

## SUPPLEMENT TO KANSAS MEDICAL CARE FACILITY DRUG DIVERSION REPORTING FLOWCHART

**Risk Management Statute.** Under K.S.A. 65-4923(c), if a healthcare provider or medical care facility agent or employee follows the risk management reporting procedure outlined in K.S.A. 65-4923(a), they need not report under the following statutes:

- Medical facility reporting Board of Healing Arts licensee to BOHA, K.S.A. 65-28,121;
- Board of Healing Arts licensee reporting other Board of Healing Arts licensee to Board of Healing Arts, K.S.A. 65-28,122; or
- Mental health technician, healthcare provider, or medical care facility reporting mental health technician to Board of Nursing, K.S.A. 65-4216.

For reference, the Board of Healing Arts regulates:

- Medical Doctors (M.D.);
- Osteopathic Doctors (D.O.);
- Chiropractic Doctors (D.C.);
- Podiatric Doctors (D.P.M.);
- Naturopathic Doctors (N.D.);
- Physician's Assistants (P.A.);
- Physical Therapists (P.T.);
- Physical Therapist Assistants (P.T.A.);
- Occupational Therapists (O.T.);
- Occupational Therapy Assistants (O.T.A.);
- Respiratory Therapists (R.T.);
- Athletic Trainers (A.T.);
- Radiologic Technologists (L.R.T.);
- Licensed Acupuncturists (L.Ac.); and
- Contact Lens Distributors

*Drug diversion by healthcare provider occurs outside medical facility.*

“If the reportable incident did not occur in a medical care facility, the report shall be made to the appropriate state or county professional society or organization, which shall refer the matter to a professional practices review committee duly constituted pursuant to the society's or organization's bylaws. The committee shall investigate all such reports and take appropriate action. The committee shall have the duty to report to the appropriate state licensing agency any finding by the committee that a health care provider acted below the applicable standard of care which action had a reasonable probability of causing injury to a patient, or in a

manner which may be grounds for disciplinary action by the appropriate licensing agency, so that the agency may take appropriate disciplinary measures.” K.S.A. 65-4923(a)(1).

*Drug Diversion occurred within medical care facility by healthcare provider.*

“If the reportable incident occurred within a medical care facility, the report shall be made to the chief of the medical staff, chief administrative officer or risk manager of the facility. The chief of the medical staff, chief administrative officer or risk manager shall refer the report to the appropriate executive committee or professional practices peer review committee which is duly constituted pursuant to the bylaws of the facility. The committee shall investigate all such reports and take appropriate action, including recommendation of a restriction of privileges at the appropriate medical care facility. In making its investigation, the committee may also consider treatment rendered by the health care provider outside the facility. The committee shall have the duty to report to the appropriate state licensing agency any finding by the committee that a health care provider acted below the applicable standard of care which action had a reasonable probability of causing injury to a patient, or in a manner which may be grounds for disciplinary action by the appropriate licensing agency, so that the agency may take appropriate disciplinary measures.” K.S.A. 65-4923(a)(2).

*Drug Diversion occurred within medical care facility by medical care facility or non-healthcare provider employee.*

“If the health care provider involved in the reportable incident is a medical care facility, the report shall be made to the chief of the medical staff, chief administrative officer or risk manager of the facility. The chief of the medical staff, chief administrative officer or risk manager shall refer the report to the appropriate executive committee which is duly constituted pursuant to the bylaws of the facility. The executive committee shall investigate all such reports and take appropriate action. The committee shall have the duty to report to the department of health and environment any finding that the facility acted in a manner which is below the applicable standard of care and which has a reasonable probability of causing injury to a patient, so that appropriate disciplinary measures may be taken.” K.S.A. 65-4923(a)(3).

**Health care provider.** A *healthcare provider* as defined in the risk management statute is broader than the definition found in Healthcare Stabilization Fund statute, K.S.A. 40-3401. *Healthcare provider* in K.S.A. 65-4921(c) includes:

- Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto;
- a dentist licensed by the Kansas dental board,
- a dental hygienist licensed by the Kansas dental board,
- a professional nurse licensed by the board of nursing,
- a practical nurse licensed by the board of nursing,
- a mental health technician licensed by the board of nursing,
- a physical therapist licensed by the state board of healing arts,
- a physical therapist assistant certified by the state board of healing arts,
- an occupational therapist licensed by the state board of healing arts,
- an occupational therapy assistant licensed by the state board of healing arts, and
- a respiratory therapist licensed by the state board of healing art.

**Controlled substance reporting requirement.** Often a healthcare provider or medical facility’s investigation of drug diversion of a controlled substance will necessitate DEA Form 106 reporting.

**Report to Board of Pharmacy.**

“Either the pharmacist-in-charge or the pharmacy owner shall notify the board in writing within one day of any suspected diversion, theft, or loss of any controlled substance and, upon completion, shall provide the board with a copy of the completed DEA 106 form issued by the U.S. department of justice.” K.A.R. 68-20-15b.

**Report to DEA.** A DEA registrant must report diversion to the DEA on a form 106 within one business day of the significant loss or theft. 21 C.F.R. §1301.76(b)

From Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances section of DEA regulations:

“Reports of drug diversion by fellow employees is not only a necessary part of an overall employee security program but also serves the public interest at large. It is, therefore, the position of DEA that an employee who has knowledge of drug diversion from his employer by a fellow employee has an obligation to report such information to a responsible security official of the employer. The employer shall treat such information as confidential and shall take all reasonable steps to protect the confidentiality of the information and the identity of the employee furnishing information. A failure to report information of drug diversion will be considered in determining the feasibility of continuing to allow an employee to work in a drug security area. The employer shall inform all employees concerning this policy.” 21 C.F.R. 1301.91.

**May report to local law enforcement.** Notwithstanding mandatory reporting requirements for abused adults or minors, in Kansas, DEA registrants or pharmacists are not required to report theft or loss of controlled substances to local law enforcement. However, a person or medical care facility may choose to do so, as drug diversion violates Kansas law. See K.S.A. 21-5706; K.S.A. 21-5708.

**Hospital agent or employee's knowledge of theft or significant loss of controlled substance.** CMS develops Conditions of Participation (CoPs) that health care organizations must meet in order to begin and continue participating in the Medicare and Medicaid programs. One such CoP relates to a hospital's duty to report the abuse or loss of controlled substances:

“Abuses and losses of controlled substances must be reported, in accordance with applicable Federal and State laws, to the individual responsible for the pharmaceutical service, and to the chief executive officer, as appropriate.” 42 C.F.R. § 482.25(b)(7).

**Drug Diversion at long-term care facility where there is a crime against a resident or a patient.**

“Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) **against any individual who is a resident of, or is receiving care from, the facility.**” 42 U.S. Code § 1320b–25(b)(1).

*A covered individual* means an individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility. 42 U.S. Code § 1320b–25(a)(3).

**Drug diversion involves abuse or neglect of minor or adult.** Please refer to the following statutes regarding mandatory reporting:

Abuse of adult statute: K.S.A. 39-1431

Abuse of minor statute: K.S.A. 38-2223

**KDADS licensed or funded entity and adverse incident occurs that included misuse of medications.** Kansas Department for Aging and Disability Services' policy is that KDADS licensed or funded entities should make reports of adverse incidents using their AIR reporting system.<sup>1</sup> An *adverse incident* includes:

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<sup>1</sup> <https://kdads.ks.gov/provider-home/providers/adverse-incident-reporting>

“Misuse of Medications: The incorrect administration or mismanagement of medication, by someone providing a KDADS Community Services and Programs service which results in or could result in serious injury or illness to a participant.”<sup>2</sup>

**Report to Board of Nursing.** The Kansas Board of Nursing has its own reporting requirements that the Risk Management statute does not override. Under K.S.A. 65-1127, a licensee of the Kansas Board of Nursing must report to the Board of Nursing if another licensee of the Kansas Board of Nursing engages in drug diversion, as diverting drugs counts as *unprofessional conduct* under K.A.R. 60-3-110(n).

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<sup>2</sup>[https://kdads.ks.gov/docs/librariesprovider17/csp/bhs-documents/air/csp-adverse-incident-definitions-and-protocol.doc?sfvrsn=439de44e\\_5](https://kdads.ks.gov/docs/librariesprovider17/csp/bhs-documents/air/csp-adverse-incident-definitions-and-protocol.doc?sfvrsn=439de44e_5)