

HOUSE BILL No. 2376

By Committee on Taxation

2-20

1 AN ACT enacting the Kansas apology and disclosure of unanticipated
2 medical outcomes and medical errors act; concerning required
3 disclosure policies for unanticipated medical outcomes and medical
4 errors by medical care providers and health care facilities; evidence in
5 civil actions; expressions of apology, sympathy, compassion or
6 benevolent acts by medical care providers or health care administrators
7 not admissible as evidence of an admission of liability or as evidence of
8 an admission against interest.
9

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

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

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

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

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

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

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

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

35 (1) "Adverse event" means an injury caused by medical management
36 rather than the underlying condition of the patient.

1 (2) "Sentinel event" means an unexpected occurrence involving death
2 or serious physical or psychological injury or the risk thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (6) an offer of support services, as needed.

1 (d) After development of the disclosure policy by the medical care
2 facility, the following shall occur before implementation of such policy:

3 (1) Medical care facilities shall provide health care administrators and
4 all health care providers copies of the policy and a training program on
5 how to make medical disclosures.

6 (2) Medical care facilities shall establish a plan for providing
7 disclosure coaching and emotional support in preparation for, and
8 following, a disclosure.

9 (e) Medical care facilities shall develop a disclosure policy, train
10 personnel and implement such policy on or before July 1, 2014.

11 (f) A copy of a medical care facility's disclosure policy shall be filed
12 with the appropriate licensing agency at the time of implementation of
13 such policy.

14 (g) The reporting of a reportable incident to a licensing agency
15 pursuant to K.S.A. 65-4921, and amendments thereto, shall include an
16 account of disclosure.

17 (h) In the event of an unanticipated outcome or medical error, the
18 health care administrator, or such administrator's designee, or the health
19 care provider, shall meet with the affected patient or, where appropriate,
20 patient's family member or patient's representative, to disclose the
21 unanticipated outcome or medical error.

22 (i) Initial disclosure of an unanticipated outcome or medical error
23 shall be made promptly, within seven days after its discovery. Additional
24 disclosure conversations shall take place when deemed appropriate by the
25 health care provider, at completion of the investigation, or upon request of
26 the patient, patient's family member or patient's representative. Once an
27 investigation is completed, the patient, patient's family member or patient's
28 representative shall be informed of the results. Disclosure conversations
29 shall include:

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

32 (2) an explanation of what is currently known about the cause, facts
33 or context of the event;

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

35 (4) an explanation of what is currently known about the impact on the
36 patient's treatment plans and health status;

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

39 (6) an offer of support services, as needed.

40 (j) Disclosure of serious unanticipated outcomes or medical errors
41 shall be in both oral and written form. Disclosure of less serious
42 unanticipated outcomes or medical errors may be oral only. Minor
43 unanticipated outcomes or medical errors are not required to be disclosed.

1 (k) Medical disclosures to a patient, patient's family member or
2 patient's representative shall be recorded within the patient's medical
3 records.

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

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

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

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

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

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

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

43 (c) Waiver of charges for medical care provided shall be inadmissible

1 as evidence and shall not constitute an admission of liability or an
2 admission against interest in any claim or civil action concerning an
3 unanticipated outcome or medical error in a medical care facility.

4 (d) A defendant in a medical malpractice action may waive the
5 inadmissibility of verbal or written statements that are attributable to such
6 defendant by expressly stating, in writing, the intent to make such a
7 waiver. If a defendant waives such inadmissibility of a verbal or written
8 statement, such waiver shall not be construed to be a failure to assist with
9 such defendant's medical malpractice insurance carrier in the defense of
10 the claim.

11 Sec. 5. This act shall take effect and be in force from and after its
12 publication in the statute book.