



To: Health Care Stabilization Fund Oversight Committee

From: Melissa Renick, Assistant Director for Research

Re: 2019 Legislation and Law; Interim Update

Relevant 2019 Legislation and Law; Interim Update

This memorandum outlines legislation and law considered by the 2019 Kansas Legislature, as well as authorized interim study topics related to the June 14, 2019, Kansas Supreme Court decision, *Hilburn v. Enerpipe*, ___ Kan. ___, 442 P.3d 509.

Authorization of Business Entities to Hire Physicians and Chiropractors; HB 2119

HB 2119 [L. 2019, Ch. 52] amends the Pharmacy Act of the State of Kansas (Pharmacy Act) to require certain prescription orders to be transmitted electronically and to permit a licensed pharmacist to administer a drug by injection in certain situations. The bill also allows a business entity issued a certificate of authorization by the State Board of Healing Arts (BOHA) to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensee holds a valid license issued by BOHA. This memorandum highlights provisions relating to the authorization of business entities to hire physicians and chiropractors.

Authorization of Business Entities to Hire Physicians and Chiropractors

The bill allows a business entity issued a certificate of authorization by BOHA to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such a licensee holds a valid license issued by BOHA. The bill provides nothing in the Kansas Healing Arts Act is to 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 Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center are exempt from the provisions in the bill. The bill states it shall not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions are added to the Kansas Healing Arts Act.

Definitions

The bill defines the following terms:

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

The bill specifies “business entity” does not include medical care facilities, corporations, and professional corporations as defined in continuing law.

Certificate of Authorization

The bill allows a business entity to apply to BOHA for a certificate of authorization, on a form and in a manner prescribed by BOHA, and requires the following information to 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 requires, as a condition of certification, a business entity to provide BOHA 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 requires BOHA to issue a certificate of authorization if it finds the business entity is in compliance with the requirements stated above. The certificate designates the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

Application and renewal fee. The bill requires a business entity to remit an application fee set by BOHA through rules and regulations, not to exceed \$1,000. The bill requires a certificate of authorization to be renewed annually and be accompanied by a fee fixed by BOHA.

Liability

The bill provides, except as stated in the Health Care Provider Insurance Availability Act (HCPIAA) [KSA 2018 Supp. 40-3403], no business entity issued a certificate of authorization shall 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 shall 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 specifies nothing in the bill exempts any business entity from the provision of any other law applicable to the business entity.

Restrictions

The bill prohibits 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, or the availability of alternate therapies, consultations, or tests; or from advocating on behalf of a patient.

Standards of Professional Conduct

The bill allows a business entity's certificate of authorization to be revoked, suspended, or limited; the entity to be publicly censured or placed under probationary conditions; or an

application for a 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, 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 has had an application for a certificate or license denied, by the proper licensing authority of another state;
- The business entity has violated any lawful rule and regulation promulgated by BOHA;
- 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 BOHA 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 BOHA, or its investigators or representatives, any information legally requested by BOHA;
- The business entity has had, or failed to report to BOHA, 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 is allowed to operate under an assumed name.

Health Care Stabilization Fund

The bill requires, for the purposes of determining the impact on the Health Care Stabilization Fund (Fund) of requiring business entities to comply with the provisions of the HCPIAA, the 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

BOHA is required to adopt rules and regulations as necessary to implement and administer the provisions in the bill.

Effective Date

The provisions of the bill authorizing business entities to hire physicians and chiropractors take effect on March 1, 2020.

[*Note:* Approved by Governor on April 18, 2019]

Coverage Liability Limits, Health Care Stabilization Fund

HB 2348 (pending legislation) would make changes to the liability limits specified in the HCPIAA. Under current law, Fund coverage in the form of basic professional liability coverage, is available from insurers authorized to write business in Kansas or through the HCPIAA. The Fund coverage limits include three options: \$100,000/ \$300,000; \$300,000/ \$900,000; and \$800,000/ \$2,400,000 [*Note:* The first dollar amount indicates the amount of loss payment available for each claim, while the second indicates the total annual amount of loss payments for all claims made during a Fund coverage year.] Under the bill, on and after July 1, 2019, there would be only one option of coverage. The bill would specify that the Fund shall not be liable to pay in excess of \$1,800,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$5,400,000 for such healthcare provider.

HB 2348 was requested for introduction as committee bill by Representative Carmichael in the House Committee on Judiciary. The bill was introduced and referred to this House Committee on February 14, 2019. There has been no hearing.

Defined Healthcare Providers

HB 2412 (pending legislation) would amend the Kansas Nurse Practice Act by revising and creating definitions; establishing advanced practice registered nurse (APRN) requirements for certification, malpractice insurance coverage, Federal Drug Enforcement Administration registration, and prescribing authority; and specifying authority of the Board of Nursing for rules and regulations on certain topics. The bill would also create a program for transition to full practice as an APRN. Finally, the bill would amend the HCPIAA to include certain APRNs as defined healthcare providers and specify exemptions from this definition.

Among its provisions, the bill would modify references to “healthcare provider” in the HCPIAA as follows:

- “Healthcare provider” would include an APRN licensed by the Board of Nursing (required excess liability coverage *via* the Fund); and
- “Healthcare provider” would not include an APRN holding an inactive license issued by the Board, practicing solely in employment for which the APRN is covered under the Federal Tort Claims Act or the Kansas Tort Claims Act, practicing solely as a charitable healthcare provider, or practicing solely while serving on active duty in the military of the United States.

Medical Malpractice Insurance Coverage

The bill also would require an APRN to maintain malpractice insurance coverage in effect as a condition of rendering professional service as an APRN in Kansas; the APRN would be required to provide proof of insurance at the time of licensure and renewal of license. Medical malpractice insurance would not be required for an APRN who practices solely in employment for which the APRN is covered under the Federal Tort Claims Act or the Kansas Tort Claims Act, practices solely as a charitable healthcare provider, or is serving on active duty in the military service of the United States [*Note:* These exceptions are also specified in the HCPIAA.]

The provisions of HB 2412 originally appeared in HB 2066, as introduced and amended by the House Committee on Health and Human Services. HB 2412 was introduced on March 26, 2019, and referred to this House Committee.

2019 Interim Update

The Legislative Coordinating Council met in July 2019 and, among its actions, approved two study committees whose authorized meeting topics include the *Hilburn* decision: the Special Committee on Financial Institutions and Insurance and the Special Committee on Judiciary. A memorandum prepared by Kansas Legislative Research Department staff for the Special Committee on Financial Institutions’ September 12, 2019, meeting is among the enclosed materials. This Special Committee will consider its assigned *Hilburn* topic (*i.e.*, the impact of the decision on healthcare costs in Kansas) at its October 29, 2019, meeting. The Special Committee on Judiciary reviewed its broader topic of recent Kansas Supreme Court decisions at

its October 2, 2019, meeting. Conferee testimony on the *Hilburn* decision can be located at http://kslegislature.org/li/b2019_20/committees/ctte_spc_2019_judiciary_1/documents/

The Office of Revisor of Statutes will provide additional information on the *Hilburn* decision at today's Oversight Committee meeting.