

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2600**

As Agreed to April 3, 2018

Brief*

Senate Sub. for HB 2600 would amend the Nuclear Energy Development and Radiation Control Act, provide for the study and investigation of maternal deaths by the Secretary of Health and Environment (Secretary), and create the Palliative Care and Quality of Life Interdisciplinary Advisory Council (Council) and the State Palliative Care Consumer and Professional Information and Education Program (Program) within the Kansas Department of Health and Environment (KDHE).

Nuclear Energy Development and Radiation Control Act

The bill would require the assessment of an additional fee up to 50.0 percent of the maximum annual licensing fee for each noncontiguous site where radioactive material is stored or used under the same license, per category. "Noncontiguous site" would mean a location more than one mile away from the main safety office where licensure records are maintained.

Study and Investigation of Maternal Deaths

The bill would provide for the study and investigation of maternal deaths by the Secretary; define "maternal death";

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provide for access to records related to maternal death and address the confidentiality of those records; and establish a July 1, 2023, expiration date for provisions addressing confidentiality of the records, unless the provisions are reenacted by the Legislature prior to their expiration. The Legislature would be required to review the confidentiality provisions prior to the expiration date established in the bill. Additionally, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to further study the causes and problems associated with maternal death.

Definition of “Maternal Death”

“Maternal death” would mean the death of any woman from any cause while pregnant or within one calendar year of the end of any pregnancy, regardless of the duration of the pregnancy or the site of the end of the pregnancy.

Access to Records by the Secretary

The bill would require the Secretary to have access to all law enforcement investigative information regarding a maternal death in Kansas, any autopsy records and coroner’s investigative records relating to the death, any medical records of the mother, and any records of the Kansas Department for Children and Families or any other state social service agency that has provided services to the mother.

The bill would authorize the Secretary to apply to the district court for, and the court may issue, a subpoena to compel the production of any books, records, or papers relevant to the cause of any maternal death being investigated by the Secretary. Any books, records, or papers received by the Secretary through a subpoena would be confidential and privileged information and would not be subject to disclosure.

The provisions related to the confidentiality of the records received by the Secretary pursuant to a subpoena would expire on July 1, 2023, unless reenacted by the Legislature. The Legislature would be required to review these confidentiality provisions prior to the expiration date.

Duties of the Secretary

The bill would require the Secretary to identify maternal death cases; review medical records and other relevant data; contact family members and other affected or involved persons to collect additional relevant data; consult with relevant experts to evaluate the records and data collected; make determinations regarding the preventability of maternal deaths; develop recommendations and actionable strategies to prevent maternal deaths; and disseminate findings and recommendations to the Legislature, healthcare providers, healthcare facilities, and the general public.

Access to Medical Records

The bill would require the following to provide reasonable access to all relevant medical records associated with a maternal death case under review by the Secretary:

- Healthcare providers licensed pursuant to Chapters 65 and 74 of the Kansas statutes [*Note:* Examples of licensed health care providers include advanced practice registered nurse, practical nurse, and professional nurse; dentist and dental hygienist; optometrist; pharmacist; podiatrist; individual licensed to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic; physician assistant; physical therapist; mental health technician; occupational therapist and occupational therapy assistant; respiratory therapist; professional counselor and clinical professional counselor; licensed dietitian;

baccalaureate social worker, master social worker, and specialist clinical social worker; marriage and family therapist and clinical marriage and family therapist; speech-language pathologist and audiologist; addiction counselor, master's addiction counselor, and clinical addiction counselor; naturopathic doctor; radiologic technologist; behavior analyst and assistant behavior analyst; licensed acupuncturist; psychologist and master's level psychologist; and individual with licensure to practice fitting and dispensing of hearing instruments.];

- Medical care facilities licensed pursuant to Article 4 of Chapter 65 of the Kansas statutes (hospital, ambulatory surgical center, or recuperation center);
- Maternity centers licensed pursuant to Article 5 of Chapter 65 of the Kansas statutes; and
- Pharmacies licensed pursuant to Article 16 of Chapter 65 of the Kansas statutes.

When making good faith efforts to provide access to medical records as required under the bill, these providers would be exempt from liability for civil damages and would not be subject to criminal or disciplinary administrative action.

Information, records, reports, statements, notes, memoranda, or other data collected would be privileged and confidential and would not be admissible as evidence in any court action or before another tribunal, board, agency, or person. Exhibition of this information or disclosure of the contents in any manner by any officer or representative of KDHE or any other person would be prohibited, except when necessary to further the investigation of the related case. Anyone participating in the investigation would be prohibited from disclosing the information obtained. The confidentiality provisions related to these records would expire on July 1, 2023, unless reenacted by the Legislature. The bill would

require the Legislature to review the confidentiality provisions prior to their expiration.

Confidentiality of Records Resulting from KDHE Review

The following would be confidential records and would not be subject to the Kansas Open Records Act or Kansas Open Meetings Act, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding:

- Proceedings, activities, and the resulting opinions of the Secretary or the Secretary's representatives; 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 KDHE in connection with investigating maternal death.

The bill would specify the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of the proceedings and activities of the Secretary or the Secretary's representatives would not be limited or otherwise restricted.

The bill would prohibit the Secretary or the Secretary's representatives from being questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of an investigation. The Secretary or the Secretary's representatives would be allowed to testify to information that is public or obtained independently of investigations, activities, and proceedings by the Secretary or the Secretary's representatives or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The provisions regarding the confidentiality of this information would expire on July 1, 2023, unless reenacted by the Legislature prior to their expiration.

Compilation and Distribution of Aggregate Reports

In an effort to further study the causes and problems associated with maternal death, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to healthcare providers, medical care facilities, and other persons necessary to reduce the maternal death rate.

Palliative Care

The Council would be responsible for developing recommendations and advising KDHE on matters related to the establishment, maintenance, operation, outcomes evaluation of palliative care initiatives in the state, and effectiveness of the Program. The Program's purpose would be to maximize the effectiveness of palliative care initiatives in the state by ensuring comprehensive and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. The bill also would define "palliative care."

Council Composition, Appointment, Terms, and Compensation

The Council would consist of 13 members appointed on or before October 1, 2018, with appointments as follows:

- Two members by the Governor;
- Two members by the Speaker of the House of Representatives;

- One member by the Majority Leader of the House of Representatives;
- One member by the Minority Leader of the House of Representatives;
- Two members by the President of the Senate;
- One member by the Minority Leader of the Senate;
- One member of the House Committee on Health and Human Services by the Chair of the House Committee;
- One member of the Senate Committee on Public Health and Welfare by the Chair of the Senate Committee;
- One member by the Secretary to represent KDHE; and
- One member by the Secretary for Aging and Disability Services to represent the Kansas Department for Aging and Disability Services (KDADS).

Council members would serve for three years and at the pleasure of their respective appointing authorities. The Council members would appoint the Chair and Vice-chair, whose duties would be established by the Council. KDHE would be required to fix the time and place for regular Council meetings, with at least two meetings required annually.

Council members would serve without compensation but would be reimbursed for actual and necessary expenses incurred in the performance of their duties.

Council Member Qualifications

The bill would require Council members to be individuals with experience and expertise in interdisciplinary palliative care medical, nursing, social work, pharmacy, and spiritual guidance. Health care professionals with palliative care work experience or expertise in palliative care delivery models in a variety of settings and with a variety of populations would be specifically required to be included in Council membership. The Council would be required to have a minimum of two members who are board-certified hospice and palliative medicine physicians or nurses and at least one member who is a patient or caregiver.

Definition of Palliative Care

Palliative care would mean an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial, and spiritual. Palliative care would:

- Provide relief from pain and other distressing symptoms;
- Affirm life and regard dying as a normal process;
- Intend neither to hasten or postpone death;
- Integrate psychological and spiritual aspects of patient care;
- Offer a support system to help patients live as actively as possible until death;

- Offer a support system to help the family cope during the patient's illness and their own bereavement;
- Use a team approach to address the needs of patients and their families, including bereavement counseling, if indicated;
- Enhance the quality of life, and may also positively influence the course of illness; and
- Apply early in the course of illness, in conjunction with other therapies intended to prolong life, such as chemotherapy or radiation, and include investigations needed to better understand and manage distressing clinical complications.

KDHE's Program Responsibilities

With regard to the Program, KDHE would be required to publish information and resources on its website, including links to external resources, about palliative care for the public, health care providers, and health care facilities; develop and implement any other initiatives regarding palliative care services and education KDHE determines would further the Program's purposes; and consult with the Council. The information to be published on the KDHE website would include, but not be limited to, health care provider continuing education opportunities, information about palliative care delivery in home and other environments, and consumer educational materials and referral information for palliative care, including hospice. Palliative care would have the meaning as described in the section regarding the Council.

Conference Committee Action

The Conference Committee agreed to the provisions of Senate Sub. for HB 2600, as recommended by the Senate

Committee on Public Health and Welfare, agreed to insert the contents of HB 2031, as amended by the Senate Committee, and made a technical amendment.

Background

Senate Sub. for HB 2600 contains provisions of Senate Sub. for HB 2600 (which includes provisions of HB 2573, as amended by the House Committee on Health and Human Services) and HB 2031, as amended by the Senate Committee on Public Health and Welfare.

HB 2600 (Nuclear Energy Development and Radiation Control Act)

HB 2600 was introduced by the House Committee on Health and Human Services at the request of KDHE. In the House Committee hearing, a representative of KDHE testified in support of the bill, stating the actual fees are set in regulation (KAR 28-35-147a) and are currently near the statutory maximum. The representative indicated KDHE does not plan to raise the fees in regulation at this time, but a future increase in regulatory fees may be needed to maintain the Radiation Control Program at KDHE. The representative stated a need to address fees for licenses involving radioactive materials at multiple sites because the current license fee structure does not support the increased costs associated with writing and inspecting these types of licenses. No neutral or opponent testimony was provided.

The House Committee amended the title of the bill to correct the name of the Nuclear Energy Development and Radiation Control Act. [*Note:* The Conference Committee retained this amendment.]

In the Senate Committee on Public Health and Welfare hearing, a representative from KDHE provided proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to remove the annual licensing fee increases and to insert the contents of HB 2573, as amended by the House Committee. The Senate Committee inserted the contents of both bills into a substitute bill. [Note: The Conference Committee retained the substitute bill.]

According to the fiscal note prepared by the Division of the Budget on HB 2600, as introduced, KDHE states enactment of the bill would increase fee revenue by \$85,015 for FY 2020 and beyond. Although the bill states the changes would become effective upon publication in the statute book, upon enactment, the agency states it would need to amend regulations. The fiscal note states fees would become effective in FY 2020. The bill also would increase the maximum fees allowed to be charged for licenses by 35.0 percent; however, the agency states it currently has no plans to increase fees other than establishing the multiple site fee. Any fiscal effect associated with enactment of HB 2600 is not reflected in *The FY 2019 Governor's Budget Report*.

HB 2573 (Study and Investigation of Maternal Deaths)

HB 2573 was introduced by the House Committee on Health and Human Services at the request of the Kansas Section of the American Congress of Obstetricians and Gynecologists (ACOG). In the House Committee hearing, an obstetrician and gynecologist, a resident in obstetrics and gynecology, and representatives of ACOG and the Kansas Midwives Alliance testified in support of the bill. The proponents generally stated maternal deaths in the United States are increasing, and an estimated half of these deaths could be prevented. The proponents stated a maternal mortality review committee would provide a systematic, confidential, statewide approach to analyze the potential causes of maternal death and identify areas where change could be implemented to reverse the upward trend, while providing legal protections for the review committee members. Written-only testimony in support of the bill was

provided by representatives of ACOG, Kansas Affiliate of the American College of Nurse-Midwives, KDHE, Kansas Medical Society, and March of Dimes.

No opponent or neutral testimony was provided.

The House Committee amended the bill to clarify the nature of the documents or records related to maternal death available for discovery or use in a civil or criminal proceeding. [*Note:* The Conference Committee retained this amendment.]

In the Senate Committee on Public Health and Welfare hearing, an obstetrician gynecologist and representatives of ACOG and the March for Moms provided proponent testimony. Written-only proponent testimony was provided by representatives of ACOG, Kansas Affiliate of the American College of Nurse-Midwives, KDHE, Kansas Medical Society, March of Dimes, and Wyandotte County Fetal and Infant Mortality Review Board. No other testimony was provided.

The Senate Committee inserted the contents of HB 2573, as amended by the House Committee, into Senate Sub. for HB 2600. [*Note:* The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget on HB 2573, as introduced, KDHE states, if the bill is enacted, existing federal maternal and child health funding would be allocated for the initiative. KDHE notes program staff within KDHE would provide support for logistics related to planning and executing meetings and disseminating reports within existing budget resources.

HB 2031 (Palliative Care)

HB 2031 was introduced by the House Committee on Health and Human Services at the request of the American Cancer Society Action Network (ACS CAN). In the House Committee hearing, a cancer survivor, a cancer patient

advocate, and representatives of the Center for Practical Bioethics, the Family Policy Alliance of Kansas, the National Multiple Sclerosis Society, the University of Kansas Health System, Via Christi Health, and Wesley Healthcare testified in support of the bill. The proponents generally stated palliative care improves the quality of life for patients and families facing serious or advanced chronic illness and noted the growing need for such care. The proponents stated the team approach in palliative care is valuable to address distressing physical symptoms, emotional and spiritual needs, and assistance in navigating an often complex health care system. Written-only proponent testimony was provided by representatives of AARP Kansas, ACS CAN, the Alzheimer's Association in Kansas, the American Heart Association, the Kansas Academy of Family Physicians, the Kansas Association of Area Agencies on Aging and Disabilities, the Kansas Chapter of the National Association of Social Workers, the Kansas Hospice and Palliative Care Association, the Kansas Hospital Association, Midland Care Connection, and the National Alliance on Mental Illness.

No neutral or opponent testimony was provided.

The House Committee amended the bill to increase the Council membership by one member appointed by the Majority Leader of the House of Representatives, require at least one Council member be a patient or caregiver, prohibit Council members from studying physician-assisted suicide, and define palliative care. [Note: The Conference Committee retained the amendment related to member appointment by the Majority Leader, requiring a Council member to be a patient or caregiver, and defining palliative care.]

The House Committee reconsidered its previous action on the bill and amended the bill to strike the language regarding the Council member prohibition on studying physician-assisted suicide.

The House Committee of the Whole amended the bill to require KDHE to implement the provisions of the bill within

the limitations of existing moneys and resources already allocated to the agency. [Note: The Conference Committee did not retain this amendment.]

On March 9, 2017, in the Senate Committee on Public Health and Welfare hearing, two cancer survivors, a mother of a cancer survivor, a palliative care chaplain, and representatives of the Family Policy Alliance of Kansas, Lawrence Memorial Hospital, and the University of Kansas Medical Center testified in favor of the bill.

Written-only proponent testimony was provided by representatives of the AARP Kansas, ACS CAN, Alzheimer's Association in Kansas, American Heart Association, Center for Practical Bioethics, Kansas Association of Area Agencies on Aging and Disabilities, Kansas Academy of Family Physicians, Kansas Advocates for Better Care, Kansas Chapter of the National Association of Social Workers, Kansas Hospital Association, Kansas LIFE Foundation, Midland Care, National Alliance on Mental Illness Kansas, National Multiple Sclerosis Society, Via Christi Health, and Wesley Healthcare. No other testimony was provided.

On January 31, 2018, the Senate Committee held an informational hearing on palliative care. A palliative care patient and representatives from the Kansas Clinical Improvement Collaborative and ACS CAN provided information to the Senate Committee. Written-only information was provided by a cancer patient and representatives from Saint Luke's Health System, Stormont Vail Health, and the University of Kansas Health System.

On February 7, 2018, the Senate Committee amended the bill by changing the date for Council members to be appointed from October 1, 2017, to October 1, 2018, and by deleting the requirement for KDHE to implement the provisions of the bill within the limitations of existing moneys and resources already allocated to the agency. [Note: The Conference Committee retained these amendments.]

According to the fiscal note prepared by the Division of the Budget on HB 2031, as introduced, enactment of the bill would have no fiscal effect on KDADS. The fiscal note states the costs for actual expenses of the Council members and KDHE staff would increase expenditures for KDHE in FY 2018 by \$113,000, including \$83,000 from the State General Fund (SGF), and by \$115,000 in FY 2019, including \$85,000 from the SGF. The expenditures for FY 2018 would include those for one FTE Program Director; a one-time computer cost; printing costs; telephone, travel, and office supplies; Council expenses calculated at \$1,000 each for 12 members; and data collection and evaluation costs. For FY 2019, KDHE estimates a 2.0 percent increase in expenditures. Any fiscal effect associated with HB 2031 is not reflected in *The FY 2018 Governor's Budget Report*.

Nuclear Energy Development and Radiation Control Act, maternal deaths, Palliative Care and Quality of Life Interdisciplinary Advisory Council, State Palliative Care Consumer and Professional Information and Education Program

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