

Designation and Control of Infectious and Contagious Diseases; Office of Laboratory Services Operating Fund; Kansas Health Information Technology Act; Medical Assistance Recovery Program; Sub. for HB 2183

Sub. for HB 2183 enacts and amends several provisions in Kansas law related to the Department of Health and Environment (KDHE). Generally, the bill:

- Addresses the designation and control of infectious and contagious diseases;
- Creates the Office of Laboratory Services Operating Fund, which is a fee fund for the Kansas Department of Health and Environmental Laboratories Bureau (KHEL) of KDHE;
- Amends provisions of and renames the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act; and
- Amends the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance.

Effective Dates

The effective dates of all provisions of the bill take effect upon publication in the statute book.

Designation and Control of Infectious and Contagious Diseases

The bill amends the law to expand the scope of the rules and regulations authority of the Secretary of the Department of Health and Environment (Secretary) relating to the protection of public health and for the control of infectious or contagious diseases and designates those changes made to KSA 65-116a and KSA 65-128 as “Chy J. Miller’s Law.”

The bill allows the Secretary to issue orders and adopt rules and regulations to provide for the testing of such diseases as deemed medically necessary and reasonable for the protection of public health and control of infectious or contagious diseases. The bill also requires rules and regulations be developed and adopted by January 1, 2014, to protect both individuals who provide services that may result in occupational exposure to blood or other potentially infectious materials and those who receive the services. Further, the bill provides definitions for applicable terms and repeals KSA 2012 Supp. 65-129a containing definitions addressed by the bill. Technical amendments also are made.

Prior to the bill, the law only authorized the Secretary to designate diseases that are infectious or contagious and to adopt rules and regulations for the isolation and quarantine of such diseases and persons with or exposed to such diseases as needed to prevent the spread and dissemination of diseases dangerous to the public.

The following definitions are amended or newly defined by the bill:

- The definition of “tuberculosis” is updated;
- “Infectious and contagious diseases” mean those designated by the Secretary as needing control for the protection of the public health; and
- “Blood,” “occupational exposure,” and “other potentially infectious materials” are defined.

Office of Laboratory Services Operating Fund

The bill creates the Office of Laboratory Services Operating Fund, which is a fee fund for the Kansas Health and Environmental Laboratories Bureau of the KDHE. Expenditures from the fee fund are to be used by KDHE only for the purpose of operating the Office of Laboratory Services (Office). The bill sets out the fees and penalties to be deposited to the fee fund, some of which previously were deposited to the credit of the State General Fund (SGF) per prior law. The Secretary has authority to adopt rules and regulations and set fees for biological or chemical analysis services provided by the Office, and to allow for the deposit of those fees in the fee fund. Further, the bill repeals KSA 75-5607 and moves language in that statute creating the Office of Laboratory Services to KSA 75-5608.

Specifically, the bill allows the Secretary to remit to the State Treasurer, for deposit in the State Treasury to the credit of the fee fund, the fees collected for the analysis of all waters and fees and penalties received for certification of environmental laboratories at private and public facilities under the Environmental Laboratory Improvement Program (ELIP). Prior law required the deposit of these fees and penalties in the State General Fund (SGF).

Further, the Secretary has authority to adopt rules and regulations for the collection and biological or chemical analysis of samples received by the Office, to set fees for any biological or chemical analysis services provided, and to allow for the waiver of any such fees in the interest of protecting the public health and safety. The Secretary is required to waive fees for such services provided to public health departments and the State Hospitals. The fees charged and collected cannot exceed the actual cost of analysis and testing provided by the Office. Fees received for biological and chemical analysis services also are to be deposited to the credit of the newly created fee fund.

Kansas Health Information Technology Act

The bill amends provisions of and renames the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act (the Act), transfers the oversight of and the authorization to create and establish standards for the approval and operation of statewide and regional health information organizations from the Kansas Health Information Exchange, Inc. (KHIE) to the Department of Health and Environment (the Department), and establishes the Advisory Council on Health Information Technology. The bill also generally replaces references to “health information exchange” with “the sharing of health information electronically.” The bill also makes several technical amendments to the Act.

Purpose of the Act

The bill updates the stated purpose of the Act, by indicating the Act is “to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically.” (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA].)

Definitions

The bill revises definitions of the terms “approved health information organization,” “covered entity,” “health care provider,” “health information organization,” and “participation agreement.” Additionally, the term “health information technology” is amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The bill deletes the following terms from the Act: “corporation” (this term refers to the Kansas Health Information Exchange, created by Executive Order 10-06), “designated record set,” “DPOA-HC,” “electronic protected health information,” “health care clearinghouse,” “health plan,” “hybrid entity,” “interoperability,” “public health authority,” and “standard authorization form.”

The bill adds definitions of “authorization” and “department” to the Act. “Authorization” means a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight by the Department of Health and Environment

The bill transfers duties to establish and revise standards for the approval and operation of the statewide and regional health information organizations operating in the state from the Kansas Health Information Exchange (“corporation”) to the Department of Health and Environment. The Department is required to ensure that approved health information organizations operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

Standards

Among the standards in the Act and those amended or created by the bill are these:

- Adherence to nationally recognized standards for interoperability, that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner;

- Adoption and adherence to rules promulgated by the Department regarding access to and use and disclosure of protected health information maintained by or on an approved health information organization; and
- Development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the Department pursuant to participation agreement provisions of this act.

The bill further prohibits State General Fund expenditures for the purpose of administration, operation, or oversight of the health information organizations, with the following exception: the Secretary is permitted to make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Act.

Certificate of Authority and Re-approval, Health Information Organizations

The bill directs the Department to establish requirements to be used by approved health information organizations in participation agreements with covered entities. Among the requirements, the Department is required to provide:

- Specifications of procedures by which an individual's protected health information will be disclosed by covered entities, will be collected by approved health information organizations, and will be shared with other participating covered entities and with the Department as required by law for public health purposes;
- Specification of procedures by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities; and
- Specifications of purposes for, and procedures by which a covered entity can access an individual's protected health information from the approved health information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual.

The bill also provides procedural requirements for the written notice provided by covered entities to individuals and their personal representatives.

Health Information Organizations and Protected Health Information

The bill states that protected health information in the possession of an approved health information organization cannot be subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. Further, an approved health information organization cannot be compelled by a request for production, subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

Advisory Council on Health Information Technology

The bill creates the Advisory Council on Health Information Technology (Council), a group that serves in an advisory role to the Secretary of Health and Environment. The Council is within the Division of Health, Department of Health and Environment. The Council includes 23 voting members serving, with the exception of the Governor and Secretary or their designees, in staggered terms at the commencement of the Council (term length, varying from one to four years for initial appointments, are determined by lot):

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators, selected as follows:
 - Chairperson and ranking minority member, or their designees, of the House Health and Human Services Committee; and
 - Chairperson and ranking minority member, or their designees, of the Senate Public Health and Welfare Committee;
- Two members representing consumers (appointed by the Secretary);
- One member representing employers (appointed by the Secretary);
- One member representing payers (appointed by the Secretary);
- One member representing local health departments (appointed by the Secretary, from a list of three names submitted by the Kansas Association of Local Health Departments);
- Three members representing hospitals (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Hospital Association):
 - One of the members must be involved in the administration of a critical access hospital;
- Three members appointed by the Secretary from a list of three names for each position submitted by the Kansas Medical Society:
 - At least two of the members must be practicing physicians; and
 - One of physicians must be a physician in a primary care specialty;
- Two members representing pharmacists (appointed by the Secretary from a list of three names submitted by the Kansas Pharmacists Association):
 - At least one of the members must be a practicing pharmacist;
- One member representing the University of Kansas Center for Health Information (appointed by the Secretary from a list of three names submitted by the University of Kansas Center for Health Information);

- One member representing the Kansas Foundation for Medical Care (appointed by the Secretary from a list of three names submitted by the Kansas Foundation for Medical Care);
- One member representing the Kansas Optometric Association (appointed by the Secretary from a list of three names submitted by the Kansas Optometric Association); and
- One member representing the Association of Community Mental Health Centers of Kansas (appointed by the Secretary from a list of three names submitted by the Association of Community Mental Health Centers of Kansas).

Following their initial terms of service on the Council, members are eligible for reappointment and, if reappointed, those members serve for four years. The bill makes other provisions for filling vacancies on and removal of members on the Council. The Council is required to meet at least four times per year and at times as the Council deems appropriate or as called by the Secretary.

Members of the Council are entitled to compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council are paid mileage and all other applicable expenses, provided those expenses are consistent with policies established from time-to-time by the Council.

Medical Assistance Recovery Program

The bill amends the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance. Existing law allows KDHE to file and enforce a lien against the real property of a recipient during the recipient's lifetime and, pursuant to the bill, KDHE also could file and enforce such a lien after a recipient's death. Any such lien needs to be filed in the office of the Register of Deeds of the county where the real property is located within one year from the date of death of the recipient. The bill clarifies these liens do not have priority over transfers for value to a *bona fide* purchaser of record. Pursuant to the bill, KDHE also could claim an interest in the unclaimed property of a deceased recipient of medical assistance held by the State Treasurer, not to exceed the amount of assistance received. Further, the bill requires the Kansas Department for Children and Families to notify KDHE, within seven days of receiving notice of the recipient's death, that a recipient has died.

The bill also makes technical amendments.