

**HOUSE BILL No. 2705**

By Committee on Judiciary

2-7

1 AN ACT concerning health care providers; relating to peer review;  
2 privileged information; amending K.S.A. 65-4925 and K.S.A. 2017  
3 Supp. 65-4915 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 65-4915 is hereby amended to read as  
7 follows: 65-4915. (a) As used in this section:

8 (1) "Health care provider" means: (A) Those persons and entities  
9 defined as a health care provider under K.S.A. 40-3401, and amendments  
10 thereto; and (B) a dentist licensed by the Kansas dental board, a dental  
11 hygienist licensed by the Kansas dental board, a professional nurse  
12 licensed by the board of nursing, a practical nurse licensed by the board of  
13 nursing, a mental health technician licensed by the board of nursing, a  
14 physical therapist licensed by the state board of healing arts, a physical  
15 therapist assistant certified by the state board of healing arts, an  
16 occupational therapist licensed by the state board of healing arts, a  
17 occupational therapy assistant licensed by the state board of healing arts, a  
18 respiratory therapist licensed by the state board of healing arts, a physician  
19 assistant licensed by the state board of healing arts and attendants and  
20 ambulance services certified by the emergency medical services board.

21 (2) "Health care provider group" means:

22 (A) A state or local association of health care providers or one or  
23 more committees thereof;

24 (B) the board of governors created under K.S.A. 40-3403, and  
25 amendments thereto;

26 (C) an organization of health care providers formed pursuant to state  
27 or federal law and authorized to evaluate medical and health care services;

28 (D) a review committee operating pursuant to K.S.A. 65-2840c, and  
29 amendments thereto;

30 (E) an organized medical staff of a licensed medical care facility as  
31 defined by K.S.A. 65-425, and amendments thereto, an organized medical  
32 staff of a private psychiatric hospital licensed under K.S.A. 75-3307b, and  
33 amendments thereto, or an organized medical staff of a state psychiatric  
34 hospital or state institution for people with intellectual disability, as  
35 follows: Larned state hospital, Osawatomie state hospital, Rainbow mental  
36 health facility, Kansas neurological institute and Parsons state hospital and

- 1 training center;
- 2 (F) a health care provider;
- 3 (G) a professional society of health care providers or one or more  
4 committees thereof;
- 5 (H) a Kansas corporation whose stockholders or members are health  
6 care providers or an association of health care providers, which  
7 corporation evaluates medical and health care services;
- 8 (I) an insurance company, health maintenance organization or  
9 administrator of a health benefits plan which engages in any of the  
10 functions defined as peer review under this section; or
- 11 (J) the university of Kansas medical center.
- 12 (3) "Peer review" means any of the following functions:
- 13 (A) Evaluate and improve the quality of health care services rendered  
14 by health care providers;
- 15 (B) determine that health services rendered were professionally  
16 indicated or were performed in compliance with the applicable standard of  
17 care;
- 18 (C) determine that the cost of health care rendered was considered  
19 reasonable by the providers of professional health services in this area;
- 20 (D) evaluate the qualifications, competence and performance of the  
21 providers of health care or to act upon matters relating to the discipline of  
22 any individual provider of health care;
- 23 (E) reduce morbidity or mortality;
- 24 (F) establish and enforce guidelines designed to keep within  
25 reasonable bounds the cost of health care;
- 26 (G) conduct of research;
- 27 (H) determine if a hospital's facilities are being properly utilized;
- 28 (I) supervise, discipline, admit, determine privileges or control  
29 members of a hospital's medical staff;
- 30 (J) review the professional qualifications or activities of health care  
31 providers;
- 32 (K) evaluate the quantity, quality and timeliness of health care  
33 services rendered to patients in the facility;
- 34 (L) evaluate, review or improve methods, procedures or treatments  
35 being utilized by the medical care facility or by health care providers in a  
36 facility rendering health care.
- 37 (4) "Peer review officer or committee" means:
- 38 (A) An individual employed, designated or appointed by, or a  
39 committee of or employed, designated or appointed by, a health care  
40 provider group and authorized to perform peer review; or
- 41 (B) a health care provider monitoring the delivery of health care at  
42 correctional institutions under the jurisdiction of the secretary of  
43 corrections.

1 (b) Except as provided by K.S.A. 60-437, and amendments thereto,  
2 and by subsections (c)~~and~~ (d), (e), (f) and (g), the reports, statements,  
3 *witness testimony, affidavits*, memoranda, proceedings, findings and other  
4 *information*, records or data submitted to, *considered by*, or generated by  
5 peer review committees or officers, *whether oral or written*, shall be  
6 privileged and shall not be *disclosed to any person or entity or be*  
7 *admissible in any civil action, administrative proceeding or disciplinary*  
8 *board of this state*. Subject to discovery, subpoena or other means of legal  
9 compulsion for their release to any person or entity or be admissible in  
10 evidence in any judicial or administrative proceeding. Information  
11 contained in such records shall not be discoverable or admissible at trial in  
12 the form of testimony by an individual who participated in the peer review  
13 process. The peer review officer or committee creating or initially  
14 receiving the record is the holder of the privilege established by this  
15 section. This privilege may be claimed by the legal entity creating the peer  
16 review committee or officer, or by the commissioner of insurance for any  
17 records or proceedings of the board of governors.

18 (c) Subsection (b) shall not apply to proceedings in which a health  
19 care provider contests the revocation, denial, restriction or termination of  
20 staff privileges or the license, registration, certification or other  
21 authorization to practice of the health care provider. A licensing agency in  
22 conducting a disciplinary proceeding in which admission of any peer  
23 review committee report, record or testimony is proposed shall hold the  
24 hearing in closed session when any such report, record or testimony is  
25 disclosed. Unless otherwise provided by law, a licensing agency  
26 conducting a disciplinary proceeding may close only that portion of the  
27 hearing in which disclosure of a report or record privileged under this  
28 section is proposed. In closing a portion of a hearing as provided by this  
29 section, the presiding officer may exclude any person from the hearing  
30 location except the licensee, the licensee's attorney, the agency's attorney,  
31 the witness, the court reporter and appropriate staff support for either  
32 counsel. The licensing agency shall make the portions of the agency record  
33 in which such report or record is disclosed subject to a protective order  
34 prohibiting further disclosure of such report or record. *Except as provided*  
35 *in subsections (d) and (e)*, such report or record shall not be subject to  
36 discovery, subpoena or other means of legal compulsion for their release to  
37 any person or entity. *Except as provided in subsections (d) and (e)*, no  
38 person in attendance at a closed portion of a disciplinary proceeding shall  
39 at a subsequent civil, criminal or administrative hearing, be required to  
40 testify regarding the existence or content of a report or record privileged  
41 under this section which was disclosed in a closed portion of a hearing, nor  
42 shall such testimony be admitted into evidence in any subsequent civil,  
43 criminal or administrative hearing. A licensing agency conducting a

1 disciplinary proceeding may review peer review committee records,  
2 testimony or reports but must prove its findings with independently  
3 obtained testimony or records which shall be presented as part of the  
4 disciplinary proceeding in open meeting of the licensing agency. Offering  
5 such testimony or records in an open public hearing shall not be deemed a  
6 waiver of the peer review privilege relating to any peer review committee  
7 testimony, records or report.

8 (d) Nothing in this section shall limit the authority, which may  
9 otherwise be provided by law, of the commissioner of insurance, the state  
10 board of healing arts or other health care provider licensing or disciplinary  
11 boards of this state to require a peer review committee or officer to report  
12 to it any disciplinary action or recommendation of such committee or  
13 officer; to transfer to it records of such committee's or officer's  
14 proceedings or actions to restrict or revoke the license, registration,  
15 certification or other authorization to practice of a health care provider; or  
16 to terminate the liability of the fund for all claims against a specific health  
17 care provider for damages for death or personal injury pursuant to  
18 ~~subsection (i) of K.S.A. 40-3403(i)~~, and amendments thereto. *Except as*  
19 *provided in subsection (g)*, reports and records so furnished shall not be  
20 subject to discovery, subpoena or other means of legal compulsion for  
21 their release to any person or entity and shall not be admissible in evidence  
22 in any judicial or administrative proceeding other than a disciplinary  
23 proceeding by the state board of healing arts or other health care provider  
24 licensing or disciplinary boards of this state.

25 (e) A peer review committee or officer may report to and discuss its  
26 activities, information and findings to other peer review committees or  
27 officers or to a board of directors or an administrative officer of a health  
28 care provider without waiver of the privilege provided by subsection (b)  
29 and the records of all such committees or officers relating to such report  
30 shall be privileged as provided by subsection (b).

31 (f) Nothing in this section shall be construed to prevent an insured  
32 from obtaining information pertaining to payment of benefits under a  
33 contract with an insurance company, a health maintenance organization or  
34 an administrator of a health benefits plan.

35 (g) *Factual information is not protected under subsection (b) as part*  
36 *of the peer review process, whether independently discoverable from other*  
37 *sources or not, including the names and addresses of persons whom any*  
38 *peer review committee or officer knows to have direct knowledge of the*  
39 *provisions of healthcare in question, statements or testimony of witnesses*  
40 *with direct knowledge, incident reports, occurrence reports, memoranda,*  
41 *written or electronic communications, statements or similar reports that*  
42 *contain facts concerning a specific situation, and shall not include records*  
43 *made in the regular course of business by a hospital or other provider of*

1 healthcare, including patient medical records. Original sources of  
2 information, data, documents or records shall not be construed as being  
3 immune from discovery or use in any claim or civil proceeding merely  
4 because they were reviewed or considered by a medical provider for  
5 submission to, or were in fact submitted to or reviewed by a peer review  
6 committee or peer review officer. However, the deliberations, analyses,  
7 findings, conclusions and recommendations of any peer review committee  
8 or officer shall remain protected under subsection (b) and shall not be  
9 subject to discovery in any claim process or civil action.

10 Sec. 2. K.S.A. 65-4925 is hereby amended to read as follows: 65-  
11 4925. (a) *Except as provided in subsection (f)*, the reports and records  
12 made pursuant to K.S.A. 65-4923 or 65-4924, and amendments thereto,  
13 shall be confidential and privileged, including:

14 (1) Reports and records of executive or review committees of medical  
15 care facilities or of a professional society or organization;

16 (2) reports and records of the chief of the medical staff, chief  
17 administrative officer or risk manager of a medical care facility;

18 (3) reports and records of any state licensing agency or impaired  
19 provider committee of a professional society or organization; and

20 (4) reports made pursuant to this act to or by a medical care facility  
21 risk manager, any committee, the board of directors, administrative officer  
22 or any consultant.

23 *Except as provided in subsection (f)*, such reports and records shall not  
24 be subject to discovery, subpoena or other means of legal compulsion for  
25 their release to any person or entity and shall not be admissible in any civil  
26 or administrative action other than a disciplinary proceeding by the  
27 appropriate state licensing agency.

28 (b) *Except as provided in subsection (f)*, no person in attendance at  
29 any meeting of an executive or review committee of a medical care facility  
30 or of a professional society or organization while such committee is  
31 engaged in the duties imposed by K.S.A. 65-4923, shall be compelled to  
32 testify in any civil, criminal or administrative action, other than a  
33 disciplinary proceeding by the appropriate licensing agency, as to any  
34 committee discussions or proceedings.

35 (c) *Except as provided in subsection (f)*, no person in attendance at  
36 any meeting of an impaired provider committee shall be required to testify,  
37 nor shall the testimony of such person be admitted into evidence, in any  
38 civil, criminal or administrative action, other than a disciplinary  
39 proceeding by the appropriate state licensing agency, as to any committee  
40 discussions or proceedings.

41 (d) Any person or committee performing any duty pursuant to this act  
42 shall be designated a peer review committee or officer pursuant to K.S.A.  
43 65-4915, and amendments thereto.

1 (e) A licensing agency in conducting a disciplinary proceeding in  
2 which admission of any peer review committee report, record or testimony  
3 is proposed shall hold the hearing in closed session when any such report,  
4 record or testimony is disclosed. Unless otherwise provided by law, a  
5 licensing agency conducting a disciplinary proceeding may close only that  
6 portion of the hearing in which disclosure of a report or record privileged  
7 under this section is proposed. In closing a portion of a hearing as  
8 provided by this section, the presiding officer may exclude any person  
9 from the hearing location except the licensee, the licensee's attorney, the  
10 agency's attorney, the witness, the court reporter and appropriate staff  
11 support for either counsel. The licensing agency shall make the portions of  
12 the agency record in which such report or record is disclosed subject to a  
13 protective order prohibiting further disclosure of such report or record.  
14 Such report or record shall not be subject to discovery, subpoena or other  
15 means of legal compulsion for their release to any person or entity. No  
16 person in attendance at a closed portion of a disciplinary proceeding shall  
17 at a subsequent civil, criminal or administrative hearing, be required to  
18 testify regarding the existence or content of a report or record privileged  
19 under this section which was disclosed in a closed portion of a hearing, nor  
20 shall such testimony be admitted into evidence in any subsequent civil,  
21 criminal or administrative hearing. A licensing agency conducting a  
22 disciplinary proceeding may review peer review committee records,  
23 testimony or reports but must prove its findings with independently  
24 obtained testimony or records which shall be presented as part of the  
25 disciplinary proceeding in open meeting of the licensing agency. Offering  
26 such testimony or records in an open public hearing shall not be deemed a  
27 waiver of the peer review privilege relating to any peer review committee  
28 testimony, records or report.

29 (f) *Factual information protected from disclosure under subsection*  
30 *(a) as part of the risk management review process is not protected from*  
31 *disclosure, whether independently discoverable from other sources or not,*  
32 *including the names and addresses of persons who any review committee*  
33 *or officer knows to have direct knowledge of the provision of healthcare in*  
34 *question, statements or testimony of witnesses with direct knowledge,*  
35 *incident reports, occurrence reports, memoranda, written or electronic*  
36 *communications, statements or similar reports that contain facts*  
37 *concerning a specific situation, and shall not include records made in the*  
38 *regular course of business by a hospital or other provider of healthcare*  
39 *including patient medical records. Original sources of information,*  
40 *documents or records shall not be construed as being immune from*  
41 *discovery or use in any civil proceeding merely because they were*  
42 *reviewed or considered by a medical provider for submission to, or were*  
43 *in fact submitted to, any risk management committee or risk management*

1 *review officer. However, the deliberations, analyses, findings, conclusions*  
2 *and recommendations of any risk management committee or officer shall*  
3 *remain protected under subsection (a) and shall not be subject to*  
4 *discovery in any claim process or civil action.*

5       Sec. 3. K.S.A. 65-4925 and K.S.A. 2017 Supp. 65-4915 are hereby  
6 repealed.

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