

SESSION OF 2009

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2010

As Amended by Senate Committee on
Public Health and Welfare

Brief*

HB 2010, as amended, would provide funding for the Board of Healing Arts for the storage, maintenance, and transfer of abandoned medical records. The bill would create the Medical Records Maintenance Trust Fund which would be an interest earning fund. The Fund would receive an allocation set by the Board that could be no greater than \$10 of each fee for the issuance or renewal of a license. If the balance of the Medical Records Maintenance Trust Fund were to fall below \$100,000, the Board would be able to certify another amount, no greater than \$10 of each fee, to be deposited in the Fund.

The bill also would give the Board the power to order a licensee to reimburse the Board for expenses incurred for the storage, maintenance, and transfer of medical records when a licensee fails to provide for the safekeeping of medical records when the licensee becomes inactive. The Board would be required to adopt rules and regulations establishing procedures and standards necessary to implement the requirements of the bill.

The bill would require a district court to expedite an action brought by the Board in matters relating to the safekeeping of medical records. The court's findings could be made solely on a review of the documentation or affidavits attached to the petition and without hearing any testimonial evidence. The district court's review may be made without all parties present or notice.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill also would add clarifying language that a person licensed by the State Board of Healing Arts to practice medicine and surgery or chiropractic medicine is allowed to delegate acts which constitute the practice of the healing arts to other persons the licensee knows or believes can competently perform such acts. The delegation of authority would be required to not result in a violation of any other statute or regulation.

Background

The Board of Healing Arts was a proponent of the bill. The Board's involvement in two recent cases concerning the safety of abandoned medical records has caused the Board to conclude that the state's statutory framework is less than adequate. It is the Board's goal to assure the proper handling and protection of patients' medical records either when a licensee is no longer practicing or when a person's license has been revoked. A representative of the Kansas Medical Society spoke as an opponent to the bill. It was noted that under rule and regulation, licensees are required currently to maintain patient records for a minimum of ten years after a licensee has stopped practicing. When licensees terminate their practice, they are required to notify the Board of the location of records and the name of any custodian. The Kansas Medical Society representative also noted that statute provides a process wherein the Board can petition a district court for the custody of abandon records. Concern also was expressed regarding the imposition of additional fees.

The House Committee on Health and Human Services amended the bill to allow a portion of the current revenue derived from license fees to be allocated to the newly created fund. The Committee also deleted provisions that would have required licensees to file a written protocol for the maintenance, transfer, and access of medical records with the Board (failure to file or follow written protocol would have been classified as professional incompetency.) The Committee also amended the bill so that moneys in the Medical Records Maintenance Trust

Fund would be subject to the appropriations process. The amendments were requested by the Kansas Medical Society.

In addition to testimony provided by the Board of Healing Arts on the storage, maintenance and transfer of medical records, the Senate Public Health and Welfare Committee heard testimony on delegation of authority for certain practices of the healing arts. The Executive Director of the Kansas Medical Society requested that, based on an Attorney General's Opinion, an amendment be made to the bill that would remedy current law that has become an impediment to the appropriate transmission of physician orders to individuals who perform acts pursuant to physician delegation. The current law has had the unintended result of creating ambiguity in situations, such as those involving nurse anesthetists. The Committee also received written testimony from the President of the Kansas Society of Anesthesiologists stating that the amendment would resolve any question in the law about whether a licensed physician requesting anesthesia or analgesia care can issue a delegation order which authorizes a Certified Registered Nurse Anesthetist (CRNA) to order appropriate pre-operative or post-operative medications and tests pursuant to that licensed physician's order. The amendment also would remove any doubt that a Registered Nurse or Licensed Professional Nurse could follow the order of a CRNA who is working pursuant to a physician's order.

The Committee adopted the proposed amendment and further amended the bill to require the adoption of rules and regulations concerning the storage, maintenance and transfer of medical records within one year of the effective date of the bill.

The fiscal note prepared by the Division of the Budget on the original bill indicates that the bill would increase the operational expenses of the Board of Healing Arts. Based upon 11,256 licensed individuals, and a deposited amount equivalent to \$5 per license fee, it is estimated that \$56,280 would be deposited in the fund in FY 2010. Based upon the two recent

cases involving abandoned medical records, the Board's additional expenses would be approximately \$1,300 per year.