

Medical Retainer Agreement and Amendments to the Kansas Healing Arts Act, Physician Assistant Licensure Act, Kansas Pharmacy Act, Controlled Substances Act, and Do Not Resuscitate Directives Act; Senate Sub. for HB 2225

Senate Sub. for HB 2225 specifies a medical retainer agreement is not insurance and is not subject to insurance provisions in Chapter 40 of the Kansas statutes. The bill also amends the Kansas Healing Arts Act, the Physician Assistant Licensure Act, the Kansas Pharmacy Act, the Controlled Substances Act, and the Do Not Resuscitate Directives Act, and it includes technical amendments to such Acts.

Medical Retainer Agreement

A health care provider is not required to obtain a certificate of authority or license under Chapter 40 to market, sell, or offer to sell a medical retainer agreement.

The bill defines the following:

- “Health care provider” to mean a person licensed under the Healing Arts Act;
- “Medical retainer agreement” to mean a contract between a health care provider and an individual patient in which the health care provider agrees to provide to the patient routine health care services for an agreed-upon fee and period of time; and
- “Routine health care service” to mean only the following:
 - Screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury;
 - Medical supplies and prescription drugs that are dispensed in a health care provider’s office or facility site; and
 - Laboratory work including routine blood screening or routine pathology screening performed by a laboratory meeting certain requirements.

The bill states the requirements of a medical retainer, as follows:

- Be in writing;
- Be signed by the health care provider and the individual patient;
- Allow either party to terminate the agreement upon written notice;
- Describe and quantify the routine health care services;
- Specify the fee for the agreement;

- Specify the period of time under the agreement;
- Prominently state the agreement is not health insurance;
- Prohibit the health care provider and the patient from billing an insurer or other third-party payer for the services provided under the agreement; and
- Prominently state in writing the patient must pay the health care provider for all services not covered under the agreement and not otherwise covered by insurance.

The bill requires the following provision to be prominently stated in writing, in boldface type in 10-point font or larger, all words capitalized, on the front page of the medical retainer, and requires the patient or patient’s legal representative to initial below the provision:

Notice: This Medical Retainer Agreement does not constitute insurance, is not a medical plan that provides health insurance coverage for purposes of the Federal Patient Protection and Affordable Care Act and covers only limited routine health care services as designated in this agreement.

Healing Arts Act

Licenses and Fees

The bill adds the term “active” to “reentry license” to clarify a reentry license must be a reentry active license. A reentry active license is subject to continuing education requirements and licensure fees. The bill also creates a “resident active license.”

Resident Active License

Under the bill, a resident active license is created and can be issued to a person who makes written application; remits the required fee; has successfully completed at least one year of approved postgraduate training; is engaged in a full-time, approved postgraduate training program; and has passed the examinations for licensure. The Board of Healing Arts (Board) is required to adopt rules and regulations regarding issuance, maintenance, and renewal of the license. A resident active licensee is entitled to all privileges attendant to the branch of the healing arts for which such license is used.

A statutory cap of \$500 on fees for reinstatement of a canceled license, for a reentry active license or renewal of a reentry active license, and for a resident active license is created.

Patient Records

The bill defines the following terms:

- “Health care provider” to mean any person licensed by the Board;

- “Authorized representative” to mean the person designated in writing by the patient to obtain the health care records on behalf of the patient or the person otherwise authorized by law to obtain the health care records of the patient; and
- “Authorization” to mean a written or printed document signed by a patient or a patient’s authorized representative containing:
 - A description of the health care records a provider is authorized to produce;
 - The patient’s name, address, and date of birth;
 - A designation of the person or entity authorized to obtain copies of the health care records;
 - A date or event upon which the force of the authorization shall expire, not to exceed one year;
 - If signed by a patient’s authorized representative, the representative’s name, address, telephone number, and relationship to the patient; and
 - A statement declaring the right of the person signing the authorization to revoke it in writing.

The bill sets forth the requirements of health care providers to provide copies of patient records to the patient, patient’s authorized representative, or other authorized person or entity within 30 days of receipt of the authorization. If the records are not available, the health care provider is required to notify the patient or the patient’s authorized representative of the reasons the copies are not available.

The law requires a covered entity to provide a patient or patient’s representative with access to the patient’s health information; however, the bill requires a covered entity defined by the bill as a health care provider to furnish copies of health care records to a patient, a patient’s authorized representative, or other person or entity authorized by law.

The bill also allows a provider to withhold requested records if the provider reasonably believes providing copies would cause substantial harm to the patient or another person. If a request is denied, a patient is authorized to file a claim against the provider to enforce the request. Upon a court finding the failure to comply with the request for records is without just cause or excuse, the court is required to award costs of the action and order production of the records at no expense to the prevailing party.

The bill requires charges for furnishing the records be established in rules and regulations. In establishing charges, the Board is required to consider the All-Items Consumer Price Index published by the U.S. Department of Labor.

The bill permits the Board to adopt rules and regulations requiring providers to furnish health care records to patients or their authorized representatives.

Special Permit

The bill expands the scope of the “special permit”—to include the practice of medicine and surgery—that may be issued by the Board to any person who has completed

undergraduate training at the University of Kansas School of Medicine who has not yet commenced a full-time approved postgraduate training program. The holder of the special permit is allowed to be compensated by a supervising physician, but not allowed to charge patients a fee for services rendered; is not allowed to engage in private practice; is allowed to prescribe drugs, but not controlled substances; is required to clearly identify himself or herself as a physician in training; is not deemed to be rendering professional service as a health care provider for the purposes of professional liability insurance; is subject to all provisions of the Healing Arts Act, except as otherwise provided in the bill; and requires supervision by a physician who is physically present within the healthcare facility and is immediately available.

The special permit expires the day the holder of the permit becomes engaged in a full-time approved postgraduate training program or one year from issuance. The permit may be renewed one time. The Board is allowed to adopt rules and regulations to carry out the provisions related to the special permit holder.

Discipline

The bill eliminates private censure as a disciplinary option for Board licensees. The law states the Board may deny licensure in instances where a licensee had a license to practice the healing arts revoked, suspended, or limited in another jurisdiction. The bill eliminates providing a certified copy of the record of a disciplinary action of another jurisdiction as conclusive evidence thereof.

Definitions

The term “supervising physician” has the same meaning as set forth in the Physician Assistant Licensure Act.

Physician Assistant Licensure Act

Licenses and Fees

The bill creates a designation of “exempt license” and of “federally active license” and establishes a statutory cap on the fees, not more than \$150 and \$200 respectively, for such licenses.

Exempt License

The Board is allowed to issue an “exempt license” to a licensed physician assistant who makes written application, remits the required fee, and is not regularly engaged in physician assistant practice in Kansas and who does not hold himself or herself out publicly to be engaged in such practice. An exempt licensee is entitled to all privileges of a physician assistant and is subject to all provisions of the Physician Assistant Licensure Act. Continuing education requirements for this designation are to be established by rules and regulations adopted by the Board. The exempt license is eligible for renewal.

An exempt licensee is allowed to apply for an active license by filing a written application and remitting required fees for an active license. The requirements to be issued an active license vary depending on the time a person has held an exempt license. If a person has held an exempt license for more than two years, the testing, training, or education may be greater than for someone who has held the exempt license less than two years. The requirements may be established by rules and regulations adopted by the Board.

An exempt licensee is allowed to be a paid employee of a local health department or an indigent health care clinic.

Federally Active License

The Board is allowed to issue a “federally active license” to a licensed physician assistant who makes a written application, remits the required fee, and who practices as a physician assistant solely in the course of employment or active duty with the U.S. government. Under this designation a person may engage in limited practice outside the course of federal employment consistent with the scope of practice of the exempt licensees except that the scope is limited to the following:

- Performing administrative functions;
- Providing direct patient care services gratuitously or providing supervision, direction, or consultation for no compensation;
 - However, payment for subsistence allowances or actual and necessary expenses incurred in providing such services is allowed; and
- Rendering professional services as a charitable health care provider.

Federally active licensees are subject to licensure fees and continuing education requirements. A person practicing under this designation is not deemed to be rendering professional services for the purpose of KSA 2014 Supp. 40-3402, relating to professional liability insurance. The requirements may be established by rules and regulations adopted by the Board.

Do Not Resuscitate Directives Act

The bill allows a physician assistant to write do not resuscitate (DNR) orders if delegated the authority by a physician and revises the DNR statutory form to include a physician assistant signature line.

“Physician assistant” is defined to mean a person licensed by the Board to practice as a physician assistant.

Pharmacy Act

After January 11, 2016, the bill changes “written protocol” to “written agreement” and “responsible physician” to “supervising physician” as the term relates to the authority of a physician assistant to prescribe drugs.

Implementation

The bill reverts language specified below to terms in law prior to July 1, 2014, but only until January 11, 2016, when new terms become effective.

- “Agreement” means “protocol” until July 11, 2016, when it means “agreement,” and “supervising physician” means “responsible physician” until July 11, 2016, when it means “supervising physician.” “Supervising physician” means a physician who has accepted responsibility for the medical services rendered and actions of the physician assistant while performing under the direction and supervision of the supervising physician. “Responsible physician” means a physician who has accepted continuous and ultimate responsibility for the medical services rendered and actions of the physician assistant while performing under the direction and supervision of the responsible physician. These distinctions are applicable to:
 - A physician who has accepted responsibility for the medical services rendered and actions of a physician assistant; (This change amends the Physician Assistant Licensure Act, the Controlled Substances Act, and KSA 2014 Supp. 72-8252 relating to school districts adopting policies to allow students to self-medicate.) and
 - A statute, contract, or other document referencing a supervising physician and a physician assistant;
- The Board is required to adopt rules and regulations to be effective January 11, 2016, governing the practice of physician assistants;
- Physician assistants are allowed to dispense prescription-only drugs on and after January 11, 2016; and
- The Board limits the number of physician assistants a responsible physician may supervise at any one time to two until January 11, 2016.