

SESSION OF 2019

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2402**

As Amended by House Committee on Health  
and Human Services

**Brief\***

HB 2402, as amended, would allow a business entity issued a certificate of authorization by the Board of Healing Arts (Board) to employ or contract with one or more licensees of the Board, for the purpose of providing professional services for which such licensees hold a valid license issued by the Board. The bill would provide nothing in the Kansas Healing Arts Act (Act) would be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization as set forth in the bill. Medical care facilities in compliance with the Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center would be exempt from the provisions in the bill. The bill would not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions of the bill would be part of and supplemental to the Act.

***Definitions***

The bill would define the following terms:

- “Business entity” to mean:
  - An employer located in Kansas that utilizes electronic medical records and offers

---

\*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>

medicine and surgery or chiropractic services solely for its employees and the dependents of such employees at the employer's work site;

- An organization licensed to sell accident and sickness insurance in Kansas that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization that provides medical services solely for the organization's enrollees and dependents of such enrollees; or
- An information technology company that designs, utilizes, and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or chiropractic services solely to its employees and the dependents of such employees at the employer's work sites in Kansas;
- "Licensee" to mean a person licensed by the Board to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited, or placed under probationary conditions; and
- "Physician" to mean a person licensed by the Board to practice medicine and surgery.

The bill would specify "business entity" does not include medical care facilities, corporations, and professional corporations as defined in current law.

### ***Certificate of Authorization***

The bill would allow a business entity to apply to the Board for a certificate of authorization, on a form and in a

manner prescribed by the Board, and would require the following information be included;

- The name of the business entity;
- A list of the names of the owners and officers of the business entity;
- A description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;
- A list of each responsible official if the business entity is organized as a governmental unit; and
- A list of all licensed physicians and chiropractors to be hired by the business entity.

The bill would require, as a condition of certification, a business entity to provide the Board evidence of the following:

- The address of the business entity;
- A city or county occupational license; and
- Licensure of all physicians and chiropractors to be employed by the business entity.

The bill would require the Board to issue a certificate of authorization if it finds that the business entity is in compliance with the requirements stated above. The certificate would designate the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

### *Application and Renewal Fee*

A business entity would be required to remit an application fee set by the Board through rules and regulations, not to exceed \$1,000. The bill would require a certificate of authorization to be renewed annually and be accompanied by a fee fixed by the Board.

### ***Liability***

The bill would provide, except as stated in the Health Care Provider Insurance Availability Act (HCPAAA) (KSA 2018 Supp. 40-3403), no business entity issued a certificate of authorization would be relieved of responsibility for the conduct or acts of its agents or employees by reason of its compliance with the provisions of the bill, nor would any individual licensed to practice the healing arts be relieved of responsibility and liability for services performed by reason of employment or relationship with such business entity. The bill would specify nothing in the bill would exempt any business entity from the provision of any other law applicable to the business entity.

### ***Restrictions***

The bill would prohibit a business entity from directly or indirectly interfering with, diminishing, restricting, substituting its judgment for, or otherwise exercising control over the independent professional judgment and decisions of its employed licensees as it relates to the care of patients; or from prohibiting or restricting any employed licensee from discussing with or disclosing to any patient or other individual any medically appropriate healthcare information that such licensee deems appropriate regarding the nature of treatment options, the risk or alternatives, the process used or the decision made by the business entity to approve or deny healthcare services, the availability of alternate therapies,

consultations or tests, or from advocating on behalf of a patient.

### ***Standards of Professional Conduct***

The bill would allow a business entity's certificate of authorization to be revoked, suspended, or limited; publicly censured or placed under probationary conditions; or an application for certificate or reinstatement of a certificate denied upon a finding of the existence of any of the following grounds:

- The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated certificate;
- The business entity has willfully or repeatedly violated the provisions in the bill, the Pharmacy Act of the State of Kansas, or the Uniform Controlled Substances Act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the Secretary of Health and Environment that are relevant to the practice of the healing arts;
- The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended, or limited; has been censured or has had other disciplinary action taken; or an application for a certificate or license denied, by the proper licensing authority of another state;
- The business entity has validated any lawful rule and regulation promulgated by the Board;
- The business entity has failed to report or reveal the knowledge continuing law requires to be reported or revealed;

- The business entity has failed to report to the Board any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under provisions of the bill;
- The business entity has engaged in conduct likely to deceive, defraud, or harm the public;
- The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain;
- The business entity has used any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient healthcare record;
- The business entity has failed to furnish the Board, or its investigators or representatives, any information legally requested by the Board;
- The business entity has had, or failed to report to the Board, any adverse judgment, award, or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to the acts or conduct that would constitute grounds for disciplinary action under provisions of the bill; or
- The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

A business entity that holds a certificate of authorization would be allowed to operate under an assumed name.

### ***Health Care Stabilization Fund***

The bill would require, for the purposes of determining the impact on the Fund of requiring business entities to comply with the provision of the HCPIAA, the Health Care Stabilization Fund (Fund) to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the finding to the Legislature on or before January 1, 2020.

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

The Board would be required to adopt rules and regulations as necessary to implement and administer the provision in the bill.

### ***Effective Date***

The bill would be effective from and after March 1, 2020.

### **Background**

The bill was introduced in the House Committee on Appropriations at the request of Representative Landwehr. In the House Committee on Health and Human Services hearing, proponent testimony was provided by representatives from Blue Cross and Blue Shield of Kansas City, Cerner, and the Kansas Chamber of Commerce. The proponents generally stated enactment of the bill would allow business entities to employ primary care physicians to provide healthcare in stand-alone care clinics in Kansas and would allow physicians to refer patients to specialists and hospital systems who have the best clinical outcomes for the

specific patient's needs. A representative from Kansans for Prosperity provided written-only proponent testimony.

Opponent testimony was provided by the Kansas Association of Osteopathic Medicine, Kansas Chiropractic Association, Kansas Medical Society, and Kansas Optometric Association. The opponents generally stated this bill is not necessary, and this bill should hold to the consistent standards regarding independent physician judgment and clinical care for those who practice medicine and employ those who practice medicine. Representatives from the American Academy of Pediatrics, Kansas Chapter; Kansas Dental Association; Kansas Healthcare Stabilization Fund; and the Kansas Hospital Association provided written-only opponent testimony.

A representative of the State Board of Healing Arts provided neutral testimony stating introduction of corporate practice of medicine represents a major policy change for medical practice in Kansas and impacts medical professionals licensed by the Board. The representative further stated the Board needs clear legislative direction on important issues to facilitate implementing legislative intent.

The House Committee adopted amendments, as agreed upon by stakeholders, to clarify the provisions of the bill do not apply to medical care facilities defined in continuing law; change the certificate application fee from a maximum of \$500 to a maximum of \$1,000 and change the renewal period from biennially to annually; clarify the language regarding the business entity's role as it relates to the employed licensees and the care of patients; require the use of electronic medical records by business entities; define "licensee"; insert standards of professional conduct and corresponding penalties for failure to meet such standards; and require the Fund conduct such actuarial and operational studies as necessary to determine impact on the Fund of requiring business entities to comply with the provisions of the HCPIAA.



A fiscal note was not available when the House Committee took action on the bill.