

SENATE BILL No. 234

By Committee on Public Health and Welfare

2-10

1 AN ACT concerning public health and welfare; relating to a closed-loop
2 referral system; requiring consent for an individual's information to be
3 added to or transmitted by a closed-loop referral system.
4

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

6 Section 1. (a) This section shall apply to governmental entities that
7 directly or through a contracted entity provide a closed-loop referral
8 system.

9 (b) As used in this section:

10 (1) "Closed-loop referral system" means any system that:

11 (A) Stores an individual's social care information for the purpose of
12 referrals;

13 (B) shares its data with a network of entities, including, but not
14 limited to, healthcare providers, health plans, health information
15 exchanges, public agencies, nonprofit organizations, charitable
16 organizations and other entities that provide social care; and

17 (C) is capable of updating or showing updated referral activity,
18 including data related to participating organizations closing the loop on
19 referrals by updating downstream systems.

20 (2) "Governmental entity" means the same as defined in K.S.A. 75-
21 6102, and amendments thereto.

22 (3) "Participating organization" means any entity, including, but not
23 limited to, healthcare providers, health plans, health information
24 exchanges, public agencies, nonprofit organizations, charitable
25 organizations, closed-loop referral system technology vendors and entities
26 that provide social care, and have the ability to create, receive or update
27 referrals or other social care information in a closed-loop referral system.
28 "Participating organization" includes entities that use a closed-loop referral
29 system regardless of whether they have entered into contractual
30 agreements with a closed-loop referral system vendor.

31 (4) "Personally identifiable information" means personal information
32 as defined in K.S.A. 50-7a01, and amendments thereto, that is linked to a
33 specific individual and would allow a reasonable person to identify such
34 individual with reasonable certainty.

35 (5) "Social care" means care, services, goods or supplies related to an
36 individual's social needs. "Social care" includes, but is not limited to,

1 support and assistance for an individual's food stability and nutritional
2 needs, housing, transportation, economic stability, employment, access to
3 quality education, child care, family relationship needs and environmental
4 and physical safety.

5 (6) "Social care information" means any information, in any form,
6 that relates to the need for, payment for or provision of social care.

7 (c) (1) Notwithstanding any other provision of law to the contrary, an
8 individual's personally identifiable information or social care information
9 shall not be added to a closed-loop referral system unless such individual:

10 (A) Consents to its inclusion on each instance of a referral for
11 services; and

12 (B) retains the right to revoke consent to be in the system at any time.

13 (2) Notwithstanding any other provision of law to the contrary, a
14 participating organization shall not have access to an individual's
15 personally identifiable information or social care information unless such
16 individual:

17 (A) Has been referred to the participating organization for services;
18 and

19 (B) gives consent to the participating organization to access such
20 information.

21 (3) Participating organizations shall adopt policies and controls in
22 place that define staff roles necessary for the referral and provision of
23 services and for the purpose of providing care coordination. Such policies
24 shall:

25 (A) Permit access to social care information that is necessary to
26 ensure uninterrupted and efficient delivery of services and care
27 coordination; and

28 (B) restrict or prohibit access to social care information by any
29 individual who does not need access to complete such individual's duties.

30 (4) A participating organization shall not require an individual's
31 consent to sharing such individual's social care information with any
32 employee or organization not necessary for the provision of services in
33 order for such individual to receive services.

34 (5) (A) A participating organization shall not share or transmit an
35 individual's social care information that it holds with a third party unless:

36 (i) The individual, through opt-in consent, agrees to allow the
37 participating organization to share or transmit the information; and

38 (ii) such third party is required to meet the same privacy and security
39 obligations as the

40 participating organization is required under this section or other
41 applicable law.

42 (B) If the third party is not a participating organization under this
43 section, a participating organization may ensure that the third party meets

1 the requirements of this section through contractual provisions. A
2 participating organization shall exercise reasonable oversight and take
3 reasonable actions to ensure compliance with such contractual obligations.

4 (d) A participating organization shall not sell or license an
5 individual's personally identifiable information or social care information
6 without the explicit, written consent of the individual. An individual
7 checking a box or radio button on a website shall not constitute explicit,
8 written consent for the purposes of this section.

9 (e) (1) Nothing in this section shall supersede the requirements for
10 patient privacy and confidentiality under the health insurance portability
11 and accountability act of 1996 and 42 C.F.R. § 2.13 or the provisions of
12 any other state or federal law relating to the confidentiality, privacy,
13 security or privileged status of protected health information. This section
14 shall not affect the ability of a medical care facility or healthcare provider
15 to access, use, transmit, receive or maintain protected health information.

16 Sec. 2. This act shall take effect and be in force from and after its
17 publication in the statute book.