

HOUSE BILL No. 2652

By Committee on Judiciary

2-9

1 AN ACT concerning the governmental response to the COVID-19
2 pandemic in Kansas; extending the authority of the board of healing
3 arts to grant certain temporary emergency licenses; imposing
4 requirements related thereto and expiring such provisions; extending
5 the suspension of certain requirements related to medical care facilities
6 and expiring such provisions; modifying the COVID-19 response and
7 reopening for business liability protection act; extending immunity
8 from civil liability for certain healthcare providers, certain persons
9 conducting business in this state and covered facilities for COVID-19
10 claims until January 20, 2023; amending K.S.A. 2021 Supp. 48-963,
11 48-964, 48-965, 60-5503, 60-5504, 60-5508 and 65-468 and repealing
12 the existing sections.
13

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

15 Section 1. K.S.A. 2021 Supp. 48-963 is hereby amended to read as
16 follows: 48-963. (a) A physician may issue a prescription for or order the
17 administration of medication, including a controlled substance, for a
18 patient without conducting an in-person examination of such patient.

19 (b) A physician under quarantine, including self-imposed quarantine,
20 may practice telemedicine.

21 (c) (1) A physician holding a license issued by the applicable
22 licensing agency of another state may practice telemedicine to treat
23 patients located in the state of Kansas, if such out-of-state physician holds
24 a temporary emergency license granted pursuant to K.S.A. 2021 Supp. 48-
25 965, and amendments thereto.

26 (2) The state board of healing arts may extend the provisions of this
27 subsection to other healthcare professionals licensed and regulated by the
28 board as deemed necessary by the board to address the impacts of COVID-
29 19 and consistent with ensuring patient safety.

30 (d) A physician practicing telemedicine in accordance with this
31 section shall conduct an appropriate assessment and evaluation of the
32 patient's current condition and document the appropriate medical
33 indication for any prescription issued.

34 (e) Nothing in this section shall supersede or otherwise affect the
35 provisions of K.S.A. 40-2,215 or 65-4a10, and amendments thereto, ~~or~~
36 ~~K.S.A. 40-2,215, and amendments thereto.~~

1 (f) As used in this section:

2 (1) "Physician" means a person licensed to practice medicine and
3 surgery.

4 (2) "Telemedicine" means the delivery of healthcare services by a
5 healthcare provider while the patient is at a different physical location.

6 (g) This section shall expire on ~~March 31, 2022~~ *January 20, 2023*.

7 Sec. 2. K.S.A. 2021 Supp. 48-964 is hereby amended to read as
8 follows: 48-964. (a) (1) A hospital may admit patients in excess of such
9 hospital's number of licensed beds or inconsistent with the licensed
10 classification of such hospital's beds to the extent that such hospital
11 determines is necessary to treat COVID-19 patients and to separate
12 COVID-19 patients and non-COVID-19 patients.

13 (2) A hospital admitting patients in such manner shall notify the
14 department of health and environment as soon as practicable but shall not
15 be required to receive prior authorization to admit patients in such manner.

16 (b) (1) A hospital may utilize non-hospital space, including off-
17 campus space, to perform COVID-19 testing, triage, quarantine or patient
18 care to the extent that such hospital determines is necessary to treat
19 COVID-19 patients and to separate COVID-19 patients and non-COVID-
20 19 patients.

21 (2) The department of health and environment may impose
22 reasonable safety requirements on such use of non-hospital space to
23 maximize the availability of patient care.

24 (3) Non-hospital space used in such manner shall be deemed to meet
25 the requirements of K.S.A. 65-431(d), and amendments thereto.

26 (4) A hospital utilizing non-hospital space in such manner shall notify
27 the department of health and environment as soon as practicable but shall
28 not be required to receive prior authorization to utilize non-hospital space
29 in such manner.

30 (c) A medical care facility may permit healthcare providers
31 authorized to provide healthcare services in the state of Kansas to provide
32 healthcare services at such medical care facility without becoming a
33 member of the medical care facility's medical staff.

34 (d) As used in this section, "hospital" and "medical care facility"
35 mean the same as defined in K.S.A. 65-425, and amendments thereto.

36 (e) This section shall expire on ~~March 31, 2022~~ *January 20, 2023*.

37 Sec. 3. K.S.A. 2021 Supp. 48-965 is hereby amended to read as
38 follows: 48-965. (a) Notwithstanding any statute to the contrary, the state
39 board of healing arts may grant a temporary emergency license to practice
40 any profession licensed, certified, registered or regulated by the board to
41 an applicant with qualifications the board deems sufficient to protect
42 public safety and welfare within the scope of professional practice
43 authorized by the temporary emergency license for the purpose of

1 preparing for, responding to or mitigating any effect of COVID-19.

2 (b) Notwithstanding any statute to the contrary, an applicant may
3 practice in Kansas pursuant to a temporary emergency license upon
4 submission of a non-resident healthcare provider certification form to the
5 Kansas healthcare stabilization fund and without paying the surcharge
6 required by K.S.A. 40-3404, and amendments thereto.

7 (c) This section shall expire on ~~March 31, 2022~~ *January 20, 2023*.

8 Sec. 4. K.S.A. 2021 Supp. 60-5503 is hereby amended to read as
9 follows: 60-5503. (a) Notwithstanding any other provision of law, except
10 as provided in subsection (c), a healthcare provider is immune from civil
11 liability for damages, administrative fines or penalties for acts, omissions,
12 healthcare decisions or the rendering of or the failure to render healthcare
13 services, including services that are altered, delayed or withheld, as a
14 direct response to the COVID-19 public health emergency.

15 (b) The provisions of this section shall apply to any claims for
16 damages or liability that arise out of or relate to acts, omissions or
17 healthcare decisions occurring between March 12, 2020, and ~~March 31,~~
18 ~~2022~~ *January 20, 2023*, related to the COVID-19 public health emergency.

19 (c) (1) The provisions of this section shall not apply to civil liability
20 when it is established that the act, omission or healthcare decision
21 constituted gross negligence or willful, wanton or reckless conduct.

22 (2) The provisions of this section shall not apply to healthcare
23 services not related to COVID-19 that have not been altered, delayed or
24 withheld as a direct response to the COVID-19 public health emergency.

25 Sec. 5. K.S.A. 2021 Supp. 60-5504 is hereby amended to read as
26 follows: 60-5504. (a) Notwithstanding any other provision of law, a
27 person, or an agent of such person, conducting business in this state shall
28 be immune from liability in a civil action for a COVID-19 claim if such
29 person was acting pursuant to and in substantial compliance with public
30 health directives applicable to the activity giving rise to the cause of action
31 when the cause of action accrued.

32 (b) The provisions of this section shall expire on ~~March 31, 2022~~
33 *January 20, 2023*.

34 Sec. 6. K.S.A. 2021 Supp. 60-5508 is hereby amended to read as
35 follows: 60-5508. (a) The provisions of K.S.A. 2021 Supp. 60-5504, 60-
36 5505 and 60-5507, and amendments thereto, shall apply retroactively to
37 any cause of action accruing on or after March 12, 2020.

38 (b) The provisions of K.S.A. 2021 Supp. ~~60-5503 and~~ 60-5506, and
39 amendments thereto, ~~and the amendments made to K.S.A. 2021 Supp. 60-~~
40 ~~5506 by section 2 of 2021 House Bill No. 2126, shall apply retroactively~~
41 ~~to any cause of action accruing on or after March 12, 2020, and prior to~~
42 ~~termination of the state of disaster emergency related to the COVID-19~~
43 ~~public health emergency declared pursuant to K.S.A. 48-924, and~~

1 ~~amendments thereto:~~

2 ~~(e) The provisions of K.S.A. 2021 Supp. 60-5503, and amendments~~
3 ~~thereto, shall apply retroactively to any cause of action accruing on or after~~
4 ~~March 12, 2020, and prior to March 31, 2022~~ *January 20, 2023.*

5 Sec. 7. K.S.A. 2021 Supp. 65-468 is hereby amended to read as
6 follows: 65-468. As used in K.S.A. 65-468 through 65-474, and
7 amendments thereto:

8 (a) "Healthcare provider" means any person licensed or otherwise
9 authorized by law to provide health care services in this state or a
10 professional corporation organized pursuant to the professional
11 corporation law of Kansas by persons who are authorized by law to form
12 such corporation and who are health care providers as defined by this
13 subsection, or an officer, employee or agent thereof, acting in the course
14 and scope of employment or agency.

15 (b) "Member" means any hospital, emergency medical service, local
16 health department, home health agency, adult care home, medical clinic,
17 mental health center or clinic or nonemergency transportation system.

18 (c) "Mid-level practitioner" means a physician assistant or advanced
19 practice registered nurse who has entered into a written protocol with a
20 rural health network physician.

21 (d) "Physician" means a person licensed to practice medicine and
22 surgery.

23 (e) "Rural health network" means an alliance of members, including
24 at least one critical access hospital and at least one other hospital, that has
25 developed a comprehensive plan submitted to and approved by the
26 secretary of health and environment regarding: Patient referral and
27 transfer; the provision of emergency and nonemergency transportation
28 among members; the development of a network-wide emergency services
29 plan; and the development of a plan for sharing patient information and
30 services between hospital members concerning medical staff credentialing,
31 risk management, quality assurance and peer review.

32 (f) (1) "Critical access hospital" means a member of a rural health
33 network that: Makes available 24-hour emergency care services; provides
34 not more than 25 acute care inpatient beds or in the case of a facility with
35 an approved swing-bed agreement a combined total of extended care and
36 acute care beds that does not exceed 25 beds; provides acute inpatient care
37 for a period that does not exceed, on an annual average basis, 96 hours per
38 patient; and provides nursing services under the direction of a licensed
39 professional nurse and continuous licensed professional nursing services
40 for not less than 24 hours of every day when any bed is occupied or the
41 facility is open to provide services for patients unless an exemption is
42 granted by the licensing agency pursuant to rules and regulations. The
43 critical access hospital may provide any services otherwise required to be

1 provided by a full-time, on-site dietician, pharmacist, laboratory
2 technician, medical technologist and radiological technologist on a part-
3 time, off-site basis under written agreements or arrangements with one or
4 more providers or suppliers recognized under medicare. The critical access
5 hospital may provide inpatient services by a physician assistant, advanced
6 practice registered nurse or a clinical nurse specialist subject to the
7 oversight of a physician who need not be present in the facility. In addition
8 to the facility's 25 acute beds or swing beds, or both, the critical access
9 hospital may have a psychiatric unit or a rehabilitation unit, or both. Each
10 unit shall not exceed 10 beds and neither unit shall count toward the 25-
11 bed limit or be subject to the average 96-hour length of stay restriction.

12 (2) Notwithstanding the provisions of paragraph (1), prior to ~~March~~
13 ~~31, 2022~~ *January 20, 2023*, to the extent that a critical access hospital
14 determines it is necessary to treat COVID-19 patients or to separate
15 COVID-19 patients and non-COVID-19 patients, such critical access
16 hospital shall not be limited to 25 beds or, in the case of a facility with an
17 approved swing bed agreement, to a combined total of 25 extended care
18 and acute care beds, and shall not be limited to providing acute inpatient
19 care for a period of time that does not exceed, on an annual average basis,
20 96 hours per patient.

21 (g) "Hospital" means a hospital other than a critical access hospital
22 that has entered into a written agreement with at least one critical access
23 hospital to form a rural health network and to provide medical or
24 administrative supporting services within the limit of the hospital's
25 capabilities.

26 Sec. 8. K.S.A. 2021 Supp. 48-963, 48-964, 48-965, 60-5503, 60-
27 5504, 60-5508 and 65-468 are hereby repealed.

28 Sec. 9. This act shall take effect and be in force from and after its
29 publication in the statute book.