

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 449

As Amended by House Committee on Health
and Human Services

Brief*

SB 449, as amended, 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 Kansas Administrative Procedure Act (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" and "licensed clinical addiction counselor" into applicable statutes. Finally, the bill would prohibit any state agency from entering into an agreement to outsource or privatize any operations or facilities of Larned State Hospital or Osawatomie State Hospital without prior legislative approval. Specific bill details follow.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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 board-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 Counselor

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 BRSB); 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.

Prohibition on Outsourcing State Psychiatric Hospital Operations or Facilities

The bill would prohibit any state agency from entering into any agreement to outsource or privatize any operations or facilities of Larned State Hospital or Osawatomie State Hospital without prior specific authorization by an act of the Legislature or an appropriation act of the Legislature.

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 board-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 board-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; 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.