has paid all application fees prescribed by the fees section of the bill.

Applicants for license by endorsement would be required to have qualifications substantially equivalent to the Kansas requirements for licensure under the Acupuncture Practice Act.

### *Grandfathered License*

The Board of Healing Arts would be required to waive the education and examination requirements for an applicant for an acupuncture license who submits an application on or before January 1, 2018, and who, on or before July 1, 2017:

- Is 21 years of age or older;
- Has successfully completed secondary schooling or its equivalent;
- Has met both of these requirements:
  - Has completed a minimum of 1,350 hours of study (excluding online study) in acupuncture; and
  - Has been engaged in the practice of acupuncture with a minimum of 1,500 patient visits during at least 3 of the 5 years immediately preceding July 1, 2017, which would require documentation in the form of 2 affidavits from office partners, clinic supervisors, or other individuals approved by the Board of Healing Arts, who have personal knowledge of the years of practice and number of patients visiting the applicant for acupuncture. The Board would be authorized to adopt rules and regulations for further verification of the applicant's practice of acupuncture; or

- Has satisfactorily passed an examination approved by the Board of Healing Arts;
- Has the reasonable ability to communicate in English; and
- Has paid all fees required for licensure as prescribed by the fees section of the bill.

#### *Annual License Process*

The licensure process for an acupuncturist established by the bill would be effective on July 1, 2017. Licenses would be issued annually and would be canceled on March 31 of each year unless renewed in the manner prescribed by the Board of Healing Arts. The Board would be authorized to prorate the amount of the fee established under the fees section of the bill when a license is renewed for less than 12 months. License renewal would be requested on a form provided by the Board of Healing Arts and accompanied by the established renewal fee to be paid by the renewal date of the license.

#### *Active License*

The bill would create a designation of an active license. The Board of Healing Arts would be authorized to issue an active license upon written application on a form provided by the Board and payment of fees established pursuant to the fees section of the bill. Every active licensee would be required to submit evidence of satisfactory completion of continuing education required by the Board of Healing Arts, with such continuing education requirements required to be established by rules and regulations adopted by the Board.

Prior to license renewal, active licensees would be required to submit to the Board of Healing Arts evidence of maintenance of professional liability insurance. The Board

would be required to fix by rules and regulations the minimum level of professional liability insurance coverage.

### *Renewal Notice*

At least 30 days before the renewal date of a licensee's license, the Board of Healing Arts would be required to notify the licensee of the renewal date by mail to the licensee's last known mailing address. A licensee who fails to submit the renewal application and pay the renewal fee by the renewal date would be required to be given notice that:

- The licensee has failed to submit the application and pay the renewal fee by the renewal date;
- The license would be deemed canceled if not renewed within 30 days following the renewal date;
- The license would not be canceled if, within the 30-day period, the renewal application, the renewal fee, and an additional late fee established by rules and regulations not to exceed \$500 is received; and
- The license would be deemed canceled by operation of law and without further proceedings if both fees are not received within the 30-day period.

### *Reinstatement of License*

The bill would allow for the reinstatement of any acupuncturist license within two years of cancellation for failure to renew upon recommendation of the Board of Healing Arts, payment of renewal fees, and proof of compliance of continuing education requirements established by the Board of Healing Arts by rules and regulations. The Board would be authorized to require a person who has not been in the active practice of acupuncture and seeks

reinstatement or has not been engaged in a formal educational program during the two years preceding the application for reinstatement to complete additional testing, training, or education as deemed necessary by the Board of Healing Arts to establish the licensee's present ability to practice with reasonable skill and safety.

### *Exempt License*

The bill would create a designation of an exempt license. The Board of Healing Arts would be authorized to issue an exempt license to any licensee who makes written application on a form provided by the Board and pays the fee established by the fees section of the bill. The Board of Healing Arts would be authorized to issue an exempt license to a person who is not regularly engaged in the practice of acupuncture in the state and who does not hold oneself out as being professionally engaged in such practice. An exempt licensee would be entitled to all privileges attendant to the practice of acupuncture for which the license is issued. An exempt license could be renewed and would be subject to all provisions of the Acupuncture Practice Act, except as otherwise provided.

The Board of Healing Arts would be authorized to require the holder of an exempt license to provide evidence of satisfactory completion of continuing education requirements, which would be required to be established by rules and regulations of the Board.

An exempt licensee would be allowed to apply for an active license to regularly engage in the active practice of acupuncture upon filing a written application with the Board of Healing Arts on a form provided by the Board of Healing Arts and submission of the license fee established in the fees section of the bill. The Board would be required to adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees whose license has been exempt for less than two years to become licensed to

regularly practice acupuncture in the state. For a licensee whose license has been exempt for more than two years and has not been in the active practice of acupuncture since the license has been exempt, the Board of Healing Arts would be authorized to require completion of such additional testing, training, or education as the Board would deem necessary to establish the licensee's present ability to practice with reasonable skill and safety. A person holding an exempt license would not be prohibited from serving as a paid employee of a local health department or an indigent health care clinic.

#### *Inactive License*

Effective on and after July 1, 2017, the bill would create the designation of an inactive license, which may be issued by the Board of Healing Arts upon written application and payment of the requisite fee. The bill would allow the Board to issue an inactive license only to persons who are not regularly engaged in the practice of acupuncture in the state and do not hold themselves out to the public as being professionally engaged in such practice. The holder of an inactive license would not be entitled to practice acupuncture in the state. Provisions would be made for the renewal of an inactive license, and an inactive licensee would be subject to all provisions of the Acupuncture Practice Act, unless otherwise noted. A holder of an inactive license would not be required to submit evidence of completion of the continuing education requirements.

An inactive licensee would be allowed to apply for an active license upon filing a written application with the Board of Healing Arts on a form provided by the Board of Healing Arts and submitting the license fee established in the fees section of the bill. The Board would be required to adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees whose license has been exempt for less than two years to become licensed to regularly practice acupuncture in the state. For a licensee

whose license has been exempt for more than two years and has not been in the active practice of acupuncture or engaged in a formal education program since the license has been inactive, the Board of Healing Arts would be authorized to require completion of such additional testing, training, or education as the Board would deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

#### *Reinstatement of Revoked License*

The bill would allow a person whose acupuncture license has been revoked to apply for reinstatement after the expiration of three years from the effective date of the revocation. An application for reinstatement would have to be made on a form provided by the Board of Healing Arts and accompanied by the fee set out in the fees section of the bill. The applicant would have to prove by clear and convincing evidence sufficient rehabilitation to justify reinstatement. If the Board does not reinstate a license, the applicant would be ineligible to reapply for reinstatement for three years from the effective date of denial. Proceedings for an application for reinstatement would be conducted according to the Kansas Administrative Procedure Act (KAPA) and reviewable under the Kansas Judicial Review Act (KJRA). The Board of Healing Arts, on its own motion, would be authorized to stay the effectiveness of a revocation order.

#### *Fees*

The Board of Healing Arts would be required to charge and collect in advance nonrefundable fees for acupuncturists as established by the Board through rules and regulations in amounts not to exceed the fees specified in the bill.

### *Deposit of Fees, Charges, and Penalties*

Moneys received by the Board of Healing Arts for fees, charges, and penalties would be deposited in the State Treasury, with 10.0 percent of the amount credited to the State General Fund and the balance credited to the Healing Arts Fee Fund.

### *Acupuncture Advisory Council*

An Acupuncture Advisory Council would be established to assist the Board of Healing Arts in carrying out the provisions of the Acupuncture Practice Act. The Council would consist of five members appointed, as follows:

- The Board of Healing Arts would appoint one member who is a physician licensed to practice medicine and surgery or osteopathy, and the member would serve at the pleasure of the Board of Healing Arts;
- The Governor would appoint three acupuncturists who have at least three years of experience in acupuncture preceding the appointment and are actively engaged in the state in the practice or teaching of acupuncture (at least two of these appointments would be made from a list of four nominees submitted by the Kansas Association of Oriental Medicine). The appointments would be for a term of four years and until a successor has been appointed; and
- One member, appointed by the Governor from the public who is not engaged, directly or indirectly, in the provision of health services.

The bill would require, insofar as possible, that the members appointed to the Council by the Governor be from different geographic areas.

The bill would address the filling of vacancies and quorum. The Council would be required to meet at least once each year at a time of its choosing at the Board of Healing Arts' main office and at such other times as may be necessary on the call of the chairperson or on the request of a majority of the Council's members. A majority of the Council would constitute a quorum.

The Board of Healing Arts members would receive compensation for attending the meetings of the Council, or a subcommittee of the Council, as provided in KSA 75-3223(e), from the Healing Arts Fee Fund.

#### *Duties of the Council*

The Council would be tasked with advising the Board of Healing Arts regarding examination, licensing and other fees; rules and regulations to be adopted to carry out provisions of the Acupuncture Practice Act; the annual continuing education requirements to maintain an active license; changes and new requirements taking place in the area of acupuncture; and such other duties and responsibilities as the Board of Healing Arts may assign.

#### *Duties of the Board of Healing Arts*

The Board of Healing Arts would promulgate rules and regulations necessary to administer the provisions of the Acupuncture Practice Act.

#### *Grounds for Disciplinary Action*

Provisions dealing with grounds for disciplinary action and administrative review would take effect on July 1, 2017. The bill would establish 13 grounds for which a licensee's license may be revoked, suspended, limited, or placed on probation, or the licensee publicly censured, or an application

for a license or for reinstatement denied. The grounds for disciplinary action outlined in the bill include unprofessional conduct; obtaining a license by means of fraud or misrepresentation in applying for or securing an original, renewal or reinstated license; professional incompetency; felony conviction; violation of any provisions of the Acupuncture Practice Act; violation of a lawful order or rule and regulation of the Board of Healing Arts; failure to report to the Board of Healing Arts information regarding adverse action taken against the licensee; and the inability to practice due to impairment by reason of physical or mental illness, or condition, or use of alcohol, drugs, or controlled substances. The Board would be authorized to take action in accordance with KSA 2015 Supp. 65-2842 when a reasonable suspicion of impairment exists. Information relating to impairment would be confidential and not subject to discovery by or release to any person or entity outside a Board of Healing Arts proceeding. The bill would require the provision regarding confidentiality expire on July 1, 2022, unless the Kansas Legislature reviews and reenacts the provision prior to its expiration date.

The Board of Healing Arts would be authorized to order the denial, refusal to renew, suspension, limitation, probation or revocation of a license, or other sanction on a finding of a violation of the Acupuncture Practice Act. Administrative proceedings would be conducted in accordance with KAPA and reviewable under KJRA.

#### *Board of Healing Arts Jurisdiction in Disciplinary Actions*

The bill would grant the Board of Healing Arts jurisdiction in proceedings for disciplinary action against any licensee practicing under the Acupuncture Practice Act, and such action would be required to comply with KAPA. Before or after formal charges have been filed, the bill would authorize the Board and licensee to enter into a stipulation that would be binding on both parties. An enforcement order based on a stipulation would allow for the ordering of any

disciplinary action. Additionally, the Board of Healing Arts would be authorized to temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings provisions under KAPA if the Board determines grounds exist for disciplinary action and the licensee's continuation of practice would constitute imminent danger to public health and safety. Judicial review and civil enforcement of any agency actions under the Acupuncture Practice Act would be in accordance with KJRA.

#### *Non-Disciplinary Resolution*

The Board of Healing Arts or a committee of the Board would be authorized to implement non-disciplinary resolutions concerning a licensed acupuncturist consistent with KSA 2015 Supp. 65-2838a.

#### *Assessment of a Civil Fine*

The Board of Healing Arts, in addition to any other penalty prescribed by the Acupuncture Practice Act, would be authorized to assess a civil fine against a licensee for violation of such Act, after proper notice and an opportunity for the licensee to be heard. The civil fine would not exceed \$2,000 for the first violation, \$5,000 for the second violation, and \$10,000 for the third and for each subsequent violation. All civil fines collected would be deposited in the State Treasury to the credit of the State General Fund. Fines collected under this section would be considered administrative fines pursuant to federal law (11 USC § 523).

#### *Confidentiality of Complaint Information*

Any complaint or report, record or other information relating to a complaint in the possession of the Board of Healing Arts would be deemed confidential and disclosure by the Board in a manner which identifies or enables

identification of the person who is the subject or source of the information would be prohibited, except the disclosure would be permitted as specifically outlined in the bill. Re-disclosure by an agency authorized to receive the information disclosed by the Board of Healing Arts would be prohibited unless otherwise authorized by law. These provisions regarding confidentiality would expire on July 1, 2022, unless the Kansas Legislature reviews or reenacts the provisions before their expiration.

#### *Protection from Civil Damages for Good Faith Reporting*

No person reporting in good faith to the Board of Healing Arts concerning alleged incidents of malpractice or the qualifications, fitness or character of or disciplinary action taken against a person licensed, registered or certified by the Board would be subject to a civil action for damages as a result of reporting the information. Likewise, any state, regional, or local association composed of persons licensed to practice acupuncture and the individual members of any associated committees, which in good faith investigates or communicates the same type of information regarding a licensee, would be immune from liability in a civil action based on the information disclosed in good faith.

#### *Patient Confidentiality*

Effective July 1, 2017, confidential relations and communications between a licensed acupuncturist and a patient would be on the same basis as that provided by law between a physician and a patient.

#### *Injunctions*

On and after July 1, 2017, the Board of Healing Arts would be authorized to seek an injunction against any person violating the provisions of the Acupuncture Practice Act,

without regard to whether proceedings have been or may be instituted before the Board or criminal proceedings have been or will be instituted.

#### *Severability Clause*

If any provision of the Acupuncture Practice Act or its application to any person or circumstance is held invalid, such invalidity would not affect the remainder of the provisions or applications of such Act, which could be given effect without the invalid provision or application. Accordingly, the provisions of the Acupuncture Practice Act would be considered severable.

#### *Exclusion from the Practice of Healing Arts*

The bill would add acupuncturists licensed and practicing in accordance with the Acupuncture Practice Act, amendments to such Act, rules and regulations adopted, and their interpretations by the Kansas Supreme Court to the list of persons not included in the practice of healing arts.

#### *Physical Therapy Practice Act Amendments*

The Board of Healing Arts would be required to adopt rules and regulations establishing minimum education and training requirements for the practice of dry needling by a licensed physical therapist. The bill also would replace references to “Article 29 of Chapter 65 of the *Kansas Statutes Annotated*, and amendments thereto” with “the Physical Therapy Practice Act.”

Dry needling would be added to the definition of “physical therapy.” The bill would define “dry needling” to mean “a skilled intervention using a thin filiform needle to penetrate into or through the skin and stimulate underlying myofascial trigger points or muscular or connective tissues for

the management of neuromuscular pain or movement impairments.”

Additionally, the bill would exempt from the Physical Therapy Practice Act licensed acupuncturists practicing their profession, when licensed and practicing in accordance with the Acupuncture Practice Act. The licensed acupuncturist exemption would take effect and be in force on and after July 1, 2016.

### **Behavioral Sciences Regulatory Board**

The bill would standardize regulatory statutes administered by the Behavioral Sciences Regulatory Board (BSRB) that apply to psychologists, professional counselors, social workers, addiction counselors, and marriage and family therapists. The provisions that would be standardized pertain to licensure by reciprocity, the reasons for disciplinary action against a licensee, and the licensure fees charged by the BSRB. The bill would allow the BSRB to require fingerprinting and background checks on licensees; place licensed psychologists and social workers under the KAPA; establish supervisory training standards for professional counselors and marriage and family therapists; and create a new category of licensure for Masters Level Addiction Counselors. Additionally, the bill would require a two-thirds majority vote of the BSRB to issue or reinstate the license of an applicant with a felony conviction. The bill also would update several statutes by deleting the terms “state certified alcohol and drug abuse counselor” and “counselor” from applicable statutes, and inserting “licensed addiction counselor,” “licensed master’s addiction counselor,” and “licensed clinical addiction counselor” into applicable statutes. Additionally, the bill would grandfather credentialed or registered alcohol and other drug counselors who comply with specific requirements prior to July 1, 2017. Specific bill details follow.

### ***Fingerprinting and Background Checks***

The bill would allow the BSRB to require a person be fingerprinted and submit to a national criminal history record check as part of an original application for or reinstatement of any license, registration, permit, or certificate or in connection with any investigation of any holder of a license, registration, permit, or certificate. The BSRB would be authorized to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The BSRB would be allowed to use the information obtained from fingerprinting and the criminal history to verify the identification of the person and to officially determine the qualifications and fitness of the person to be issued or to maintain a license, registration, permit, or certificate.

Local and state law enforcement officers and agencies would be required to assist the BSRB in taking and processing the applicant fingerprints and would be required to release all records of adult convictions and non-convictions and adult convictions or adjudications of another state or country to the BSRB. The BSRB would be authorized to fix and collect a fee in an amount equal to the cost of fingerprinting and the criminal history record check. The funds collected would be credited to the BSRB Fee Fund.

### ***Change of Address Notice***

A licensee would be required to notify the BSRB within 30 days after any change of permanent address.

### ***Licensure by Reciprocity***

The bill would amend the requirements for licensure by reciprocity to require the applicant to demonstrate registration, certification, or licensure to practice from another

jurisdiction for at least 60 of the last 66 months immediately preceding the application.

### ***Fees***

The bill would make the fixing of fees through the rules and regulations process by the BSRB permissive, allowing for the elimination of a fee. The fee for the licensure of a clinical professional counselor would be set at not more than \$175 and maximum fees would be established for reinstatement and replacement of license and for a wallet card license.

The bill would remove the ceiling on the examination fees and would allow the licensee to pay the fees directly to the exam company.

### ***Disciplinary Action***

The bill would make changes to the reasons to deny, suspend, revoke, or censure a licensee to standardize such disciplinary action across all professions. The changes made in the disciplinary action across the professions would include:

Allowing the BSRB to impose a fine not to exceed \$1,000 per violation for the itemized violations cited in the bill;

Defining incompetence as:

- One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the BSRB;
- Repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the BSRB; or

- A pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to practice;
- Failure to demonstrate sufficient rehabilitation to merit the public trust after a conviction for a felony offense, a misdemeanor against persons, or being currently listed on a child abuse registry or an adult protective services registry as the result of a substantiated finding of abuse or neglect;
- Requiring a two-thirds majority vote of the BSRB for the issuance of a new license or reinstatement of a revoked or suspended license for a licensee or applicant for licensure with a felony conviction; and
- Providing for administrative proceedings and disciplinary actions regarding licensure for licensed psychologists and social workers to be conducted in accordance with KAPA.

### ***Supervisory Training Standards***

Effective July 1, 2017, licensed professional counselors and marriage and family therapists providing postgraduate supervision for those working toward clinical licensure would be required to be BSRB-approved clinical supervisors. The bill would establish application procedures for obtaining this approval. Each applicant would be required to provide evidence of training and practice with no disciplinary action prohibiting providing clinical supervision, and have completed coursework related to the enhancement of supervision skills approved by the BSRB or completed the minimum number of continuing education hours related to the enhancement of supervision skills approved by the BSRB. The continuing education requirement would include at least three hours related to the enhancement of supervisory skills, with at least one hour focusing on the ethics of supervision.

### ***Licensed Master's Addiction Counselors***

The bill would create a new category of Licensed Master's Addiction Counselor. The term would be defined as a person who engages in the practice of addiction counseling limited to substance use disorders and who is licensed under the Addiction Counselor Licensure Act. The person would be allowed to diagnose substance use disorders only under the direction of a licensed clinical addiction counselor, a licensed psychologist, a person licensed to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of substance use disorders or mental disorders.

Effective September 1, 2016, no person would be allowed to engage in the practice of addiction counseling or represent oneself as a licensed master's addiction counselor, a master's addiction counselor, master's substance abuse counselor, or a master's alcohol and drug counselor without having first obtained a license as a master's addiction counselor.

The requirements for licensure as a master's addiction counselor would be established by the bill, as follows:

- Meets the following requirements:
  - Attained the age of 21;
  - Completed at least a master's degree from an addiction counseling program approved by the BSRB; completed at least a master's degree from a college or university approved by the BSRB (as part of or in addition to the master's degree coursework, the applicant also has completed a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the BSRB); or currently is licensed in Kansas as a licensed

master social worker, licensed professional counselor, licensed marriage and family therapist or licensed master's level psychologist;

- Passed an examination approved by the BSRB;
  - Satisfied the BSRB that the applicant is a person who merits the public trust; and
  - Paid the requisite application fee; or
- Meets the following requirements:
    - On or before July 1, 2016, holds an active license by the BSRB as an addiction counselor and completed at least a master's degree in a related field; and
    - Completed six hours of continuing education in the diagnosis and treatment of substance use disorders during the three years immediately preceding the application date.

A licensed master's addiction counselor would be authorized to use the initials LAC or LMAC to designate that profession.

The bill would make provisions for a temporary license to practice as a licensed master's addiction counselor for persons waiting to take the examination for such licensure.

The requirement to practice only in a facility licensed by the Kansas Department for Aging and Disability Services would be eliminated by the bill.

### ***Temporary Licenses for Psychologists***

A temporary license not to exceed two years would be allowed to be issued to persons who have completed all

requirements for a doctoral degree approved by the BSRB but have not received such degree conferral and who provide documentation of such completion.

### ***BSRB Duties***

The bill would clarify the duties, powers, and functions of the BSRB as involving the regulation of individuals under the Social Workers Licensure Act, the Licensure of Master's Level Psychologists Act, the Applied Behavior Analysis Licensure Act, the Marriage and Family Therapists Licensure Act, and the Addiction Counselor Licensure Act.

### **Interstate Medical Licensure Compact**

The bill would allow Kansas to join the Interstate Medical Licensure Compact (Compact). The Compact would be governed by the Interstate Medical Licensure Compact Commission (Commission) and the Commission would have the authority to develop rules to implement the provisions of the Compact. Once effective, the Compact would remain in force unless a member state withdraws from the Compact by repealing the statute that enacted the Compact into law; however, the withdrawal would not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given to the governor of each other member state.

The bill would establish the 24 sections of the Compact as follows:

#### ***Compact Section 1 – Purpose***

The purpose of the Compact would be for the member states of the Compact to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and would provide a

streamlined process for physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. Joining the Compact would not change a state's existing medical practice act and would require the physician to be under the jurisdiction of the state medical board where the patient is located. Participating state medical boards would retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.

### ***Section 2 – Definitions***

A number of terms would be defined, including the following:

- “Expedited license” would mean a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact;
- “Interstate commission” would mean the interstate commission created pursuant to Section 11 (of the Compact provisions);
- “License” would mean the authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization;
- “Member board” would mean a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians, as directed by the state government;
- “Member state” would mean a state that has enacted the Compact; and

- “State of principal license” would mean a member state where a physician holds a license to practice medicine and that has been designated as such by the physician for purposes of registration and participation in the Compact.

### ***Section 3 – Eligibility***

A physician would be eligible to receive an expedited license if the physician met the requirements in the Compact’s definition of physician. A physician who does not meet the Compact’s definition of physician would be eligible to receive a license in a member state if the physician complies with all laws and requirements relating to the issuance of a license to practice medicine in that state.

### ***Section 4 – Designation of State of Principal License***

A physician would be required to designate a member state as the state of principal license for purposes of registration for expedited licensure through the Compact if the physician possesses a full and unrestricted license to practice medicine in that state and the state is:

- The state of primary residence for the physician;
- The state where at least 25 percent of the practice of medicine occurs;
- The location of the physician’s employer; or
- If no state meets the above qualifications, the state designated as state of residence for purposes of federal income tax.

### ***Section 5 – Application and Issuance of Expedited Licensure***

A physician seeking an expedited license would be required to file an application with the member board of the state selected by the physician as the state of principal license. Upon receipt of the application, such member board would be required to evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification verifying or denying the physician's eligibility to the Commission. The member board would be required to perform a criminal background check of the applicant in compliance with the requirements of the Federal Bureau of Investigation. If a physician is deemed eligible, the physician would be required to submit applicable fees and complete the registration process. [Note: See Compact Section 6 regarding fees for expedited licensure.] Upon receipt of the completed registration, a member state would be required to issue the applying physician an expedited license, which would allow the physician to practice medicine in the issuing state.

### ***Section 6 – Fees for Expedited Licensure***

A member state issuing an expedited license would be allowed to impose a fee for a license issued or renewed through the Compact.

### ***Section 7 – Renewal and Continued Participation***

A physician seeking to renew an expedited license granted in a member state would be required to complete a renewal process with the Commission and pay applicable renewal fees. A physician also would be required to comply with all continuing education requirements.

### ***Section 8 – Coordinated Information System***

The Commission would be required to establish a database of all physicians licensed or who have applied for licensure. Member states would be required to report to the Commission complaints against a licensed physician who has applied for or received an expedited license. Member boards also would be required to report disciplinary or investigatory information determined as necessary by rule of the Commission.

### ***Section 9 – Joint Investigations***

A member board would be allowed to participate with other member boards in joint investigations of physicians licensed by the member boards and would be allowed to share investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

### ***Section 10 – Disciplinary Actions***

Any member board would be allowed to take disciplinary action against a physician licensed through the Compact. This section would set forth the implications to a license granted to a physician through the Compact when such license is revoked, surrendered or relinquished in lieu of discipline, or suspended by any member board.

### ***Section 11 – Interstate Medical Licensure Compact Commission***

This section would create the Commission; set forth its purpose as the administrator of the Compact; and set forth the Commission membership, rules, and meeting schedule.

The Commission would consist of two voting representatives appointed by each member state who would serve as Commissioners. A Commissioner would be:

- An allopathic or osteopathic physician appointed to a member board;
- An executive director, executive secretary, or similar executive of a member board; or
- A member of the public appointed to a member board.

### ***Section 12 – Powers and Duties of the Commission***

The powers and duties of the Commission would be set forth, including the following:

- Oversee and maintain the administration of the Compact;
- Promulgate rules;
- Enforce compliance with the Compact;
- Employ an executive director;
- Accept donations and grants;
- Establish a budget and make expenditures;
- Conduct business as it relates to the Commission's real and personal property; and
- Report annually to the legislatures and governors of the member states concerning the activities of the Commission during the preceding year. Such reports would include reports of financial audits and any recommendations adopted by the Commission.

### ***Section 13 – Finance Powers***

The Commission would be allowed to collect an annual assessment from each member state to cover the cost of the operations and activities of the Commission and its staff. The Commission would be subject to a yearly financial audit and the report of the audit would be included in the annual report of the Commission.

### ***Section 14 – Organization and Operation of the Commission***

The Compact would set forth the following operational procedures of the Commission:

- Adopt bylaws within 12 months of the first Commission meeting;
- Elect or appoint annually from among the Commissioners a chairperson, a vice-chairperson, and a treasurer; and
- Defend the executive director, its employees, and in some instances, Commission representatives in legal matters, as specified in the Compact.

### ***Section 15 – Rule-Making Functions of the Commission***

The Commission would be required to promulgate reasonable rules in order to effectively achieve the purposes of the Compact and such rules would be subject to judicial review upon the filing of a petition by any person.

### ***Section 16 – Oversight of Interstate Compact***

The executive, legislative, and judicial branches of state government in each member state would be required to

enforce the Compact and take all actions necessary to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules would have standing as statutory law but would not override existing state authority to regulate the practice of medicine.

### ***Section 17 – Enforcement of Interstate Compact***

The Commission would be required to enforce the provision and rules of the Compact. In its discretion, the Commission would be allowed to initiate legal action and avail itself of any other remedies available under state law or the regulation of a profession.

### ***Section 18 – Default Procedures***

The grounds for default would include failure of a member state to perform obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Commission.

The Commission would be required to do the following if it determined a member state had defaulted:

- Provide written notice to the defaulting state and other member states, the nature of the default, the means of curing the default, and any action taken by the Commission. The Commission would be required to specify the conditions by which the defaulting state must cure its default; and
- Provide remedial training and specific technical assistance regarding the default.

If the defaulting state failed to cure the default, the defaulting state would be terminated from the Compact upon an affirmative vote of the majority of the Commissioners.

Notice of intent to terminate would be given by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states. The terminated state would be responsible for all dues, obligations, and liabilities incurred through the effective date of termination. The defaulting state would be allowed to appeal the action of the Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its offices.

### ***Section 19 – Dispute Resolution***

The Commission would be required to promulgate rules providing for mediation and binding dispute resolution.

### ***Section 20 – Member States, Effective Date and Amendment***

The Compact would become effective and binding upon legislative enactment of the Compact into law by no less than seven states (there are currently 12 member states). Thereafter, it would become effective and binding on a state upon enactment of the Compact into law by that state.

The Commission would be allowed to propose amendments to the Compact for enactment by member states; however, no amendment would be effective and binding unless and until it was enacted into law by unanimous consent of the member states.

### ***Section 21 – Withdrawal***

Once effective, the Compact would continue in force and remain binding upon every member state. A member state would be allowed to withdrawal from the Compact by the enactment of a repealing statute; however, the withdrawal would not take effect until one year after the effective date of

such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state. The withdrawing state would be responsible for all dues, obligations, and liabilities incurred through the effective date of the withdrawal.

### ***Section 22 – Dissolution***

The Compact would dissolve effective upon the date of the withdrawal or default of the member state, which would reduce the membership in the Compact to one member state.

### ***Section 23 – Severability and Construction***

The provisions of the Compact would be severable, and liberally construed to effectuate the purpose of the Compact.

### ***Section 24 – Binding Effect of Compact and Other Laws***

The Compact would address the binding effect of the Compact and the potential conflict of laws as follows:

- Nothing in the Compact would prevent enforcement of any other law of a member state that is not inconsistent with the compact;
- All laws in a member state in conflict with the Compact would be superseded to the extent of the conflict;
- All lawful action of the Commission would be binding upon the member states;
- All agreements between the Commission and the member states would be binding in accordance with the terms; and

- In the event any provision of the Compact would exceed the constitutional limits imposed on the legislature of any member state, such provision would be ineffective to the extent of the conflict with that constitutional provision in question in that member state.

### **Independent Practice of Midwifery Act**

The bill would create the Independent Practice of Midwifery Act (Midwifery Act). Effective January 1, 2017, the Act would allow certified nurse-midwives to practice without a collaborative practice agreement with a person licensed to practice medicine and surgery within a limited scope practice as set forth in the bill. The bill also would prohibit nurse-midwives engaged in the independent practice of midwifery from performing or inducing abortions or from prescribing drugs for an abortion.

### ***Definitions***

Effective January 1, 2017, the bill would define the following terms:

- “Certified nurse-midwife” to mean an individual who:
  - Is educated in the two disciplines of nursing and midwifery;
  - Is currently certified by a certifying board approved by the Kansas State Board of Nursing (Board of Nursing); and
  - Is currently licensed under the Kansas Nurse Practice Act;
- “Independent practice of midwifery” to mean the provision of clinical services by a certified nurse-

midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery when such clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including:

- The prescription of drugs and diagnostic tests;
  - The performance of an episiotomy or a repair of a minor vaginal laceration;
  - The initial care of the normal newborn; and
  - Family planning services, including treatment or referral of a male partner for sexually transmitted infections;
- Professional incompetency to mean:
    - One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the Board of Healing Arts;
    - Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the Board of Healing Arts; or
    - A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to engage in the independent practice of midwifery.

### ***Authorization and Licensure***

Effective January 1, 2017, in order to obtain authorization to engage in the independent practice of midwifery, the bill would require a certified nurse-midwife meet the following requirements:

- Be licensed to practice professional nursing under the Kansas Nurse Practice Act;
- Successfully complete a course of study in nurse-midwifery in a school of nurse-midwifery approved by the Board of Healing Arts;
- Successfully complete a national certification approved by the Board of Healing Arts;
- Successfully complete a refresher course if the individual has not been in active midwifery practice for five years immediately preceding the application;
- Be authorized to perform the duties of a certified nurse-midwife by the Board of Nursing;
- Be licensed as an advanced practice registered nurse by the Board of Nursing; and
- Paid all fees for licensure prescribed in the Midwifery Act.

Effective January 1, 2017, the bill specifies it would be unlawful for a person to engage in the independent practice of midwifery without a collaborative practice agreement with a person licensed to practice medicine and surgery, unless such certified nurse-midwife holds a license from the Board of Nursing and the Board of Healing Arts.

Effective January 1, 2017, the bill would set forth the process for obtaining a new or renewal license and the corresponding caps on the fees for such licenses. The Board of Healing Arts would be required to remit all moneys received from fees, charges, or penalties to the State Treasurer. The State Treasurer would be required to deposit the entire amount in the State Treasury and ten percent of each amount would be credited to the State General Fund

and the remaining balance would be credited to the Healing Arts Fee Fund.

Effective January 1, 2017, the Kansas Bureau of Investigation would be required to provide criminal history record information as requested by the Board of Healing Arts for the purpose of the determination of the initial and continuing qualifications of licensees and applicants for licensure by the Board of Healing Arts.

### ***Rules and Regulations***

The Board of Healing Arts, in consultation with the Board of Nursing, would be required to promulgate rules and regulations no later than January 1, 2017, pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests; diagnostic services; prescribing of drugs; and referral or transfer to physicians in the event of complications or emergencies.

### ***Statutory Oversight***

Effective January 1, 2017, a certified nurse-midwife engaging in the independent practice of midwifery would be subject to the provision of the Midwifery Act with respect to the ordering of tests, diagnostic services, and prescribing of drugs and not subject to the provisions of the statute that governs advanced practice registered nurses on those specific topics.

### ***Standards of Care***

The standards of care in the ordering of tests, diagnostics services, and the prescribing of drugs would be those standards which protect patients and would be

standards comparable to persons licensed to practice medicine and surgery providing the same services.

### ***Disciplinary Procedures***

Effective January 1, 2017, the Board of Healing Arts would be allowed to deny, revoke, limit, or suspend any license or authorization issued to a certified nurse-midwife to engage in the independent practice of midwifery that is issued by the Board or would be allowed to publicly censure a licensee if an applicant or licensee is found after a hearing:

- To be guilty of fraud or deceit in practicing the independent practice of midwifery or in procuring or attempting to procure a license to engage in the independent practice of midwifery;
- To have been guilty of a felony or misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that no license would be granted to a person with a felony conviction for a crime against persons as specified in Kansas law;
- To have committed an act of professional incompetence as defined above;
- To be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment due to physical or mental illness or condition or use of alcohol, drugs, or controlled substances (provisions related to impairment would expire on July 1, 2022, unless otherwise enacted upon by the Legislature);
- To be a person who has been adjudged in need of a guardian or conservator, or both, and who has

not been restored to capacity under the Midwifery Act for obtaining a guardian or conservator;

- To be guilty of unprofessional conduct as defined by rules and regulations of the Board of Healing Arts;
- To have willfully or repeatedly violated the provision of the Kansas Nurse Practice Act or any rules or regulations adopted pursuant to that Act;
- To have a license to practice nursing as a registered nurse, or as a practical nurse denied, revoked, limited, or suspended, to be publicly or privately censured, or have other disciplinary action taken against the applicant or licensee by a licensing authority of another state; or
- To have assisted suicide in violation of Kansas law.

No person would be excused from testifying in any proceedings before the Board of Healing Arts under this act or in any civil proceedings under this act on the grounds that such testimony may incriminate the person testifying, but such testimony would not be used against the person for the prosecution of any crime in Kansas, except perjury.

### ***Nurse-midwives Council***

The bill would establish a Nurse-midwives Council to advise the Board of Healing Arts in carrying out the provisions of the Midwifery Act. The Nurse-midwives Council would consist of seven members, all residents of Kansas, appointed as follows:

- Two members licensed by the Board of Healing Arts to practice medicine and surgery and whose specialty and customary practice includes obstetrics, appointed by the Board of Healing Arts;

- The president of the Board of Healing Arts, or a Board member designated by the president; and
- Four members who are certified nurse-midwives licensed and appointed by the Board of Nursing.

If a vacancy occurs on the Nurse-midwives Council, the appointing authority of the position that has become vacant would appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.

Finally, the bill would amend the definition of “mid-level practitioner” to include a certified nurse-midwife engaging in the independent practice of midwifery under the Midwifery Act

#### **Conference Committee Action**

The Fourth Conference Committee agreed to the following:

- Retain the contents of HB 2615 regarding charitable healthcare providers, as amended by the Senate Committee on Public Health and Welfare; add the definition of “community mental health center” to the Kansas Tort Claims Act; and exempt community mental health centers and the employees of those centers from liability under the Kansas Tort Claims Act;
- Insert the contents of SB 363 regarding the Acupuncture Practice Act and the Physical Therapy Practice Act, as further amended by the Senate Committee of the Whole;
- Insert the contents of SB 449 regarding the Behavioral Sciences Regulatory Board, as amended by the House Committee on Health and Human Services, insert the definition of “licensed master’s addiction counselor,” and delete the

prohibition on outsourcing or privatization of any operations or facilities of the Larned State Hospital or Osawatomie State Hospital without prior specific authorization by an act of the Legislature or an appropriation act of the Legislature;

- Insert the contents of HB 2456 regarding the Interstate Medical Licensure Compact, as recommended by the House Committee on Public Health and Welfare; and
- Insert the contents of House Sub. for SB 402 regarding the Independent Practice of Midwifery Act, as recommended by the House Committee on Health and Human Services; change the effective date of various provisions as noted above; insert language prohibiting nurse-midwives engaged in the independent practice of midwifery from performing or inducing abortions or prescribing drugs for an abortion; and amend the definition of mid-level practitioner to include a certified nurse-midwife engaging in the independent practice of midwifery under the Independent Practice of Midwifery Act.

## **Background**

The Conference Committee Report, as agreed to on May 1, 2016, would include the contents of HB 2615 and add the contents of SB 363, SB 449, HB 2456, and House Sub. for SB 402 (bill versions included in this report are noted in the Conference Committee action above and all amendments are retained from the version noted except as stated below).

### ***HB 2615 Background***

At the hearing before the House Committee on Health and Human Services, testimony in favor of HB 2615 was

offered by representatives of the Association of Community Mental Health Centers (Association), the Foundation for Government Accountability Action (FGA Action), and the Kansas Dental Association (KDA). The proponents testified the bill offered innovative incentives that could help produce meaningful benefits to low-income patients and provide care to underserved populations.

Neutral testimony was offered by representatives of the Board of Healing Arts and the Kansas Health Care Stabilization Fund. The representative of the Board of Healing Arts provided information on continuing education requirements for physicians. Written-only neutral testimony was provided by the Kansas Medical Society (KMS). No opponent testimony was provided.

The House Committee amended the bill to allow a dentist to fulfill one hour of continuing education credit for performance of two hours of gratuitous service to medically indigent persons if the dentist signs an agreement with the Secretary to provide gratuitous services. A dentist would be allowed to fulfill a maximum of six continuing educational credits through gratuitous service per licensure period. Additionally, the House Committee changed the maximum amount of continuing education hours a healthcare provider can fulfill for performance of gratuitous service per licensure period from 8 to 20 hours, to reflect the original intent of the bill. Finally, the House Committee adopted a technical amendment.

At the hearing before the Senate Committee on Public Health and Welfare, testimony in favor of the bill was offered by representatives of the Association and the KDA. The proponents testified the incentives for healthcare providers to provide care to low-income populations can promote increased care. Written proponent testimony was provided by a representative of the FGA Action.

Written neutral testimony was provided by a representative of the KMS. The testimony noted support for

efforts to encourage greater charitable care activities, but could not say for certain the incentive provided in the bill would be widely taken up by physicians or other healthcare providers.

No opponent testimony was presented at the Senate Committee hearing.

The Senate Committee amended the bill to exempt charitable healthcare providers who have signed an agreement with the Secretary to provide gratuitous service from liability under the Tort Claims Act and to make technical amendments.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Board of Healing Arts states 1.00 additional full-time-equivalent position would be necessary to meet the tracking and reporting functions required by the bill. The Board of Healing Arts also states \$47,743 would be needed to cover the salary and office supplies for the position. The Division of the Budget does not consider the additional tracking and reporting requirements in the bill substantial and would not justify an additional position. The Kansas Department of Health and Environment states any additional expenditures resulting from the requirements of the bill would be handled within current resources. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

### ***SB 363 Background***

At the February 3, 2016, Senate Committee on Public Health and Welfare hearing on SB 363, as introduced, two representatives and an attorney for the Kansas Association of Oriental Medicine, a private citizen, a physician, and a representative of the Kansas Association of Osteopathic Medicine (KAOM) testified in favor of the bill. The proponents generally stated the bill would clarify and establish the lawful independent practice for licensed acupuncturists and give

Kansans access to a safe and effective health care option with fully-trained acupuncturists. The proponents stated 45 states currently license acupuncturists. Additionally, the proponents presented amendments to address concerns expressed by varying stakeholders. Written testimony in favor of the bill was provided by three physicians and an acupuncturist.

Opponent testimony was provided by representatives of the Kansas Chiropractic Association (KCA) and the Kansas Physical Therapy Association (KPTA). The KPTA representative generally stated disagreement with the definition of what acupuncture includes, that physical therapists are not exempted from the bill, and that physical therapists' scope of practice would be limited as it relates to dry needling. The KCA representative stated support for the base principle of the bill, expressed concern with regard to some of the bill language, and proposed amendments that, if made, would lead the KCA to support the bill. Written testimony in opposition to the bill was provided by a representative of the KPTA, a doctor of physical therapy, a nurse practitioner, and a private individual.

Neutral testimony was provided by a representative of the KMS who stated having no issue with the practice of acupuncture, but proposed amendments to more clearly define the practice of acupuncture. Written neutral testimony was provided by the Board of Healing Arts and the Secretary of Health and Environment.

On February 22, 2016, the Senate Committee of the Whole amended SB 363, as recommended by the Senate Committee, to delete references to licensure of oriental medicine, including in the renaming of the Acupuncture Practice Act; add, amend, and delete definitions, including the addition of osteopaths under the definition of a physician and clarifying that acupuncture as defined in the Acupuncture Practice Act applies only with regard to the human body; amend the treatments included in the practice of acupuncture; add the prescribing of any controlled

substances or prescription-only drugs, obstetrics, the use of ionizing radiation, dentistry, and podiatry to the list of activities not included in the practice of acupuncture; remove language specifying persons practicing acupuncture would have to be licensed to practice medicine and surgery, be a licensed chiropractor, or a licensed naturopathic doctor; exempt osteopaths, dentists, and persons performing professional services pursuant to delegation by and under the supervision of a practitioner licensed under the Acupuncture Practice Act from acupuncture licensure requirements; make changes in the requirements for applications for licensure; with regard to the requirements for reciprocal licensure, add requirements that the applicant's original license be based on an examination at least equal in quality to the one in Kansas, the passing grade required to obtain such a license be comparable to that required in Kansas, the applicant has been actively engaged in practice under such license since issued, that the Board of Healing Arts would be authorized to adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice and remove language referencing individuals for whom English is the second language in addressing the reasonable ability to communicate in English; clarify that an applicant for licensure by endorsement would be required to have qualifications substantially equivalent to Kansas requirements; remove the requirement that the practice of acupuncture during three of the last five years prior to the effective date of the Acupuncture Practice Act for grandfathered licensees had to have occurred in Kansas; add an age requirement, successful completion of secondary schooling or its equivalent, and the satisfactory passage of a license examination approved by the Board of Healing Arts for grandfathered licenses; for grandfathered licensees, remove accountants as eligible to verify the required minimum number of patient visits, eliminate some specified forms of documentation as to the number of patient visits, replace the specified documentation with the Board of Healing Arts rule and regulation authority for further verification options, remove the Board of Healing Arts' discretion to approve licensure based on successfully passing

the NCCAOM board examinations and submitting an application prior to January 1, 2018, even if other requirements are not met, and remove the requirement that the reasonable ability to communicate in English be determined by rules and regulations adopted by the Board of Healing Arts; permit licenses renewed for a period of less than 12 months to be prorated; remove the Board of Healing Arts' option to request an active licensee submit to a continuing education audit and instead require the submission of evidence of completion of continuing education requirements, with such requirements established by rules and regulations adopted by the Board of Healing Arts; authorize the Board of Healing Arts to fix by rules and regulations the minimum level of coverage for professional liability insurance; change the renewal notice requirement from 60 to 30 days before the renewal date and require a second 30-day notice be sent if licensee fails to renew before the renewal date informing the licensee of a 30-day grace period; replace the immediate cancellation of a license for failure to renew by the renewal date with a 30-day grace period and payment of the renewal fee and an additional late fee, but deem the license as canceled by operation of law without further proceedings if no payment is received within the grace period; make changes to reinstatement requirements for failure to renew by establishing specific requirements for reinstatement within two years of cancellation and providing for additional testing, training, or education requirements for those not in active practice or engaged in a formal education program during the two years preceding the reinstatement application; create an exempt license; make changes to inactive licenses, including additional requirements for becoming licensed to regularly practice; require a three-year waiting period from the effective date of license revocation before making application for license reinstatement, place the burden of proof by clear and convincing evidence on the applicant to show sufficient rehabilitation to justify reinstatement, prohibit the applicant from applying for three years after the date of Board of Healing Arts' denial of a request for reinstatement, require procedures conducted on an application for reinstatement to

be in accordance with KAPA, and allow the Board of Healing Arts to stay the effectiveness of an order of revocation; replace provisions related to license fees for two different time frames with one set of maximum allowable fees, add fees, and increase some maximum fee amounts; reduce the amount of fees, charges, or penalties credited to the State General Fund from 20.0 percent to 10.0 percent; change the Council membership requirements, appointment method and terms and clarify the goal that appointments be made from different geographic areas applies only to Governor appointees; change the location of the Council meetings; remove the method of appointment of the chairperson and vice-chairperson; delete Board of Healing Arts' duties, including the keeping of a roster of licensees and establishing a clean needle technique and allowing for such specificity in rules and regulations adopted by the Board of Healing Arts; remove concealment of material facts as a ground for disciplinary action; authorize disciplinary action by the Board of Healing Arts if a reasonable suspicion of impairment exists; replace the requirement the Legislature review provisions related to confidentiality prior to their expiration date with the Legislature's option to review and reenact such provisions prior to the expiration date; remove language stating a person whose license is suspended, limited, or revoked cannot engage in any conduct or activity in violation of the order; replace details related to non-disciplinary resolutions with a statutory reference; delete section on Board of Healing Arts' access to information in investigations; clarify civil fines collected would be considered administrative fines pursuant to federal law; clarify language in the severability clause; and make technical amendments.

On March 7, 2016, SB 363, as amended by the Senate Committee of the Whole, was referred to the Senate Committee on Public Health and Welfare. On March 15, 2016, the Senate Committee amended the bill to exempt licensed physical therapists from the requirements for an acupuncture license; insert the language of 2016 SB 490, as amended by the Senate Committee; and change the bill title.

On March 21, 2016, the Senate Committee of the Whole further amended the bill to clarify that the exemption of licensed physical therapists from the requirements for an acupuncture license would include physical therapists performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act. The added language represents the specifically agreed to language resulting from a compromise by the stakeholders.

According to the fiscal note prepared by the Division of the Budget on SB 363, as introduced, the Board of Healing Arts estimates enactment of the bill would result in the licensure of 42 new acupuncturists under the Acupuncture Practice Act and result in the collection of revenues from license fees of \$12,600, 10.0 percent of which (\$1,260) would be remitted to the State General Fund. The Board of Healing Arts indicates the addition of a new group of practitioners to license would result in increased complaints, investigations, and caseload activity and would require an increase in 2.00 FTE positions and operating expenditures, for a total expenditure of \$144,235. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

### ***SB 490 Background***

At the hearing on SB 490 before the Senate Committee on Public Health and Welfare, testimony in favor of the bill was offered by two KPTA representatives, a physical therapist, and two private citizens. The KPTA representatives testified the bill was introduced to clarify that dry needling is within a licensed physical therapist's scope of practice. The KPTA representatives expressed concern that, even if this bill passes, physical therapists would be violating the acupuncture licensure bill (2016 SB 363, as introduced) should it pass without an amendment exempting physical therapists. The physical therapist testified regarding the training provided for dry needling and stated dry needling is not acupuncture. The private citizens shared favorable experiences with dry needling treatments performed by a

physical therapist. Written proponent testimony also was provided by legal counsel for the KPTA.

Opponent testimony was offered by a KCA representative who testified the bill would allow all physical therapists to perform dry needling regardless of their educational level and without additional training in the practice of dry needling. The representative stated, should the bill be passed out of the Senate Committee favorably, language should be added to require certification in proficiency in dry needling for all physical therapists who perform the procedure.

Neutral testimony was offered by representatives of the KAOM and KMS. The KMS representative stated KMS has no objection to physical therapists or acupuncturists performing dry needling, assuming they have the requisite education, training, and competence. However, the KMS representative stated a clear definition of dry needling and how it differs from acupuncture should be included in the bill for the purpose of providing clear direction for the Board of Healing Arts over the professions it regulates. Written neutral testimony was provided by a representative of the Board of Healing Arts.

The Senate Committee amended the bill to add “dry needling” to the physical therapists’ scope of practice and define the term; require rules and regulations establishing minimum education and training requirements for dry needling by licensed physical therapists; and exempt licensed acupuncturists from the Physical Therapy Practice Act. [*Note:* The language in SB 490, as amended by the Senate Committee, was inserted into SB 363, as amended by the Senate Committee of the Whole, subsequently amended by the Senate Committee, and again amended by the Senate Committee of the Whole.]

According to the fiscal note prepared by the Division of the Budget on SB 490, as introduced, the Board of Healing Arts states enactment of the bill could result in an increase in

the number of reports and complaints regarding practitioners alleged to have violated requirements contained in the Physical Therapy Practice Act. The Board of Healing Arts states increased complaints could result in an increase in the number of corresponding investigations that would need to be performed by Board of Healing Arts staff and the number of disciplinary cases handled, which would proportionately increase related operational expenses. The Board of Healing Arts cannot estimate the number of additional reports and complaints, so the possible increase in operational expenses cannot be determined at this time. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

### ***SB 449 Background***

An informational hearing on the bill was held before the Senate Committee on Public Health and Welfare on February 15, 2016. Representatives of the BSRB, Johnson County Mental Health Center, and the Kansas Association of Addiction Professionals (KAAP) provided proponent testimony at the informational hearing. The proponents generally stated the bill would standardize statutes pertaining to professions regulated by the BSRB and reflects changes made to 2015 SB 254 resulting from discussions with stakeholders who testified in opposition to that bill during the 2015 Legislative Session. Representatives of Johnson County Mental Health Center and KAAP were in favor of the creation of a new level of licensure (Licensed Master's Addiction Counselor) and the amended language regarding reciprocity. Written testimony in favor of the bill was provided by representatives of the Kansas Counseling Association.

Opponent testimony was provided at the informational hearing by a representative of the National Association of Social Workers (NASW) and a licensed specialist clinical social worker. The opponents generally stated the creation of a BSRB-approved clinical supervisor applies to only three of the six professions and is an arbitrary and unfair mandate,

imposes recurring costs, and would reduce the workforce of independent practitioners. The NASW representative also expressed concerns over the process for approving applicants with felony convictions and asked a two-thirds vote be required to approve such an application to strengthen public protection, instead of a simple majority, and to adopt language drawn from the Board of Healing Arts' Physicians Practice Act into the Social Work Practice Act.

The Senate Committee held a hearing on the bill on February 16, 2016. No additional testimony was provided at the hearing.

The Senate Committee amended the bill by adding language requiring a two-thirds majority vote of the BSRB to issue or reinstate licensure of an applicant with a felony conviction and by removing the requirement that all licensees providing postgraduate clinical supervision for those working toward clinical licensure in the area of social work be BSRB-approved clinical supervisors.

The Senate Committee of the Whole amended the bill by adding other current licensure in the state that would meet the requirements for licensure as a Master's Addiction Counselor; adding language prohibiting the outsourcing or privatizing of any operations or facilities of Larned State Hospital or Osawatomie State Hospital without prior specific authorization from the Legislature [*Note:* This amendment was removed from HB 2615 by Conference Committee action]; and updating the title of the bill.

At the hearing before the House Committee on Health and Human Services, representatives of the BSRB and the Kansas Chapter of the National Association of Social Workers (KNASW) provided proponent testimony. Proponents stated the bill would make changes to regulatory statutes administered by the BSRB. Additionally, due to amendments made by the Senate Committee, pertaining to social workers, KNSAW supports the bill. Written-only proponent testimony was provided by KAAP.

Neutral testimony was provided by the Kansas Department for Aging and Disability Services requesting two amendments to the bill, including removing the language added by the Senate Committee of the Whole prohibiting the outsourcing or privatization of any operations or facilities of the Larned State Hospital or Osawatomie State Hospital without prior legislative approval. The representative stated that the consequences of this amendment could be severe and potentially impair continued service delivery at the hospitals.

No testimony in opposition to the bill was provided.

The House Committee on Health and Human Services amended the bill to update language pertaining to addiction counselors throughout statute by deleting the terms “state certified alcohol and drug abuse counselor” and “counselor” in applicable statutes and inserting the terms “licensed addiction counselor” and “licensed clinical addiction counselor,” where applicable.

According to the fiscal note prepared by the Division of the Budget on the original bill, the BSRB indicates enactment of the bill would have no fiscal effect on state revenues or expenditures.

### ***HB 2456 Background***

At the House Health and Human Services hearing, representatives from the KMS, the Board of Healing Arts, and the KAOM testified in favor of the bill. The proponents stated the Compact would provide an expedited process of medical licensure in multiple states. The Compact requires 7 member states to become effective and the proponents testified there are currently 12 member states. No opponent or neutral testimony was provided.

At the Senate Committee on Public Health and Welfare hearing, Representative Kelly testified in favor of the bill

stating the bill would help alleviate physician shortages and would increase access to healthcare for individuals in underserved or rural areas. Representatives of the Board of Healing Arts, KAOM, and KMS also testified in favor of the bill. There was no neutral or opponent testimony.

The Senate Committee amended the bill to change the effective date to publication in the *Kansas Register*. [Note: The Fourth Conference Committee changed the publication date to be effective upon publication in the statute.]

According to the fiscal note prepared by the Division of the Budget on the original bill, the Board of Healing Arts indicates the enactment of the bill would increase expenditures by \$3,000 in FY 2016 and \$6,000 in FY 2017 for the cost of travel to Commission meetings. The Board of Healing Arts also estimates approximately ten medical doctors licenses would be issued licenses through the Compact during FY 2017 at a renewal cost of \$320 each and this licensure would increase revenue to the Healing Arts Fee Fund by \$3,200. The fiscal note also states the enactment of the bill would have no fiscal effect for the Office of the Attorney General. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

#### ***House Sub. for SB 402 Background***

The House Committee on Health and Human Services recommended the adoption of a substitute bill. The substitute bill removes the contents of SB 402, as amended by Senate Committee of the Whole, relating to healthcare provider continuing education credits for gratuitous care, and inserts the contents of HB 2732, as amended by the House Committee, relating to the creation of the Independent Practice of Midwifery Act.

### *HB 2732 Background*

In the House Committee on Health and Human Services hearing, representatives from the KMS and the Board of Healing Arts testified in favor of HB 2732. The American Congress of Obstetricians and Gynecologists provided proponent written-only testimony. Proponents stated the bill is a compromise that would allow nurse midwives to practice, upon meeting certain requirements, without a collaborative agreement with a physician while holding midwives to the same standard as other healthcare providers that do not have limitations on scope of practice by requiring dual licensure with the Board of Nursing and the Board of Healing Arts.

Opponent testimony was provided by a medical doctor, and representatives from Kansas Board of Nursing and American College of Nurse Midwives. Opponents stated nurse midwives, as a profession, prefer to remain under the Kansas Board of Nursing as the profession's only regulating authority. No neutral testimony was provided. The House Committee amended HB 2732 as follows:

- To insert “referral or transfer to physicians in the event of complications or emergencies” in the topics to be addressed in rules and regulations;
- To delete private censure as a discipline measure the Board of Healing Arts may utilize;
- To modify the definition of an act of professional incompetence as it relates to an applicant or licensee to be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment;
- To delete provisions that would require members of the Board of Healing Arts or its designee to investigate a sworn complaint filed with the Board of Healing Arts and to delete the option of the Board to conduct proceedings under the KAPA if in

the opinion of the Board, reasonable grounds for believing the applicant or licensee is guilty of the charges in the sworn complaint;

- To delete provisions that address which party would be responsible for costs incurred in proceedings under the Midwifery Act; and
- To insert language into the statute governing advanced practice registered nurses, specifying an advanced practice registered nurse certified in the role of certified nurse-midwife and engaging in the independent practice of midwifery under the Midwifery Act with respect to prescribing drugs shall be subject to the provisions of the Midwifery Act.

According to the fiscal note prepared by the Division of the Budget on HB 2732, as introduced, the Board of Nursing indicates enactment of the bill would reduce both agency expenditures and revenues. However, without sufficient time to analyze the provisions of the bill, the agency is unable to provide estimates.

The Board of Healing Arts indicates, upon enactment of the bill, there would be 100 or less possible licensees; thus, it would not require additional staff to accomplish licensure. The Board of Healing Arts also could accommodate the regulation writing requirement within the current budget. The Board of Healing Arts estimates approximately \$6,480 in additional licensure revenue in FY 2017 and ongoing additional revenue of \$7,000 to \$10,000 per year. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

charitable healthcare; Behavioral Sciences Regulatory Board; midwives; acupuncture; physical therapy; Interstate Medical Licensure Compact; Board of Healing Arts; Board of Nursing; Independent Practice of Midwifery Act

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