

Electronic Prescription Orders; Administering a Drug by Injection; Authorization of Business Entities to Hire Physicians and Chiropractors; HB 2119

HB 2119 amends the Pharmacy Act of the State of Kansas (Pharmacy Act) to require certain prescription orders to be transmitted electronically and to permit a licensed pharmacist to administer a drug by injection in certain situations. The bill also allows a business entity issued a certificate of authorization by the State Board of Healing Arts (BOHA) to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensee holds a valid license issued by BOHA.

Electronic Prescription Orders

The bill requires every prescription order issued for a controlled substance in Schedules II-V that contains opiate to be transmitted electronically, except as follows:

- Electronic prescription orders are not possible due to technological or electronic system failures;
- Electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber or other exceptional circumstances exist as demonstrated by the prescriber;
- The prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- The prescription order is issued by a licensed veterinarian;
- The prescriber reasonably determines it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
- The prescription order is issued pursuant to drug research or drug therapy protocols;
- The prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- The U.S. Food and Drug Administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

A prescriber is allowed to request a waiver from electronically transmitting prescriptions described above for a period not to exceed six months if the prescriber cannot comply with the electronic transmitting requirements due to economic hardship, technological limitations, or other circumstance demonstrated by the prescriber. The bill allows the prescriber to request

renewal of a waiver granted by the State Board of Pharmacy, for a period not to exceed six months. The bill requires requests for waivers or renewals to be submitted to the State Board of Pharmacy in a form and manner prescribed by the State Board of Pharmacy and to include the reason for the request and any other information required by the State Board of Pharmacy.

If a prescriber prescribes a controlled substance by non-electronic prescription, the prescriber must indicate the prescription is made pursuant to a waiver. A pharmacist is not required to verify the validity of the waiver, either with the prescriber or the State Board of Pharmacy, but is allowed to do so in accordance with continuing law.

The bill provisions requiring every prescription order issued for a controlled substance in Schedules II-V that contains opiate to be transmitted electronically takes effect July 1, 2021. [Note: Substances included in the schedules are listed in KSA 65-4107 *et seq.*]

Administration of a Drug by Injection

The bill also amends the Pharmacy Act to permit a licensed pharmacist to administer a drug by injection that, in the judgment of the prescriber, could safely be self-administered by a patient, to a patient pursuant to a prescription order, unless the prescription order includes the words “not to be administered by a pharmacist,” or words of like effect. The bill defines “medication order” to mean an order by a prescriber for a registered patient of a Kansas licensed medical care facility.

Nothing in the provisions of the bill replaces, repeals, or supersedes requirements of KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas.

Authorization of Business Entities to Hire Physicians and Chiropractors

The bill allows a business entity issued a certificate of authorization by BOHA to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such a licensee holds a valid license issued by BOHA. The bill provides nothing in the Kansas Healing Arts Act is to be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization as set forth in the bill. Medical care facilities in compliance with Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center are exempt from the provisions in the bill. The bill states it shall not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions are added to the Kansas Healing Arts Act.

Definitions

The bill defines the following terms:

- “Business entity” to mean:

- An employer located in Kansas that utilizes electronic medical records and offers medicine and surgery or chiropractic services solely for its employees and the dependents of such employees at the employer's work site;
- An organization licensed to sell accident and sickness insurance in Kansas that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization that provides medical services solely for the organization's enrollees and dependents of such enrollees; or
- An information technology company that designs, utilizes, and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or chiropractic services solely to its employees and the dependents of such employees at the employer's work sites in Kansas;
- "Licensee" to mean a person licensed by BOHA to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited, or placed under probationary conditions; and
- "Physician" to mean a person licensed by BOHA to practice medicine and surgery.

The bill specifies "business entity" does not include medical care facilities, corporations, and professional corporations as defined in continuing law.

Certificate of Authorization

The bill allows a business entity to apply to BOHA for a certificate of authorization, on a form and in a manner prescribed by BOHA, and requires the following information to be included:

- The name of the business entity;
- A list of the names of the owners and officers of the business entity;
- A description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;
- A list of each responsible official if the business entity is organized as a governmental unit; and
- A list of all licensed physicians and chiropractors to be hired by the business entity.

The bill requires, as a condition of certification, a business entity to provide BOHA evidence of the following:

- The address of the business entity;
- A city or county occupational license; and
- Licensure of all physicians and chiropractors to be employed by the business entity.

The bill requires BOHA to issue a certificate of authorization if it finds the business entity is in compliance with the requirements stated above. The certificate designates the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

Application and renewal fee. The bill requires a business entity to remit an application fee set by BOHA through rules and regulations, not to exceed \$1,000. The bill requires a certificate of authorization to be renewed annually and be accompanied by a fee fixed by BOHA.

Liability

The bill provides, except as stated in the Health Care Provider Insurance Availability Act (HCPAAA) [KSA 2018 Supp. 40-3403], no business entity issued a certificate of authorization shall be relieved of responsibility for the conduct or acts of its agents or employees by reason of its compliance with the provisions of the bill, nor shall any individual licensed to practice the healing arts be relieved of responsibility and liability for services performed by reason of employment or relationship with such business entity. The bill specifies nothing in the bill exempts any business entity from the provision of any other law applicable to the business entity.

Restrictions

The bill prohibits a business entity from directly or indirectly interfering with, diminishing, restricting, substituting its judgment for, or otherwise exercising control over the independent professional judgment and decisions of its employed licensees as it relates to the care of patients; or from prohibiting or restricting any employed licensee from discussing with or disclosing to any patient or other individual any medically appropriate healthcare information that such licensee deems appropriate regarding the nature of treatment options, the risk or alternatives, the process used or the decision made by the business entity to approve or deny healthcare services, or the availability of alternate therapies, consultations, or tests; or from advocating on behalf of a patient.

Standards of Professional Conduct

The bill allows a business entity's certificate of authorization to be revoked, suspended, or limited; the entity to be publicly censured or placed under probationary conditions; or an application for a certificate or reinstatement of a certificate denied upon a finding of the existence of any of the following grounds:

- The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated certificate;
- The business entity has willfully or repeatedly violated the provisions in the bill, the Pharmacy Act, or the Uniform Controlled Substances Act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the Secretary of Health and Environment that are relevant to the practice of the healing arts;
- The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended, or limited; has been censured or has had other disciplinary action taken; or has had an application for a certificate or license denied, by the proper licensing authority of another state;
- The business entity has violated any lawful rule and regulation promulgated by BOHA;
- The business entity has failed to report or reveal the knowledge continuing law requires to be reported or revealed;
- The business entity has failed to report to BOHA any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under provisions of the bill;
- The business entity has engaged in conduct likely to deceive, defraud, or harm the public;
- The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain;
- The business entity has used any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient healthcare record;
- The business entity has failed to furnish BOHA, or its investigators or representatives, any information legally requested by BOHA;
- The business entity has had, or failed to report to BOHA, any adverse judgment, award, or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to the acts or conduct that would constitute grounds for disciplinary action under provisions of the bill; or
- The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

A business entity that holds a certificate of authorization is allowed to operate under an assumed name.

Health Care Stabilization Fund

The bill requires, for the purposes of determining the impact on the Health Care Stabilization Fund (Fund) of requiring business entities to comply with the provision of the HCPIAA, the Fund to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the finding to the Legislature on or before January 1, 2020.

Rules and Regulations

BOHA is required to adopt rules and regulations as necessary to implement and administer the provisions in the bill.

Effective Date

The provisions of the bill authorizing business entities to hire physicians and chiropractors take effect on March 1, 2020.