AN ACT enacting the Kansas apology and disclosure of unanticipated medical outcomes and medical errors act; concerning required disclosure policies for unanticipated medical outcomes and medical errors by medical care providers and health care facilities; evidence in civil actions; expressions of apology, sympathy, compassion or benevolent acts by medical care providers or health care administrators not admissible as evidence of an admission of liability or as evidence of an admission against interest.

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

Section 1. Sections 1 through 4, and amendments thereto, shall be known and may be cited as the Kansas apology and disclosure of unanticipated medical outcomes and medical errors act.

Sec. 2. As used in the Kansas apology and disclosure of unanticipated medical outcomes and medical errors act:

(a) "Health care provider" means a person licensed by the state board of healing arts to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts and a person engaged in a postgraduate training program approved by the state board of healing arts.

(b) "Health care administrator" means the individual directly responsible for planning, organizing, directing and controlling the operation of a medical care facility.

(c) "Medical care facility" means the same as in K.S.A. 65-425, and amendments thereto.

(d) "Medical error" means the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. This includes errors of commission, errors that occur as the result of an action taken, and errors of omission, errors that occur as a result of an action not taken.

(e) "Unanticipated outcome" means any adverse event, sentinel event or unintended or unexpected outcome or injury, whether or not resulting from an intentional act, that is not due to an underlying medical condition of the patient.

(1) "Adverse event" means an injury caused by medical management rather than the underlying condition of the patient.
(2) "Sentinel event" means an unexpected occurrence involving death or serious physical or psychological injury or the risk thereof.

(f) "Serious unanticipated outcome or medical error" means an unanticipated outcome or medical error that results in prolonged medical treatment or recovery, or death.

(g) "Less serious unanticipated outcome or medical error" means an unanticipated outcome or medical error that results in some harm, but does not inhibit previously planned treatment or prolong a patient's treatment or recovery.

(h) "Minor unanticipated outcome or medical error" means an unanticipated outcome or medical error that does not cause harm or have the potential to do so.

(i) "Patient's family member" includes a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, half brother, half sister, spouse's parent and any other person who has a family-type relationship with the patient.

(j) "Patient's representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney or any other person recognized in law or custom as a patient's agent.

Sec. 3. (a) Medical care facilities shall design and implement policies for the purpose of disclosing unanticipated outcomes and medical errors to the affected patient or, where appropriate, the patient's family member or patient's representative.

(b) All health care providers are required to disclose unanticipated outcomes and medical errors, but only medical care facilities are required to develop formal disclosure policies. Disclosure of events that occur to a patient while under the care of a health care provider working within a medical care facility or as a representative of that medical care facility shall follow the policy of that medical care facility.

(c) Policies for disclosure of unanticipated outcomes or medical errors to patients or, where appropriate, patients' families or patients' representatives, shall include, but are not limited to, procedures for each of the following:

(1) A statement that an unanticipated outcome or medical error occurred;

(2) an explanation of the cause, facts or context of the event;

(3) an acknowledgment of harm, and an apology when appropriate;

(4) an explanation of the impact on the patient's treatment plans and health status;

(5) an explanation of the investigation that has occurred or will take place; and

(6) an offer of support services, as needed.
(d) After development of the disclosure policy by the medical care facility, the following shall occur before implementation of such policy:
   (1) Medical care facilities shall provide health care administrators and all health care providers copies of the policy and a training program on how to make medical disclosures.
   (2) Medical care facilities shall establish a plan for providing disclosure coaching and emotional support in preparation for, and following, a disclosure.
   (e) Medical care facilities shall develop a disclosure policy, train personnel and implement such policy on or before July 1, 2014.
   (f) A copy of a medical care facility's disclosure policy shall be filed with the appropriate licensing agency at the time of implementation of such policy.
   (g) The reporting of a reportable incident to a licensing agency pursuant to K.S.A. 65-4921, and amendments thereto, shall include an account of disclosure.
   (h) In the event of an unanticipated outcome or medical error, the health care administrator, or such administrator's designee, or the health care provider, shall meet with the affected patient or, where appropriate, patient's family member or patient's representative, to disclose the unanticipated outcome or medical error.
   (i) Initial disclosure of an unanticipated outcome or medical error shall be made promptly, within seven days after its discovery. Additional disclosure conversations shall take place when deemed appropriate by the health care provider, at completion of the investigation, or upon request of the patient, patient's family member or patient's representative. Once an investigation is completed, the patient, patient's family member or patient's representative shall be informed of the results. Disclosure conversations shall include:
      (1) A statement that an unanticipated outcome or medical error occurred;
      (2) an explanation of what is currently known about the cause, facts or context of the event;
      (3) an acknowledgment of harm, and an apology when appropriate;
      (4) an explanation of what is currently known about the impact on the patient's treatment plans and health status;
      (5) an explanation of the investigation that has occurred or will take place; and
      (6) an offer of support services, as needed.
   (j) Disclosure of serious unanticipated outcomes or medical errors shall be in both oral and written form. Disclosure of less serious unanticipated outcomes or medical errors may be oral only. Minor unanticipated outcomes or medical errors are not required to be disclosed.
(k) Medical disclosures to a patient, patient's family member or patient's representative shall be recorded within the patient's medical records.

(l) Failure to disclose an error or unanticipated outcome, or failure to report the disclosure to the proper licensing agency, shall result in a civil fine of $10,000 per incident, assessed by the secretary of health and environment after proper notice and an opportunity to be heard. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(m) A patient, patient's family member or patient's representative shall be advised of their legal right to consult an attorney. If all parties wish to negotiate a financial settlement, all parties have a right to have an attorney present. If a patient, patient's family member or patient's representative chooses not to consult an attorney, they shall be given six months to reconsider such decision before settlement.

(n) A medical care facility, health care administrator or health care provider shall not ask or require a patient, patient's family member or patient's representative to waive their rights to litigation, except as a condition of settlement.

(o) Settlement in a medical liability claim shall not be subject to confidential sequestering of any information related to the case.

(p) Disclosure of unanticipated outcomes or medical errors shall be available to past patients or their families or representatives who suspect they were the victim of an unanticipated outcome or medical error, but were not informed of such event. Upon written request for disclosure, the medical care facility shall have two months in which to research the request and respond either in oral or written form. Where possible, the disclosure information shall include the same information as required for current patients.

Sec. 4. (a) A health care administrator's, administrator designee's or health care provider's verbal or written expressions of apology, sympathy, explanation or fault made to a patient, patient's family member or patient's representative shall not constitute an admission of liability or an admission against interest in any claim or civil action concerning an unanticipated outcome or medical error in a medical care facility.

(b) Documentation of disclosure placed in a patient's medical record shall not constitute an admission of liability or an admission against interest in any claim or civil action concerning an unanticipated outcome or medical error in a medical care facility.

(c) Waiver of charges for medical care provided shall be inadmissible
as evidence and shall not constitute an admission of liability or an
admission against interest in any claim or civil action concerning an
unanticipated outcome or medical error in a medical care facility.
(d) A defendant in a medical malpractice action may waive the
inadmissibility of verbal or written statements that are attributable to such
defendant by expressly stating, in writing, the intent to make such a
waiver. If a defendant waives such inadmissibility of a verbal or written
statement, such waiver shall not be construed to be a failure to assist with
such defendant's medical malpractice insurance carrier in the defense of
the claim.
Sec. 5. This act shall take effect and be in force from and after its
publication in the statute book.