

HOUSE BILL No. 2402

By Committee on Appropriations

3-19

1 AN ACT concerning health and healthcare; providing for the authorization
2 of certain business entities to employ physicians and chiropractors;
3 amending K.S.A. 65-2803, 65-2836 and 65-2877a and K.S.A. 2018
4 Supp. 40-3401 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Notwithstanding any other provision of law, a
8 business entity may employ one or more persons licensed by the state
9 board of healing arts to practice medicine and surgery or chiropractic
10 pursuant to this section, if the entity first obtains a certificate of
11 authorization from the state board of healing arts.

12 (b) (1) A business entity may apply to the state board of healing arts
13 for a certificate of authorization, on a form and in a manner prescribed by
14 the state board of healing arts, and shall include the following information:

15 (A) The name of the business entity;

16 (B) a list of the names of the owners and officers of the business
17 entity;

18 (C) a description of the apportionment of liability of all partners or
19 owners, if the business entity is organized as a limited partnership or a
20 limited liability company;

21 (D) a list of each responsible official if the business entity is
22 organized as a governmental unit; and

23 (E) a list of all licensed physicians and chiropractors to be hired by
24 the business entity.

25 (2) As a condition of certification, a business entity shall be required
26 to provide the state board of healing arts evidence of the following:

27 (A) The address of the business entity;

28 (B) a city or county occupational license; and

29 (C) licensure of all physicians and chiropractors to be employed by
30 the business entity.

31 (3) A business entity applying for certification shall remit a fee set by
32 the state board of healing arts through rules and regulations, not to exceed
33 \$500.

34 (c) (1) If the state board of healing arts finds that such business entity
35 is in compliance with all of the requirements of this section, the state board
36 of healing arts shall issue a certificate of authorization to such business

1 entity designating the business entity as authorized to engage in the
2 practice of medicine and surgery or chiropractic, as applicable.

3 (2) A certificate of authorization shall be renewed biennially and
4 accompanied by a fee to be fixed by the state board of healing arts. The
5 renewal fee shall be accompanied by a form prescribed by the state board
6 of healing arts.

7 (d) No business entity issued a certificate of authorization under this
8 section shall be relieved of responsibility for the conduct or acts of its
9 agents or employees by reason of its compliance with the provisions of
10 this section, nor shall any individual licensed to practice the healing arts be
11 relieved of responsibility and liability for services performed by reason of
12 employment or relationship with such business entity. Nothing in this
13 section shall exempt any business entity from the provisions of any other
14 law applicable to the business entity.

15 (e) A business entity issued a certificate of authorization under this
16 section shall not impose or substitute its judgment for that of the physician
17 or chiropractor.

18 (f) As used in this section:

19 (1) (A) "Business entity" means an employer located in Kansas that
20 offers medicine and surgery or chiropractic services for its employees and
21 the dependents of such employees at the employer's work site; an
22 organization that is licensed to sell accident and sickness insurance in the
23 state that is also a mutual or non-profit health carrier, or a wholly owned
24 subsidiary of such organization that provides medical services for the
25 organization's enrollees and dependents of such enrollees; or an
26 information technology company that designs and provides electronic
27 medical records for businesses and worksite medical clinics for employers
28 located in Kansas.

29 (B) "Business entity" does not include medical care facilities under
30 K.S.A. 65-425, and amendments thereto, corporations licensed under
31 K.S.A. 40-3214, and amendments thereto, and professional corporations
32 organized pursuant to the professional corporation law of Kansas.

33 (2) "Physician" means a person licensed by the state board of healing
34 arts to practice medicine and surgery.

35 (g) The state board of healing arts shall adopt all rules and regulations
36 as necessary to implement and administer the provisions of this section.

37 (h) This section shall be a part of and supplemental to the Kansas
38 healing arts act.

39 Sec. 2. K.S.A. 2018 Supp. 40-3401 is hereby amended to read as
40 follows: 40-3401. As used in this act:

41 (a) "Applicant" means any healthcare provider.

42 (b) "Basic coverage" means a policy of professional liability
43 insurance required to be maintained by each healthcare provider pursuant

1 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.

2 (c) "Commissioner" means the commissioner of insurance.

3 (d) "Fiscal year" means the year commencing on the effective date of
4 this act and each year, commencing on the first day of July thereafter.

5 (e) "Fund" means the healthcare stabilization fund established
6 pursuant to K.S.A. 40-3403(a), and amendments thereto.

7 (f) (l) "Healthcare provider" means a person licensed to practice any
8 branch of the healing arts by the state board of healing arts, a person who
9 holds a temporary permit to practice any branch of the healing arts issued
10 by the state board of healing arts, a person engaged in a postgraduate
11 training program approved by the state board of healing arts, a medical
12 care facility licensed by the state of Kansas, a podiatrist licensed by the
13 state board of healing arts, a health maintenance organization issued a
14 certificate of authority by the commissioner, an optometrist licensed by the
15 board of examiners in optometry, a pharmacist licensed by the state board
16 of pharmacy, a licensed professional nurse who is authorized to practice as
17 a registered nurse anesthetist, a licensed professional nurse who has been
18 granted a temporary authorization to practice nurse anesthesia under
19 K.S.A. 65-1153, and amendments thereto, a professional corporation
20 organized pursuant to the professional corporation law of Kansas by
21 persons who are authorized by such law to form such a corporation and
22 who are healthcare providers as defined by this subsection, a Kansas
23 limited liability company organized for the purpose of rendering
24 professional services by its members who are healthcare providers as
25 defined by this subsection and who are legally authorized to render the
26 professional services for which the limited liability company is organized,
27 a partnership of persons who are healthcare providers under this
28 subsection, a Kansas not-for-profit corporation organized for the purpose
29 of rendering professional services by persons who are healthcare providers
30 as defined by this subsection, a nonprofit corporation organized to
31 administer the graduate medical education programs of community
32 hospitals or medical care facilities affiliated with the university of Kansas
33 school of medicine, a dentist certified by the state board of healing arts to
34 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
35 psychiatric hospital licensed prior to January 1, 1988, and continuously
36 thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and
37 K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto, ~~or a mental~~
38 ~~health center or mental health clinic licensed by the state of Kansas. On~~
39 ~~and after January 1, 2015, "Healthcare provider" also means, a physician~~
40 ~~assistant licensed by the state board of healing arts, a licensed advanced~~
41 ~~practice registered nurse who is authorized by the board of nursing to~~
42 ~~practice as an advanced practice registered nurse in the classification of a~~
43 ~~nurse-midwife, a licensed advanced practice registered nurse who has been~~

1 granted a temporary authorization by the board of nursing to practice as an
2 advanced practice registered nurse in the classification of a nurse-midwife,
3 a nursing facility licensed by the state of Kansas, an assisted living facility
4 licensed by the state of Kansas ~~or~~, a residential healthcare facility licensed
5 by the state of Kansas *or a business entity that holds a certificate of*
6 *authorization pursuant to section 1, and amendments thereto.*

7 (2) "Healthcare provider" does not include:~~(1)~~ (A) Any state
8 institution for people with intellectual disability;~~(2)~~ (B) any state
9 psychiatric hospital;~~(3)~~ (C) any person holding an exempt license issued
10 by the state board of healing arts or the board of nursing;~~(4)~~ (D) any
11 person holding a visiting clinical professor license from the state board of
12 healing arts;~~(5)~~ (E) any person holding an inactive license issued by the
13 state board of healing arts;~~(6)~~ (F) any person holding a federally active
14 license issued by the state board of healing arts;~~(7)~~ (G) an advanced
15 practice registered nurse who is authorized by the board of nursing to
16 practice as an advanced practice registered nurse in the classification of
17 nurse-midwife or nurse anesthetist and who practices solely in the course
18 of employment or active duty in the United States government or any of its
19 departments, bureaus or agencies or who provides professional services as
20 a charitable healthcare provider as defined under K.S.A. 75-6102, and
21 amendments thereto; or~~(8)~~ (H) a physician assistant licensed by the state
22 board of healing arts who practices solely in the course of employment or
23 active duty in the United States government or any of its departments,
24 bureaus or agencies or who provides professional services as a charitable
25 healthcare provider as defined under K.S.A. 75-6102, and amendments
26 thereto.

27 (g) "Inactive healthcare provider" means a person or other entity who
28 purchased basic coverage or qualified as a self-insurer on or subsequent to
29 the effective date of this act but who, at the time a claim is made for
30 personal injury or death arising out of the rendering of or the failure to
31 render professional services by such healthcare provider, does not have
32 basic coverage or self-insurance in effect solely because such person is no
33 longer engaged in rendering professional service as a healthcare provider.

34 (h) "Insurer" means any corporation, association, reciprocal
35 exchange, inter-insurer and any other legal entity authorized to write
36 bodily injury or property damage liability insurance in this state, including
37 workers compensation and automobile liability insurance, pursuant to the
38 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
39 the Kansas Statutes Annotated, and amendments thereto.

40 (i) "Plan" means the operating and administrative rules and
41 procedures developed by insurers and rating organizations or the
42 commissioner to make professional liability insurance available to
43 healthcare providers.

1 (j) "Professional liability insurance" means insurance providing
2 coverage for legal liability arising out of the performance of professional
3 services rendered or that should have been rendered by a healthcare
4 provider.

5 (k) "Rating organization" means a corporation, an unincorporated
6 association, a partnership or an individual licensed pursuant to K.S.A. 40-
7 956, and amendments thereto, to make rates for professional liability
8 insurance.

9 (l) "Self-insurer" means a healthcare provider who qualifies as a self-
10 insurer pursuant to K.S.A. 40-3414, and amendments thereto.

11 (m) "Medical care facility" means the same when used in the
12 healthcare provider insurance availability act as defined in K.S.A. 65-425,
13 and amendments thereto, except that as used in the healthcare provider
14 insurance availability act such term, as it relates to insurance coverage
15 under the healthcare provider insurance availability act, also includes any
16 director, trustee, officer or administrator of a medical care facility.

17 (n) "Mental health center" means a mental health center licensed by
18 the state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
19 amendments thereto, except that as used in the healthcare provider
20 insurance availability act such term, as it relates to insurance coverage
21 under the healthcare provider insurance availability act, also includes any
22 director, trustee, officer or administrator of a mental health center.

23 (o) "Mental health clinic" means a mental health clinic licensed by
24 the state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
25 amendments thereto, except that as used in the healthcare provider
26 insurance availability act such term, as it relates to insurance coverage
27 under the healthcare provider insurance availability act, also includes any
28 director, trustee, officer or administrator of a mental health clinic.

29 (p) "State institution for people with intellectual disability" means
30 Winfield state hospital and training center, Parsons state hospital and
31 training center and the Kansas neurological institute.

32 (q) "State psychiatric hospital" means Larned state hospital,
33 Osawatomie state hospital and Rainbow mental health facility.

34 (r) "Person engaged in residency training" means:

35 (1) A person engaged in a postgraduate training program approved by
36 the state board of healing arts who is employed by and is studying at the
37 university of Kansas medical center only when such person is engaged in
38 medical activities that do not include extracurricular, extra-institutional
39 medical service for which such person receives extra compensation and
40 that have not been approved by the dean of the school of medicine and the
41 executive vice-chancellor of the university of Kansas medical center.
42 Persons engaged in residency training shall be considered resident
43 healthcare providers for purposes of K.S.A. 40-3401 et seq., and

1 amendments thereto; and

2 (2) a person engaged in a postgraduate training program approved by
3 the state board of healing arts who is employed by a nonprofit corporation
4 organized to administer the graduate medical education programs of
5 community hospitals or medical care facilities affiliated with the university
6 of Kansas school of medicine or who is employed by an affiliate of the
7 university of Kansas school of medicine as defined in K.S.A. 76-367, and
8 amendments thereto, only when such person is engaged in medical
9 activities that do not include extracurricular, extra-institutional medical
10 service for which such person receives extra compensation and that have
11 not been approved by the chief operating officer of the nonprofit
12 corporation or the chief operating officer of the affiliate and the executive
13 vice-chancellor of the university of Kansas medical center.

14 (s) "Full-time physician faculty employed by the university of Kansas
15 medical center" means a person licensed to practice medicine and surgery
16 who holds a full-time appointment at the university of Kansas medical
17 center when such person is providing healthcare. A person licensed to
18 practice medicine and surgery who holds a full-time appointment at the
19 university of Kansas medical center may also be employed part-time by
20 the United States department of veterans affairs if such employment is
21 approved by the executive vice-chancellor of the university of Kansas
22 medical center.

23 (t) "Sexual act" or "sexual activity" means ~~that~~ sexual conduct that
24 constitutes a criminal or tortious act under the laws of the state of Kansas.

25 (u) "Board" means the board of governors created by K.S.A. 40-3403,
26 and amendments thereto.

27 (v) "Board of directors" means the governing board created by K.S.A.
28 40-3413, and amendments thereto.

29 (w) "Locum tenens contract" means a temporary agreement not
30 exceeding 182 days per calendar year that employs a healthcare provider
31 to actively render professional services in this state.

32 (x) "Professional services" means patient care or other services
33 authorized under the act governing licensure of a healthcare provider.

34 (y) "Healthcare facility" means a nursing facility, an assisted living
35 facility or a residential healthcare facility as all such terms are defined in
36 K.S.A. 39-923, and amendments thereto.

37 (z) "Charitable healthcare provider" means the same as defined in
38 K.S.A. 75-6102, and amendments thereto.

39 Sec. 3. K.S.A. 65-2803 is hereby amended to read as follows: 65-
40 2803. (a) Unless otherwise specified by the board *or as provided in section*
41 *1, and amendment thereto*, it shall be unlawful for any person who does
42 not have a license, registration, permit or certificate to engage in the
43 practice of any profession regulated by the board or whose license,

1 registration, permit or certificate to practice has been revoked or
2 suspended to engage in the practice of any profession regulated by the
3 board.

4 (b) This section shall not apply to any healthcare provider who in
5 good faith renders emergency care or assistance at the scene of an
6 emergency or accident as authorized by K.S.A. 65-2891, and amendments
7 thereto.

8 (c) The commission of any act or practice declared to be a violation
9 of this section may render the violator liable to the state or county for the
10 payment of a civil penalty of up to \$1,000 per day for each day a person
11 engages in the unlawful practice of a profession regulated by the board. In
12 addition to such civil penalty, such violator may be assessed reasonable
13 costs of investigation and prosecution.

14 (d) Violation of this section is a severity level 10, nonperson felony.

15 Sec. 4. K.S.A. 65-2836 is hereby amended to read as follows: 65-
16 2836. A licensee's license may be revoked, suspended or limited, or the
17 licensee may be publicly censured or placed under probationary
18 conditions, or an application for a license or for reinstatement of a license
19 may be denied upon a finding of the existence of any of the following
20 grounds:

21 (a) The licensee has committed fraud or misrepresentation in
22 applying for or securing an original, renewal or reinstated license.

23 (b) The licensee has committed an act of unprofessional or
24 dishonorable conduct or professional incompetency, except that the board
25 may take appropriate disciplinary action or enter into a non-disciplinary
26 resolution when a licensee has engaged in any conduct or professional
27 practice on a single occasion that, if continued, would reasonably be
28 expected to constitute an inability to practice the healing arts with
29 reasonable skill and safety to patients or unprofessional conduct as defined
30 in K.S.A. 65-2837, and amendments thereto.

31 (c) The licensee has been convicted of a felony or class A
32 misdemeanor, or substantially similar offense in another jurisdiction,
33 whether or not related to the practice of the healing arts, or the licensee
34 has been convicted in a special or general court-martial, whether or not
35 related to the practice of the healing arts. The board shall revoke a
36 licensee's license following conviction of a felony or substantially similar
37 offense in another jurisdiction, or following conviction in a general court-
38 martial occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board
39 members present and voting determine by clear and convincing evidence
40 that such licensee will not pose a threat to the public in such person's
41 capacity as a licensee and that such person has been sufficiently
42 rehabilitated to warrant the public trust. In the case of a person who has
43 been convicted of a felony or convicted in a general court-martial and who

1 applies for an original license or to reinstate a canceled license, the
2 application for a license shall be denied unless a ²/₃ majority of the board
3 members present and voting on such application determine by clear and
4 convincing evidence that such person will not pose a threat to the public in
5 such person's capacity as a licensee and that such person has been
6 sufficiently rehabilitated to warrant the public trust.

7 (d) The licensee has used fraudulent or false advertisements.

8 (e) The licensee is addicted to or has distributed intoxicating liquors
9 or drugs for any other than lawful purposes.

10 (f) The licensee has willfully or repeatedly violated this act, the
11 pharmacy act of the state of Kansas or the uniform controlled substances
12 act, or any rules and regulations adopted pursuant thereto, or any rules and
13 regulations of the secretary of health and environment—~~which~~ *that* are
14 relevant to the practice of the healing arts.

15 (g) The licensee has unlawfully invaded the field of practice of any
16 branch of the healing arts in which the licensee is not licensed to practice.

17 (h) The licensee has engaged in the practice of the healing arts under
18 a false or assumed name, or the impersonation of another practitioner. The
19 provisions of this subsection relating to an assumed name shall not apply
20 to licensees practicing under a professional corporation, *under a business*
21 *entity that holds a certificate of authorization pursuant to section 1, and*
22 *amendments thereto, or under any other legal entity duly authorized to*
23 *provide such professional services in the state of Kansas.*

24 (i) The licensee's ability to practice the healing arts with reasonable
25 skill and safety to patients is impaired by reason of physical or mental
26 illness, or condition or use of alcohol, drugs or controlled substances. All
27 information, reports, findings and other records relating to impairment
28 shall be confidential and not subject to discovery by or release to any
29 person or entity outside of a board proceeding.

30 (j) The licensee has had a license to practice the healing arts revoked,
31 suspended or limited, has been censured or has had other disciplinary
32 action taken, or an application for a license denied, by the proper licensing
33 authority of another state, territory, District of Columbia, or other country.

34 (k) The licensee has violated any lawful rule and regulation
35 promulgated by the board or violated any lawful order or directive of the
36 board previously entered by the board.

37 (l) The licensee has failed to report or reveal the knowledge required
38 to be reported or revealed under K.S.A. 65-28,122, and amendments
39 thereto.

40 (m) The licensee, if licensed to practice medicine and surgery, has
41 failed to inform in writing a patient suffering from any form of
42 abnormality of the breast tissue for which surgery is a recommended form
43 of treatment, of alternative methods of treatment recognized by licensees

1 of the same profession in the same or similar communities as being
2 acceptable under like conditions and circumstances.

3 (n) The licensee has cheated on or attempted to subvert the validity of
4 the examination for a license.

5 (o) The licensee has been found to be mentally ill, disabled, not guilty
6 by reason of insanity, not guilty because the licensee suffers from a mental
7 disease or defect or incompetent to stand trial by a court of competent
8 jurisdiction.

9 (p) The licensee has prescribed, sold, administered, distributed or
10 given a controlled substance to any person for other than medically
11 accepted or lawful purposes.

12 (q) The licensee has violated a federal law or regulation relating to
13 controlled substances.

14 (r) The licensee has failed to furnish the board, or its investigators or
15 representatives, any information legally requested by the board.

16 (s) Sanctions or disciplinary actions have been taken against the
17 licensee by a peer review committee, health care facility, a governmental
18 agency or department or a professional association or society for acts or
19 conduct similar to acts or conduct ~~which~~ that would constitute grounds for
20 disciplinary action under this section.

21 (t) The licensee has failed to report to the board any adverse action
22 taken against the licensee by another state or licensing jurisdiction, a peer
23 review body, a health care facility, a professional association or society, a
24 governmental agency, by a law enforcement agency or a court for acts or
25 conduct similar to acts or conduct ~~which~~ that would constitute grounds for
26 disciplinary action under this section.

27 (u) The licensee has surrendered a license or authorization to practice
28 the healing arts in another state or jurisdiction, has surrendered the
29 authority to utilize controlled substances issued by any state or federal
30 agency, has agreed to a limitation to or restriction of privileges at any
31 medical care facility or has surrendered the licensee's membership on any
32 professional staff or in any professional association or society while under
33 investigation for acts or conduct similar to acts or conduct ~~which~~ that
34 would constitute grounds for disciplinary action under this section.

35 (v) The licensee has failed to report to the board surrender of the
36 licensee's license or authorization to practice the healing arts in another
37 state or jurisdiction or surrender of the licensee's membership on any
38 professional staff or in any professional association or society while under
39 investigation for acts or conduct similar to acts or conduct ~~which~~ that
40 would constitute grounds for disciplinary action under this section.

41 (w) The licensee has an adverse judgment, award or settlement
42 against the licensee resulting from a medical liability claim related to acts
43 or conduct similar to acts or conduct ~~which~~ that would constitute grounds

1 for disciplinary action under this section.

2 (x) The licensee has failed to report to the board any adverse
3 judgment, settlement or award against the licensee resulting from a
4 medical malpractice liability claim related to acts or conduct similar to acts
5 or conduct ~~which~~ that would constitute grounds for disciplinary action
6 under this section.

7 (y) The licensee has failed to maintain a policy of professional
8 liability insurance as required by K.S.A. 40-3402 or 40-3403a, and
9 amendments thereto.

10 (z) The licensee has failed to pay the premium surcharges as required
11 by K.S.A. 40-3404, and amendments thereto.

12 (aa) The licensee has knowingly submitted any misleading, deceptive,
13 untrue or fraudulent representation on a claim form, bill or statement.

14 (bb) The licensee as the supervising physician for a physician
15 assistant has failed to adequately direct and supervise the physician
16 assistant in accordance with the physician assistant licensure act or rules
17 and regulations adopted under such act.

18 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
19 prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments
20 thereto, as established by any of the following:

21 (1) A copy of the record of criminal conviction or plea of guilty for a
22 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018
23 Supp. 21-5407, and amendments thereto.

24 (2) A copy of the record of a judgment of contempt of court for
25 violating an injunction issued under K.S.A. 60-4404, and amendments
26 thereto.

27 (3) A copy of the record of a judgment assessing damages under
28 K.S.A. 60-4405, and amendments thereto.

29 (dd) The licensee has given a worthless check or stopped payment on
30 a debit or credit card for fees or moneys legally due to the board.

31 (ee) The licensee has knowingly or negligently abandoned medical
32 records.

33 Sec. 5. K.S.A. 65-2877a is hereby amended to read as follows: 65-
34 2877a. ~~The healing arts act and any other~~No provision of law prohibiting
35 practice of the healing arts by a general corporation shall ~~not~~ apply to a
36 healing arts school approved by the board if the healing arts school is a
37 non-profit entity under section 501(c)(3) of the internal revenue code of
38 1986, is approved by the state board of regents, and as part of its academic
39 requirements provides clinical training to its students under the supervision
40 of persons who are licensed to practice a branch of the healing arts in this
41 state.

42 Sec. 6. K.S.A. 65-2803, 65-2836 and 65-2877a and K.S.A. 2018
43 Supp. 40-3401 are hereby repealed.

1 Sec. 7. This act shall take effect and be in force from and after
2 January 1, 2020 and its publication in the statute book.