

## SENATE BILL No. 96

By Committee on Public Health and Welfare

1-28

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1 AN ACT enacting the Kansas disclosure of unanticipated medical  
2 outcomes and medical errors act; concerning required disclosure  
3 policies for unanticipated medical outcomes and medical errors by  
4 medical care providers and health care facilities.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. Sections 1 through 3, and amendments thereto, shall be  
8 known and may be cited as the Kansas disclosure of unanticipated medical  
9 outcomes and medical errors act.

10 Sec. 2. As used in the Kansas disclosure of unanticipated medical  
11 outcomes and medical errors act:

12 (a) "Harm" means any physical or psychological injury or damage to  
13 the health of a person, including temporary or permanent injury and injury  
14 resulting in the death of such person.

15 (b) "Health care provider" means a person licensed by the state board  
16 of healing arts to practice any branch of the healing arts, a person who  
17 holds a temporary permit to practice any branch of the healing arts issued  
18 by the state board of healing arts and a person engaged in a postgraduate  
19 training program approved by the state board of healing arts.

20 (c) "Health care administrator" means the individual directly  
21 responsible for planning, organizing, directing and controlling the  
22 operation of a medical care facility.

23 (d) "Medical care facility" means the same as in K.S.A. 65-425, and  
24 amendments thereto.

25 (e) "Medical error" means the failure of a planned action to be  
26 completed as intended or the use of a wrong plan to achieve an aim. This  
27 includes errors of commission, errors that occur as the result of an action  
28 taken, and errors of omission, errors that occur as a result of an action not  
29 taken.

30 (f) "Unanticipated outcome" means any adverse event, sentinel event  
31 or unintended or unexpected outcome or injury, whether or not resulting  
32 from an intentional act, that is not due to an underlying medical condition  
33 of the patient.

34 (1) "Adverse event" means an injury caused by medical management  
35 rather than the underlying condition of the patient.

36 (2) "Sentinel event" means an unexpected occurrence involving death

1 or serious physical or psychological injury or the risk thereof.

2 (g) "Serious unanticipated outcome or medical error" means an  
3 unanticipated outcome or medical error that results in prolonged medical  
4 treatment or recovery, or death.

5 (h) "Less serious unanticipated outcome or medical error" means an  
6 unanticipated outcome or medical error that results in some harm, but does  
7 not inhibit previously planned treatment or prolong a patient's treatment or  
8 recovery.

9 (i) "Minor unanticipated outcome or medical error" means an  
10 unanticipated outcome or medical error that does not cause harm or have  
11 the potential to do so.

12 (j) "Patient's family member" includes a patient's spouse, parent,  
13 grandparent, stepfather, stepmother, child, grandchild, half brother, half  
14 sister, spouse's parent and any other person who has a family-type  
15 relationship with the patient.

16 (k) "Patient's representative" means a legal guardian, attorney, person  
17 designated to make decisions on behalf of a patient under a medical power  
18 of attorney or any other person recognized in law or custom as a patient's  
19 agent.

20 Sec. 3. (a) Medical care facilities shall design and implement policies  
21 for the purpose of disclosing unanticipated outcomes and medical errors to  
22 the affected patient or, where appropriate, the patient's family member or  
23 patient's representative.

24 (b) All health care providers are required to disclose unanticipated  
25 outcomes and medical errors, but only medical care facilities are required  
26 to develop formal disclosure policies. Disclosure of events that occur to a  
27 patient while under the care of a health care provider working within a  
28 medical care facility or as a representative of that medical care facility  
29 shall follow the policy of that medical care facility.

30 (c) Policies for disclosure of unanticipated outcomes or medical  
31 errors to patients or, where appropriate, patients' families or patients'  
32 representatives, shall include, but are not limited to, procedures for each of  
33 the following:

34 (1) A statement that an unanticipated outcome or medical error  
35 occurred;

36 (2) an explanation of the cause, facts or context of the event;

37 (3) an acknowledgment of harm, and an apology when appropriate;

38 (4) an explanation of the impact on the patient's treatment plans and  
39 health status;

40 (5) an explanation of the investigation that has occurred or will take  
41 place; and

42 (6) an offer of support services, as needed.

43 (d) After development of the disclosure policy by the medical care

1 facility, the following shall occur before implementation of such policy:

2 (1) Medical care facilities shall provide health care administrators and  
3 all health care providers copies of the policy and a training program on  
4 how to make medical disclosures.

5 (2) Medical care facilities shall establish a plan for providing  
6 disclosure coaching and emotional support in preparation for, and  
7 following, a disclosure.

8 (e) Medical care facilities shall develop a disclosure policy, train  
9 personnel and implement such policy on or before July 1, 2017.

10 (f) A copy of a medical care facility's disclosure policy shall be filed  
11 with the appropriate licensing agency at the time of implementation of  
12 such policy.

13 (g) The reporting of a reportable incident to a licensing agency  
14 pursuant to K.S.A. 65-4921, and amendments thereto, shall include an  
15 account of disclosure.

16 (h) In the event of an unanticipated outcome or medical error, the  
17 health care administrator or such administrator's designee, or the health  
18 care provider, shall meet with the affected patient or, where appropriate,  
19 patient's family member or patient's representative to disclose the  
20 unanticipated outcome or medical error.

21 (i) Initial disclosure of an unanticipated outcome or medical error  
22 shall be made promptly, within seven days after its discovery. Additional  
23 disclosure conversations shall take place when deemed appropriate by the  
24 health care provider, at completion of the investigation, or upon request of  
25 the patient, patient's family member or patient's representative. Once an  
26 investigation is completed, the patient, patient's family member or patient's  
27 representative shall be informed of the results. Disclosure conversations  
28 shall include:

29 (1) A statement that an unanticipated outcome or medical error  
30 occurred;

31 (2) an explanation of what is currently known about the cause, facts  
32 or context of the event;

33 (3) an acknowledgment of harm, and an apology when appropriate;

34 (4) an explanation of what is currently known about the impact on the  
35 patient's treatment plans and health status;

36 (5) an explanation of the investigation that has occurred or will take  
37 place; and

38 (6) an offer of support services, as needed.

39 (j) Disclosure of serious unanticipated outcomes or medical errors  
40 shall be in both oral and written form. Disclosure of less serious  
41 unanticipated outcomes or medical errors may be oral only. Minor  
42 unanticipated outcomes or medical errors are not required to be disclosed.

43 (k) Medical disclosures to a patient, patient's family member or

1 patient's representative shall be recorded within the patient's medical  
2 records.

3 (l) Failure to disclose an error or unanticipated outcome or failure to  
4 report the disclosure to the proper licensing agency shall result in a civil  
5 fine of \$10,000 per incident, assessed by the secretary of health and  
6 environment after proper notice and an opportunity to be heard. All fines  
7 assessed and collected under this section shall be remitted to the state  
8 treasurer in accordance with the provisions of K.S.A. 75-4215, and  
9 amendments thereto. Upon receipt of each such remittance, the state  
10 treasurer shall deposit the entire amount in the state treasury to the credit  
11 of the state general fund.

12 (m) A patient, patient's family member or patient's representative  
13 shall be advised of their legal right to consult an attorney. If all parties  
14 wish to negotiate a financial settlement, all parties have a right to have an  
15 attorney present. If a patient, patient's family member or patient's  
16 representative chooses not to consult an attorney, they shall be given six  
17 months to reconsider such decision before settlement.

18 (n) A medical care facility, health care administrator or health care  
19 provider shall not ask or require a patient, patient's family member or  
20 patient's representative to waive their rights to litigation, except as a  
21 condition of settlement.

22 (o) Settlement in a medical liability claim shall not be subject to  
23 confidential sequestering of any information related to the case.

24 Sec. 4. This act shall take effect and be in force from and after its  
25 publication in the statute book.