

HOUSE BILL No. 2081

By Committee on Judiciary

1-22

1 AN ACT enacting the Kansas disclosure of unanticipated medical
2 outcomes and medical errors act; concerning required disclosure
3 policies for unanticipated medical outcomes and medical errors by
4 medical care providers and health care facilities.
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. Sections 1 through 3, and amendments thereto, shall be
8 known and may be cited as the Kansas disclosure of unanticipated medical
9 outcomes and medical errors act.

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

12 (a) "Harm" means any physical or psychological injury or damage to
13 the health of a person, including temporary or permanent injury and injury
14 resulting in the death of such person.

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

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

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

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

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

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

36 (2) "Sentinel event" means an unexpected occurrence involving death

1 or serious physical or psychological injury or the risk thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (d) After development of the disclosure policy by the medical care

1 facility, the following shall occur before implementation of such policy:

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

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

8 (e) Medical care facilities shall develop a disclosure policy, train
9 personnel and implement such policy on or before July 1, 2017.

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

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

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

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

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

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

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

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

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

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

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

43 (k) Medical disclosures to a patient, patient's family member or

1 patient's representative shall be recorded within the patient's medical
2 records.

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

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

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

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

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.