

HOUSE BILL No. 2315

By Committee on Health and Human Services

2-11

1 AN ACT concerning the department for aging and disability services;
2 providing for the licensure of certain facilities and standards for
3 treatment of certain individuals; also repealing K.S.A. 39-1807 and 75-
4 3307c and K.S.A. 2014 Supp. 75-3307b.
5

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

7 Section 1. The purpose of this act is the development, establishment
8 and enforcement of standards: (1) For the care, treatment, health, safety,
9 welfare and comfort of individuals residing in or receiving treatment or
10 services provided by residential care facilities, residential and day support
11 facilities, case management, private and public psychiatric hospitals,
12 psychiatric residential treatment facilities, community mental health
13 centers and providers of other disability services licensed by the secretary
14 for aging and disability services; and (2) for the construction, maintenance
15 or operation, or any combination thereof, of facilities, hospitals, centers
16 and providers of services that will promote safe and adequate
17 accommodation, care and treatment of such individuals.

18 Sec. 2. As used in this act, the following terms shall have the
19 meanings ascribed to them in this section:

20 (a) "Center" means a community mental health center.

21 (b) "Community mental health center" means a center that provides
22 the core services described in the public health services act organized
23 pursuant to article 40 of chapter 19 of the Kansas Statutes Annotated, and
24 amendments thereto, or a mental health clinic organized pursuant to article
25 2 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

26 (c) "Department" means the department for aging and disability
27 services.

28 (d) "Facility" means any place other than a center or hospital where
29 individuals reside or receive treatment or services provided by a person or
30 entity licensed under this act.

31 (e) "Hospital" means a psychiatric hospital.

32 (f) "Individual" means a person who is the recipient of behavioral
33 health, intellectual disabilities, developmental disabilities or other
34 disability services as set forth in this act.

35 (g) "Licensee" means one or more persons or entities licensed by the
36 secretary under this act.

1 (h) "Licensing agency" means the secretary for aging and disability
2 services.

3 (i) "Provider" means a person, partnership or corporation employing
4 or contracting with appropriately credentialed persons that provide
5 behavioral health, intellectual disability, developmental disability or other
6 disability services in accordance with the requirements as set forth by
7 regulations created and adopted by the secretary.

8 (j) "Psychiatric hospital" means an institution, excluding state
9 institutions as defined in K.S.A. 76-12a01, and amendments thereto, which
10 is primarily engaged in providing services, by and under the supervision of
11 qualified professionals, for the diagnosis and treatment of mentally ill
12 individuals, and the institution meets the licensing requirements as set
13 forth by regulations created and adopted by the secretary.

14 (k) "Psychiatric residential treatment facility" means any non-hospital
15 facility with a provider agreement with the licensing agency to provide the
16 inpatient services for individuals under the age of 21 who will receive
17 highly structured, intensive treatment for which the licensee meets the
18 requirements as set forth by regulations created and adopted by the
19 secretary.

20 (l) "Residential care facility" means any place or facility, or a
21 contiguous portion of a place or facility, caring for two or more individuals
22 not related within the third degree of relationship to the administrator,
23 operator or owner by blood or marriage and who, by choice or due to
24 functional impairments, may need personal care and supervised nursing
25 care to compensate for activities of daily living limitations, and which
26 place or facility includes individual living units and provides or
27 coordinates personal care or supervised nursing care available on a 24-
28 hour, seven-days-a-week basis for the support of an individual's
29 independence, including crisis residential care facilities.

30 (m) "Secretary" means the secretary for aging and disability services.

31 (n) "Services" means the following types of behavioral health,
32 intellectual disability, developmental disability and other disability
33 services, including, but not limited to: Residential supports, day supports,
34 care coordination, case management, workshops, sheltered domiciles,
35 education, therapeutic services, assessments and evaluations, diagnostic
36 care, medicinal support and rehabilitative services.

37 Sec. 3. (a) In addition to authorities, powers and duties otherwise
38 provided by law, the secretary shall have the following authorities, powers
39 and duties:

40 (1) To enforce the laws relating to the hospitalization of mentally ill
41 individuals of this state in a psychiatric hospital and the diagnosis, care,
42 training or treatment of individuals receiving services through community
43 mental health centers, psychiatric residential treatment facilities for

1 individuals with mental illness, a residential care facility or other facilities
2 and services for individuals with mental illness, intellectual disabilities,
3 developmental disabilities or other disabilities.

4 (2) To inspect, license, certify or accredit centers, facilities, hospitals
5 and providers for individuals with mental illness, intellectual disabilities,
6 developmental disabilities or other disabilities pursuant to federal
7 legislation, and to deny, suspend or revoke a license granted for causes
8 shown.

9 (3) To set standards for centers, facilities, hospitals and providers for
10 individuals with mental illness, intellectual disabilities, developmental
11 disabilities or other disabilities pursuant to federal legislation.

12 (4) To set standards for, inspect and license all providers and facilities
13 for individuals with mental illness, intellectual disabilities, developmental
14 disabilities or other disabilities receiving assistance through the Kansas
15 department for aging and disability services which receive or have
16 received after June 30, 1967, any state or federal funds, or facilities where
17 individuals with mental illness, intellectual disabilities or developmental
18 disabilities reside who require supervision or require limited assistance
19 with the taking of medication, and the withdrawal of licenses granted for
20 causes shown. The secretary may adopt rules and regulations that allow
21 the facility to assist an individual with the taking of medication when the
22 medication is in a labeled container dispensed by a pharmacist.

23 (5) Enter into contracts necessary or incidental to the performance of
24 the secretary's duties and the execution of the secretary's powers.

25 (6) Solicit and accept for use any gift of money or property, real or
26 personal, made by will or otherwise, and any grant of money, services or
27 property from the federal government, the state or any political subdivision
28 thereof or any private source and do all things necessary to cooperate with
29 the federal government or any of its agencies in making an application for
30 any grant.

31 (7) Administer or supervise the administration of the provisions
32 relating to individuals with mental illness, intellectual disabilities,
33 developmental disabilities, or other disabilities pursuant to federal
34 legislation.

35 (8) Coordinate activities and cooperate with treatment providers or
36 other facilities for those with mental illness, intellectual disabilities,
37 developmental disabilities or other disabilities pursuant to federal
38 legislation in this and other states for the treatment of such individuals and
39 for the common advancement of these programs and facilities.

40 (9) Keep records, gather relevant statistics, and make and disseminate
41 analyses of the same.

42 (10) Do other acts and things necessary to execute the authority
43 expressly granted to the secretary.

1 (b) Notwithstanding the existence or pursuit of any other remedy, the
2 secretary for aging and disability services, as the licensing agency, in the
3 manner provided by the Kansas judicial review act, may maintain an
4 action in the name of the state of Kansas for an injunction against any
5 person or facility to restrain or prevent the operation of a residential care
6 facility, crisis residential care facility, private or public psychiatric
7 hospital, psychiatric residential treatment facility, provider of services,
8 community mental health center or any other facility providing services to
9 individuals without a license.

10 (c) Reports and information shall be furnished to the secretary by the
11 superintendents, executive or other administrative officers of all
12 psychiatric hospitals, community mental health centers or facilities serving
13 individuals with intellectual disabilities or developmental disabilities and
14 facilities serving other disabilities receiving assistance through the Kansas
15 department for aging and disability services.

16 Sec. 4. (a) The secretary for aging and disability services may adopt
17 rules and regulations necessary to carry out the provisions of this act. Such
18 rules and regulations may prescribe minimum standards and requirements
19 relating to the location, building, construction, size of centers, facilities
20 and hospitals; environmental standards; capacity; the individuals allowed;
21 the types of services offered; the records to be kept; medication
22 management; policies and procedures specific to centers, facilities,
23 hospitals and providers; the kind and frequency of reports and inventories
24 to be made; and may generally establish such requirements as may be
25 deemed necessary to protect the health, safety, hygiene, welfare and
26 comfort of the individuals.

27 (b) The authority granted to the secretary under this act is in addition
28 to other statutory authority the secretary has to require the licensing and
29 operation of centers, facilities, hospitals and providers and is not to be
30 construed to limit any of the powers and duties of the secretary for aging
31 and disability services under article 59 of chapter 75 of the Kansas Statutes
32 Annotated, and amendments thereto.

33 Sec. 5. All pertinent laws of this state and lawfully adopted
34 ordinances and rules and regulations shall be strictly complied with in the
35 operation of any center, facility, hospital or provision of services in this
36 state. All centers, facilities, hospitals and providers shall comply with all
37 the lawfully established requirements and rules and regulations of the
38 secretary and the state fire marshal, and any other agency of government
39 so far as pertinent and applicable to such centers, facilities, hospitals and
40 providers, their buildings, staff, facilities, maintenance, operation, conduct
41 and the care and treatment of individuals.

42 Sec. 6. It shall be unlawful for any person or entity to operate a
43 center, facility, hospital or be a provider of services within this state except

1 upon obtaining a license for that purpose from the secretary as the
2 licensing agency upon application made therefor as provided in this act,
3 and compliance with the requirements, standards, rules and regulations
4 promulgated under its provisions.

5 Sec. 7. An application for a license to operate a center, facility,
6 hospital or to be a provider of services shall be made in writing to the
7 licensing agency on forms made available by the agency. The application
8 shall contain all information required by the licensing agency, which may
9 include affirmative evidence of the applicant's ability to comply with the
10 standards and rules and regulations as adopted under the provisions of this
11 act. The application shall be signed by the person or persons seeking the
12 license or by a duly authorized agent.

13 Sec. 8. (a) Upon receipt of an initial or renewal application for
14 license, the licensing agency, with the approval of the state fire marshal,
15 shall issue a license if the applicant is fit and qualified and if the center,
16 facility, hospital or provider meets the requirements established under this
17 act and such rules and regulations as are adopted under the provisions of
18 this act. The licensing agency, the state fire marshal and the county, city-
19 county or multi-county health departments or their designated
20 representatives shall make such inspections and investigations as are
21 necessary to determine the conditions existing in each case and a written
22 report of such inspections and investigations and the recommendations of
23 the state fire marshal and the county, city-county or multi-county health
24 department or their authorized agents shall be filed with the licensing
25 agency. A copy of any inspection report required by this section shall be
26 furnished to the applicant.

27 (b) The initial and annual fees for a license shall be fixed by the
28 secretary by rules and regulations. The license fee shall be paid to the
29 secretary when the license is applied for and annually thereafter. The fee
30 shall not be refundable. Fees in effect under this subsection immediately
31 prior to the effective date of this act shall continue in effect on and after
32 the effective date of this act until a different fee is established by the
33 secretary by rules and regulations under this subsection.

34 (c) Each license shall be issued only for the premises or persons
35 named in the application, or both, and shall not be transferable or
36 assignable. The license shall be posted in a conspicuous place in the
37 center, facility, hospital or provider's principal location. If the annual
38 report is not so filed and an annual fee, if any, is not paid, such license
39 shall be automatically denied or revoked. Any license granted under the
40 provisions of this act shall state the type of facility for which the license is
41 granted, the number of individuals for whom granted, the person or
42 persons to whom granted, the date and such additional information and
43 special limitations deemed appropriate by the licensing agency.

1 (d) A license, unless sooner suspended or revoked, shall remain in
2 effect until the date of expiration. Licensees seeking renewal shall file a
3 renewal application containing such information in such form as the
4 licensing agency prescribes together with payment of any required annual
5 fee. Upon review and approval by the licensing agency and the state fire
6 marshal or their duly authorized agents, a license shall be issued and
7 effective until the date of expiration specified.

8 Sec. 9. (a) No licensee shall knowingly operate a center, facility,
9 hospital or be a provider of services if any person who works in the center,
10 facility, hospital or for a provider of services: (1) (A) Has a felony
11 conviction for a crime against persons; (B) has a felony conviction under
12 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or
13 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
14 thereto, or any felony violation of any provision of the uniform controlled
15 substances act prior to July 1, 2009; (C) has a conviction of any act which
16 is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
17 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the
18 Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-
19 6326 or 21-6418 through 21-6421, and amendments thereto, or a
20 conviction of an attempt under K.S.A. 21-3301, prior to its repeal, or
21 K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit any such
22 act or a conviction of conspiracy under K.S.A. 21-3302, prior to its repeal,
23 or K.S.A. 2014 Supp. 21-5302, and amendments thereto, to commit such
24 act, or similar statutes of other states or the federal government; or (D) has
25 been convicted of any act which is described in K.S.A. 21-4301 or 21-
26 4301a, prior to their repeal, or K.S.A. 2014 Supp. 21-6401, and
27 amendments thereto, or similar statutes of other states or the federal
28 government;

29 (2) has been adjudicated a juvenile offender because of having
30 committed an act which if done by an adult would constitute the
31 commission of a felony and which is a crime against persons, is any act
32 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
33 Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the
34 Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-
35 6326 or 21-6418 through 21-6421, and amendments thereto, or similar
36 statutes of other states or the federal government, or is any act described in
37 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2014 Supp.
38 21-6401, and amendments thereto, or similar statutes of other states or the
39 federal government;

40 (3) has committed an act of physical, mental or emotional abuse or
41 neglect or sexual abuse and who is listed in the child abuse and neglect
42 registry maintained by the Kansas department for children and families
43 pursuant to K.S.A. 2014 Supp. 38-2226, and amendments thereto, and: (A)

1 The person has failed to successfully complete a corrective action plan
2 which had been deemed appropriate and approved by the Kansas
3 department for children and families; or (B) the record has not been
4 expunged pursuant to rules and regulations adopted by the secretary for
5 children and families;

6 (4) has had a child removed from home based on a court order
7 pursuant to K.S.A. 2014 Supp. 38-2251, and amendments thereto, in this
8 state, or a court order in any other state based upon a similar statute that
9 finds the child to be deprived or a child in need of care based on a finding
10 of physical, mental or emotional abuse or neglect or sexual abuse and the
11 child has not been returned to the home or the child reaches majority
12 before being returned to the home and the person has failed to
13 satisfactorily complete a corrective action plan;

14 (5) has had parental rights terminated pursuant to the Kansas juvenile
15 code or K.S.A. 2014 Supp. 38-2266 through 38-2270, and amendments
16 thereto, or a similar statute of other states;

17 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
18 seq., and amendments thereto, or an immediate intervention agreement
19 pursuant to K.S.A. 2014 Supp. 38-2346, and amendments thereto,
20 involving a charge of child abuse or a sexual offense.

21 (b) No licensee shall operate a center, facility, hospital or be a
22 provider of services if such person has been found to be a person in need
23 of a guardian or a conservator, or both, as provided in K.S.A. 59-3050
24 through 59-3095, and amendments thereto.

25 (c) The secretary shall notify the licensee, within ten business days,
26 when the result of the national criminal history record check or other
27 appropriate review reveals unfitness specified in subsections (a)(1)
28 through (7) with regard to the person who is the subject of the review.

29 (d) No licensee, its contractors or employees, shall be liable for civil
30 damages to any person refused employment or discharged from
31 employment by reason of such licensee's compliance with the provisions
32 of this section if such licensee acts in good faith to comply with this
33 section.

34 (e) Any licensee or staff person thereof who receives information
35 concerning the fitness or unfitness of any person shall keep such
36 information confidential, except that the staff person may disclose such
37 information to the person who is the subject of the request for information.
38 A violation of this paragraph (e) shall be an unclassified misdemeanor
39 punishable by a fine of \$100.

40 (f) The licensing agency may require a person to be fingerprinted and
41 submit to a state and national criminal history record check. The
42 fingerprints shall be used to identify the person and to determine whether
43 the person has a record of criminal history in this state or other

1 jurisdiction. The licensing agency is authorized to submit the fingerprints
2 to the Kansas bureau of investigation and the federal bureau of
3 investigation for a state and national criminal history record check. The
4 licensing agency may use the information obtained from fingerprinting and
5 the criminal history for purposes of verifying the identification of the
6 person and in the official determination of the qualifications and fitness of
7 the person to be issued or to maintain a license, work with, or provide
8 services to individuals as applicable under this act.

9 (g) The secretary for aging and disability services shall have access to
10 any criminal history record information in the possession of the Kansas
11 bureau of investigation regarding any criminal history information,
12 including adjudications of a juvenile offender which if committed by an
13 adult would have been a felony conviction for the purposes specified in
14 this act. The Kansas bureau of investigation may charge to the Kansas
15 department for aging and disability services a reasonable fee for providing
16 criminal history record information under this subsection.

17 (h) The secretary for aging and disability services shall charge each
18 person or licensee requesting information under this section a fee equal to
19 cost for each name about which an information request has been submitted
20 to the department under this section.

21 (i) For the purpose of complying with this section, the licensee
22 operating a center, facility, hospital or a provider of services shall request
23 from the Kansas department for aging and disability services information
24 regarding any criminal history information, and which relates to a person
25 who works in the center, facility, hospital or for a provider of services, or
26 is being considered for employment or volunteer work in the facility,
27 center, hospital or with the service provider, for the purpose of determining
28 whether such person is subject to the provisions of this section. For the
29 purpose of complying with this section, the licensee of a center, facility,
30 hospital or a provider of services shall receive from any employment
31 agency which provides employees to work in or with the center, facility or
32 hospital or provider of services written certification that such employees
33 are not prohibited from working in the center, facility or hospital or
34 providing services under this section. For the purpose of complying with
35 this section, a licensee may hire an applicant for employment on a
36 conditional basis pending the results from the Kansas department for aging
37 and disability services of a request for information under this subsection.

38 (j) No person who works for a center, facility or hospital and who is
39 currently licensed or registered by an agency of this state to provide
40 professional services in the state and who provides such services as part of
41 the work which such person performs for the center, facility or hospital
42 shall be subject to the provisions of this section.

43 (k) A licensee may request from the Kansas department for aging and

1 disability services criminal history information on persons employed under
2 subsection (j).

3 (l) The licensee of a center, facility, hospital or provider of services
4 shall not be required under this section to conduct a background check on
5 an applicant for employment with the center, facility, hospital or provider
6 if the applicant has been the subject of a background check under this act
7 within one year prior to the application for employment with the center,
8 facility or hospital or provider of services. The licensee where the
9 applicant was the subject of such background check may release a copy of
10 such background check to the operator of a center, facility or hospital or
11 provider of services where the applicant is currently applying.

12 (m) No person who is in the custody of the secretary of corrections
13 and who provides services, under direct supervision in non-patient areas,
14 on the grounds or other areas designated by the secretary shall be subject
15 to the provisions of this section while providing such services.

16 Sec. 10. All licenses, issued under the provisions of chapter 33 of
17 article 75 of the Kansas Statutes Annotated, and amendments thereto, for
18 centers, facilities, hospitals and providers prior to the taking effect of this
19 act shall continue in force until the date of expiration unless sooner
20 suspended or revoked as provided in this act. All persons holding such
21 licenses which are in force on the effective date of this act shall be
22 permitted not more than four months from their effective date to comply
23 with the rules and regulations and standards promulgated under the
24 authority of this act wherein those rules and regulations and standards
25 differ in any substantial respect from those in force and effect immediately
26 prior to the effective date of this act under the provisions of chapter 59 of
27 article 75 of the Kansas Statutes Annotated, and amendments thereo.

28 Sec. 11. (a) Inspections and investigations shall be made, announced
29 or unannounced, and reported in writing by the authorized agents and
30 representatives of the licensing agency and state fire marshal, and of the
31 county, city-county and multi-county health departments as often and in
32 the manner and form prescribed by the rules and regulations promulgated
33 under the provisions of this act. Access shall be given to the premises of
34 any center, facility, hospital or provider's principal location at any time
35 upon presenting adequate identification to carry out the requirements of
36 this section and the provisions and purposes of this act, and failure to
37 provide such access may constitute grounds for denial, suspension or
38 revocation of the license. A copy of any inspection or investigation reports
39 required by this section shall be furnished to the applicant or licensee. An
40 exit interview shall be conducted with the licensee.

41 (b) A correction order may be issued by the secretary or the
42 secretary's designee to a licensee whenever the state fire marshal or the
43 marshal's representative or a duly authorized representative of the

1 secretary inspects or investigates a center, facility, hospital or provider and
2 determines that the center, facility, hospital or provider is not in
3 compliance with the provisions of article 59 of chapter 75 of the Kansas
4 Statutes Annotated, and amendments thereto, or rules and regulations
5 promulgated thereunder which individually or jointly is likely to adversely
6 affect the health, safety, nutrition or sanitation of the individuals or the
7 public. The correction order shall be served upon the licensee either
8 personally or by certified mail, return receipt requested. The correction
9 order shall be in writing, shall state the specific deficiency, cite the specific
10 statutory provision or rule and regulation alleged to have been violated and
11 shall specify the time allowed for correction.

12 (c) Every licensee shall post in a conspicuous place a notice
13 indicating that the most recent inspection report and related documents
14 may be examined upon request. If requested, the licensee shall provide the
15 most recent inspection report and related documents, subject to the
16 payment of a reasonable charge to cover copying costs.

17 Sec. 12. A provisional license may be issued to any center, facility,
18 hospital or provider which are temporarily unable to conform to all the
19 standards, requirements and rules and regulations established under the
20 provisions of this act. The issuance of such provisional license shall be
21 approved by the state fire marshal. A provisional license may be issued for
22 not more than six months to provide time to make necessary corrections.
23 One additional successive six-month provisional license may be granted at
24 the discretion of the licensing agency. A change of ownership during the
25 provisional licensing period will not extend the time for the requirements
26 to be met that were the basis for the provisional license nor entitle the new
27 owner to an additional provisional license.

28 Sec. 13. (a) Whenever the licensing agency finds a substantial failure
29 to comply with the requirements, standards or rules and regulations
30 established under this act, and amendments thereto, it shall make an order
31 denying, suspending or revoking the license after notice and an
32 opportunity for a hearing in accordance with the provisions of the Kansas
33 administrative procedure act, K.S.A. 77-501 et seq., and amendments
34 thereto. Any applicant or licensee may appeal such order in accordance
35 with the provisions of the Kansas judicial review act, K.S.A. 77-601 et
36 seq., and amendments thereto.

37 (b) Except as provided in subsection (c), whenever the licensing
38 agency denies, suspends or revokes a license under this section, the
39 applicant or licensee shall not be eligible to apply for a new license or
40 reinstatement of a license for a period of two years from the date of denial,
41 suspension or revocation.

42 (c) (1) Any applicant or licensee issued an emergency order by the
43 licensing agency denying, suspending or revoking a license under this

1 section may apply for a new license or reinstatement of a license at any
2 time upon submission of a written waiver of any right conferred upon such
3 applicant or licensee under the Kansas administrative procedure act,
4 K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial
5 review act, K.S.A. 77-601 et seq., and amendments thereto, to the
6 licensing agency in a settlement agreement or other manner as approved
7 by the licensing agency.

8 (2) Any licensee issued a notice of intent to take action by the
9 licensing agency under this section may enter into a settlement agreement
10 as approved by the licensing agency, with the licensing agency, at any time
11 upon submission of a written waiver of any right conferred upon such
12 licensee under the Kansas administrative procedure act, K.S.A. 77-501 et
13 seq., and amendments thereto, and the Kansas judicial review act, K.S.A.
14 77-601 et seq., and amendments thereto.

15 Sec. 14. (a) As used in this section, the term "person" means any
16 person who is an applicant for a license or who is the licensee and who has
17 any direct or indirect ownership interest of 25% or more in the center,
18 facility or hospital; or who is the owner, in whole or in part, of any
19 mortgage, deed of trust, note or other obligation secured, in whole or in
20 part, by such center, facility or hospital; or any of the property or assets of
21 such center, facility or hospital; or who, if the center, facility, hospital or
22 provider is organized as a corporation, is an officer or director of the
23 corporation, or who, if the facility is organized as a partnership, is a
24 partner.

25 (b) Pursuant to K.S.A. 75-5976, and amendments thereto, the
26 licensing agency may deny a license to any person and may suspend or
27 revoke the license of any person who:

28 (1) Has willfully or repeatedly violated any provision of law or rules
29 and regulations adopted pursuant to article 59 of chapter 75 of the Kansas
30 Statutes Annotated, and amendments thereto;

31 (2) has had a license to operate a center, facility or hospital denied,
32 suspended, revoked or limited, has been censured or has had other
33 disciplinary action taken, or an application for a license denied, by the
34 proper licensing authority of another state, territory, District of Columbia
35 or other country, a certified copy of the record of such action of the other
36 jurisdiction being conclusive evidence thereof;

37 (3) has failed or refused to comply with the medicaid requirements of
38 title XIX of the social security act, or medicaid regulations under chapter
39 IV of title 42 of the code of federal regulations, a certified copy of the
40 record of such action being conclusive evidence thereof;

41 (4) has failed or refused to comply with the medicare requirements of
42 chapter 7 of title 42 of the United States code, or medicare regulations
43 under chapter IV of title 42 of the code of federal regulations, a certified

1 copy of the record of such action being conclusive evidence thereof;
2 (5) has been convicted of a felony;
3 (6) has failed to assure that nutrition, medication or treatment of
4 individuals, including the use of restraints, are in accordance with
5 acceptable medical practices; or
6 (7) has aided, abetted, sanctioned or condoned any violation of law or
7 rules and regulations adopted pursuant to article 59 of chapter 75 of the
8 Kansas Statutes Annotated, and amendments thereto.

9 Sec. 15. (a) Any person operating a center, facility, hospital or a
10 provider of services in this state without a license under this law shall be
11 guilty of a class B misdemeanor. Any person who shall violate any other
12 provision of this act or the requirements of any rules and regulations
13 promulgated hereunder shall be guilty of a class B misdemeanor.

14 (b) Notwithstanding the existence or pursuit of any other remedy, the
15 secretary, as the licensing agency, in the manner provided by the Kansas
16 judicial review act, may maintain an action in the name of the state of
17 Kansas for injunction or other process against any person or agency to
18 restrain or prevent the operation of a center, facility, hospital or provision
19 of services without a license under this act.

20 Sec. 16. (a) If upon re-inspection by the state fire marshal or the
21 marshal's representative or a duly authorized representative of the
22 secretary, it is found that the licensee has not corrected the deficiency or
23 deficiencies specified in the corrective order, the secretary may assess a
24 civil penalty in an amount not to exceed \$500 per day per deficiency
25 against the licensee for each day subsequent to the day following the time
26 allowed for correction of the deficiency as specified in the correction
27 order, the maximum assessment shall not exceed \$2,500. A written notice
28 of assessment shall be served upon the licensee either personally or by
29 certified mail, return receipt requested.

30 (b) Before the assessment of a civil penalty, the secretary for aging
31 and disability services shall consider the following factors in determining
32 the amount of the civil penalty to be assessed: (1) The severity of the
33 violation; (2) the good faith effort exercised by the center, facility, hospital
34 or provider to correct the violation; and (3) the history of compliance of
35 the licensee of the center, facility, hospital or provider with the rules and
36 regulations. If the secretary finds that some or all deficiencies cited in the
37 correction order have also been cited against the center, facility, hospital or
38 provider as a result of any inspection or investigation which occurred
39 within 18 months prior to the inspection or investigation which resulted in
40 such correction order, the secretary may double the civil penalty assessed
41 against the licensee, the maximum not to exceed \$5,000.

42 (c) All civil penalties assessed shall be due and payable within 10
43 days after written notice of assessment is served on the licensee, unless a

1 longer period of time is granted by the secretary. If a civil penalty is not
2 paid within the applicable time period, the secretary may file a certified
3 copy of the notice of assessment with the clerk of the district court in the
4 county where the center, facility, hospital or provider is located. The notice
5 of assessment shall be enforced in the same manner as a judgment of the
6 district court.

7 (d) All civil penalties collected pursuant to the provisions of this act
8 shall be deposited in the state general fund.

9 Sec. 17. If any provision of this act or the application thereof to any
10 person or circumstances is held invalid, the invalidity shall not affect other
11 provisions or applications of the act which can be given effect without the
12 invalid provisions or application and, to this end, the provisions of this act
13 are severable.

14 Sec. 18. K.S.A. 39-1807 and 75-3307c and K.S.A. 2014 Supp. 75-
15 3307b are hereby repealed.

16 Sec. 19. This act shall take effect and be in force from and after its
17 publication in the statute book.