

Study of Overdose Deaths; Restrictions on Authority of the Secretary of Health and Environment and Local Health Officers; Prohibition of COVID-19 Vaccine Requirement to Attend Child Care or School; HB 2285

HB 2285 requires the Secretary of Health and Environment (Secretary) to study overdose deaths and maintain confidentiality of the records used by the Secretary in the study. The bill restricts the duties and authority of the Secretary and local health officers regarding infectious and contagious diseases. The bill defines the COVID-19 vaccine and prohibits the Secretary from requiring such vaccine for any child cared for in a child care facility, any student enrolling or enrolled in a school for the first time, any child enrolling or enrolled for the first time in a preschool or daycare program operated by a school, and any other such students as may be designated by the Secretary, prior to admission or attendance at school.

[*Note:* “School,” as defined in continuing law pertaining to student health (KSA 72-6261), means all elementary, junior high, or high schools within the state.]

Infectious and Contagious Diseases

The bill amends statutes relating to tuberculosis, removes the requirement for enforcement of isolation and quarantine orders by law enforcement officers, provides employment protection for employees who isolate or quarantine, and addresses orders for school closure during a disaster.

Study of Overdose Deaths and Confidentiality of Records

Definitions

The bill defines the following terms:

- “Data” means all facts, information, records of interviews, written reports, statements, notes, or memorandums secured in connection with an authorized medical research study;
- “Overdose” means injury to the body that happens when one or more drugs are taken in excessive amounts and includes fatal and nonfatal injuries; and
- “Secretary” means the Secretary of Health and Environment.

Duties of the Secretary of Health and Environment

The bill requires the Secretary to:

- Identify drug overdose deaths;

- Review autopsy reports, death certificates, medical records, and other relevant data;
- Review interactions with the health care system, behavioral health system, social services, educational institutions, children and family services, the criminal justice system, and any other system with which the decedent had contact prior to a drug overdose death;
- Contact family members and other affected or involved persons to collect additional relevant data;
- Make determinations regarding the preventability of drug overdose death cases and develop recommendations to prevent such deaths, including recommendations for changes to statutes, rules and regulations, policies, and procedures; and
- Disseminate findings and recommendations to the Governor, the Legislature, health care providers and facilities, behavioral health professionals, law enforcement, and the general public.

Access to Information

The bill gives the Secretary access to identifiable data sources and records:

- Law enforcement reports directly related to events leading up to a drug overdose death and information leading to the conclusion that the death may have been a drug overdose death;
 - The law enforcement agency is permitted to redact names and other personally identifiable information or exclude information that may reveal an ongoing investigation of drug violations or any criminal history information prohibited by law to be released;
- Autopsy records and coroner's investigative records regarding a drug overdose death in Kansas;
- Medical records or emergency medical services records regarding an overdose death or prior overdose by a decedent;
- A decedent's controlled substance dispensation records from the prescription monitoring program (K-TRACS) established by the Prescription Monitoring Program Act; and
- Records, data, and reports from any other applicable entity that has provided services to the decedent.

Subpoena Power and Confidentiality of Subpoenaed Records

The bill permits the Secretary to apply to the district court, and the district court to issue, a subpoena to compel the production of any relevant data or information requested by the Secretary. Data or information received by the Secretary as a result of a subpoena is confidential and privileged and not subject to disclosure.

The bill states the provisions providing for confidentiality of subpoenaed records expire on July 1, 2028, unless the Legislature acts to continue the provisions, pursuant to exceptions to disclosure under the Kansas Open Records Act (KORA), prior to July 1, 2028.

Confidentiality of Records Obtained through Proceedings and Activities of the Secretary

With regard to the study of overdose deaths, the following is confidential and not subject to KORA, the Kansas Open Meetings Act, subpoena, discovery, or introduction into evidence in a civil or criminal proceeding:

- All proceedings and activities of the Secretary or representatives and any opinions formed by these individuals as a result of such proceedings and activities; and
- Records obtained, created, or maintained, including records of interviews, written reports, and statements procured by the Secretary or any other person, agency, or organization acting jointly or under contract with the Kansas Department of Health and Environment (KDHE).

The bill does not limit or otherwise restrict the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of proceedings and activities of the Secretary or representatives of the Secretary.

The Secretary, or representatives of the Secretary, are not permitted to be questioned in any civil or criminal proceeding regarding the information presented or opinions formed as a result of an investigation. The bill does not prevent the Secretary or representatives of the Secretary from testifying to information obtained independent of the proceedings and activities or through subpoenas or that is public information.

The bill states the provisions providing for confidentiality of records pertaining to proceedings or activities of the Secretary or representatives of the Secretary expire on July 1, 2028, unless the Legislature acts to renew such provisions. The Legislature is required to review these provisions pursuant to exceptions to disclosure under KORA, prior to July 1, 2028.

Restrictions on the Authority of the Secretary and Local Health Officers

General Authority of the Secretary of Health and Environment

The bill amends the statute establishing the general powers and functions of the Secretary to specifically state the Secretary is prohibited from carrying out such powers and functions if those powers conflict with any other statute or expand their authority.

Statutory Provisions Related to Tuberculosis

The bill amends the statutes related to infectious and contagious diseases to make it unlawful for any person to violate any provisions relating to tuberculosis or any associated rules or regulations made by the Secretary. Any such violation is a class C nonperson misdemeanor. The bill clarifies the statutes included in this provision.

Authority of the County, Joint Board of Health, or Local Health Officer

The bill removes the authority of the county, joint board of health, or local health officer to prohibit public gatherings for the control of infectious or contagious disease.

Authority of Secretary and Local Health Officer Regarding Infectious or Contagious Diseases

The bill reinstates the Secretary's authority to designate infectious or contagious diseases by rules and regulations but requires proposed changes to be submitted to the Speaker of the House of Representatives and the President of the Senate prior to adopting the changes.

The bill authorizes the Secretary to recommend and educate the public in ways to prevent the spread of diseases. The bill removes the authority of the Secretary to provide for the testing for infectious or contagious diseases and the isolation and quarantine of persons afflicted with such diseases and to issue medically necessary orders and rules and regulations to prevent the spread of disease to the public.

The bill authorizes the Secretary to make recommendations, instead of developing and adopting rules and regulations, for preventing the introduction and spread of infectious or contagious diseases and for the protection of individuals who provide medical and nursing services, clinical or forensic laboratory services, emergency medical services, firefighting, law enforcement and correctional services, or other services or persons who receive the services provided or are employed in other services where the individual or person may encounter occupational exposure to blood or other infectious material.

The bill removes the authority of either the local health officer or Secretary to issue an order:

- To an individual who may have been exposed to an infectious or contagious disease to seek evaluation and treatment. It authorizes the local health officer to

- recommend the individual seek appropriate and necessary evaluation and treatment;
- To a person or group of people who may have been exposed to an infectious or contagious disease to go into and remain in isolation or quarantine. It authorizes the local health officer to recommend the person or group of people to go into isolation or quarantine;
 - To an individual who may have been exposed to an infectious or contagious disease and has refused medical examination, treatment, or testing to go to isolation or quarantine. It authorizes the local health officer to recommend the individual go into isolation or quarantine. The bill removes refusal to be vaccinated as a reason to recommend isolation or quarantine; and
 - On behalf of a minor child or a ward, who may have been exposed to an infectious or contagious disease and whose parent or guardian has refused medical examination, treatment, or testing for such child or ward to go to isolation or quarantine. It authorizes the local health officer to recommend the minor child or ward go into isolation or quarantine. The bill removes refusal to be vaccinated as a reason to recommend isolation or quarantine.

Enforcement by Law Enforcement Officers

The bill removes the requirement that any sheriff, deputy sheriff, or other law enforcement officer assist in the execution or enforcement of any orders regarding compliance with the orders of the local health officer or Secretary pertaining to infectious or contagious diseases.

Employment Protections

The bill prohibits public or private employers from discharging an employee solely for following an isolation or quarantine recommendation from a local health officer. If an employer is found in violation of such prohibition in an action against the employer, the prevailing plaintiff shall be awarded actual damages the person sustained, costs, and reasonable attorney fees.

Local Health Officer Authority

The bill amends the authority of a local health officer regarding investigations of cases of infectious, contagious, or communicable diseases to require the use of medically necessary and reasonable measures. The bill also removes the requirement that a local health officer perform other duties that may be required by the Secretary. The bill also removes language pertaining to orders issued by a local health officer regarding the remediation of any infectious disease.

Orders for School Closure

The bill amends the provisions regarding school closure to remove an order issued by the Secretary as a basis for a “disaster.”

Prohibition of COVID-19 Requirement to Attend Child Care or School

The bill prohibits the Secretary from requiring a COVID-19 vaccine for any child cared for in a child care facility, any student enrolling or enrolled in a school for the first time in Kansas, any child enrolling or enrolled for the first time in a preschool or daycare program operated by a school, and any other such students as may be designated by the Secretary, prior to admission or attendance at school.

The bill defines the COVID-19 vaccine as an immunization, vaccination, or injection against disease caused by a variant of the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus.