AN ACT concerning public health; relating to the licensure of home
nursing agencies, home health agencies and home services agencies;
2010 Supp. 65-5104, 65-5112 and 65-5117 and repealing the existing
sections.

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

Section 1. K.S.A. 65-5101 is hereby amended to read as follows: 65-
5101. As used in this article 51 of chapter 65 of the Kansas Statutes
Annotated, and amendments thereto, unless the context otherwise
requires:
(a) "Agency" means a home health agency, home nursing agency or
home services agency unless specifically stated otherwise;
(b) "attendant care services" shall have the meaning ascribed to
such term under K.S.A. 65-6201, and amendments thereto;
(c) "council" means the home health and home services advisory
council created by this act;
(d) "department" means the department of health and environment;
(e) "home health agency" means a public or private agency or
organization or a subdivision or subunit of such agency or organization
that provides for a fee one or more home health skilled nursing services
and at least one other home health service at the residence of a patient
but does not include local health departments which are not federally
certified home health agencies, durable medical equipment companies
which provide home health services by use of specialized equipment,
independent living agencies, the department of social and rehabilitation
services and the department of health and environment;
(f) "home health services" means any of the following services
provided at the residence of the patient on a full-time, part-time or
intermittent basis: Nursing, physical therapy, speech therapy, nutritional
or dietetic consulting, occupational therapy, respiratory therapy, home
health aid, attendant care services or medical social service;
(g) "home nursing agency" means an agency that provides services
directly for a fee, or acts as a placement agency, in order to deliver
skilled nursing and home health aide services to persons in their
personal residences. A home nursing agency does not:

(1) Require licensure as a home health agency; or
(2) include an individually licensed nurse acting as a private contractor or a person that provides or procures temporary employment in an adult care home, as defined in K.S.A. 39-923, and amendments thereto;

(h) "home services" or "in-home services" means assistance with activities of daily living, housekeeping, personal laundry and companionship provided to an individual in such individual's personal residence which are intended to enable that individual to remain safely and comfortably in such individual's residence. "Home services" or "in-home services" does not include services that would be required to be performed by an individual licensed under the Kansas nurse practice act;

(i) "home services agency" means an agency that provides services directly, or acts as a placement agency, for the purpose of placing individuals as workers providing home services for consumers in their personal residences. "Home services agency" does not include an agency that limits its business exclusively to providing housecleaning services;

(j) "home health aide" means an employee of a home health agency who is not licensed or professionally registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients, but shall not include employees of a home health agency providing only attendant care services;

(k) "independent living agency" means a public or private agency or organization or a subunit of such agency or organization whose primary function is to provide at least four independent living services, including independent living skills training, advocacy, peer counseling and information and referral as defined by the rehabilitation act of 1973, title VII, part B, and such agency shall be recognized by the secretary of social and rehabilitation services as an independent living agency. Such agencies include independent living centers and programs which meet the following quality assurances:

(1) Accreditation by a nationally recognized accrediting body such as the commission on accreditation of rehabilitation facilities; or
(2) receipt of grants from the state or the federal government and currently meets standards for independent living under the rehabilitation act of 1973, title VII, part B, sections (a) through (k), or comparable standards established by the state; or
(3) compliance with requirements established by the federal government under rehabilitation services administration standards for centers for independent living;

(l) "part-time or intermittent basis" means the providing of home
health services in an interrupted interval sequence on the average of not
to exceed three hours in any twenty-four-hour period;

(m) "patient's residence" means the actual place of residence of
the person receiving home health services, including institutional
residences as well as individual dwelling units;

(n) "placement agency" means any person engaged for gain or
profit in the business of securing or attempting to secure work for hire for
persons seeking work or workers for employers. "Placement agency"
includes a private employment agency and any other entity that places a
worker for private hire by a consumer in that consumer’s residence for
purposes of providing home services. "Placement agency" does not
include a person that provides or procures temporary employment in an
adult care home, as defined in K.S.A. 39-923, and amendments thereto;

(o) "person" means any individual, firm, partnership, corporation,
company, association or joint-stock association, and the legal successor
thereof;

(p) "secretary" means secretary of health and environment; and

(q) "subunit" or "subdivision" means any organizational unit of a
larger organization which can be clearly defined as a separate entity
within the larger structure, which can meet all of the requirements of this
act independent of the larger organization, which can be held accountable
for the care of patients it is serving and which provides to all patients care
and services meeting the standards and requirements of this act; and

"attendant care services" shall have the meaning ascribed to such
term under K.S.A. 65-6201 and amendments thereto.

Sec. 2. K.S.A. 65-5102 is hereby amended to read as follows: 65-
5102.

(a) (1) No home health agency, including medicare and medicaid
providers, shall provide one or more of the home health services specified
in subsection (c) of K.S.A. 65-5101 and amendments thereto, other than
attendant care services, or shall

No person shall open, manage, conduct,
maintain, advertise or hold oneself out to the public as a home nursing
agency unless it is licensed by the department;

(2) no person shall open, manage, conduct, maintain, advertise or
hold oneself out to the public as providing one or more of such home
health services, other than attendant care services, or as a home health
agency unless it is licensed by the department; and in accordance with the
provisions of this act;

(3) no person shall open, manage, conduct, maintain, advertise or
hold oneself out to the public as a home services agency unless it is
licensed by the department.

(b) The department shall adopt rules and regulations as necessary
to protect the public health, safety or welfare in order to implement the
provisions of this section.

Sec. 3. K.S.A. 65-5103 is hereby amended to read as follows: 65-5103. (a) Persons desiring to receive a license to operate a home health agency shall file a written application with the secretary on a form prescribed by the secretary.

(b) The application shall be accompanied by a license fee fixed by rules and regulations of the secretary which establish a sliding scale for such fee based upon the actual or estimated number of home health visits to be performed by a home health agency during a calendar year. The initial license fee may be greater than subsequent annual fees as established by the secretary by rules and regulations.

(a) If an applicant for licensure has not been previously licensed, or if the home health agency, home services agency or home nursing agency is not in operation at the time application is made, the department may issue a provisional license. A provisional license shall be valid for a period of 120 days unless sooner suspended or revoked pursuant to K.S.A. 65-5101 et seq., and amendments thereto. Within 30 days prior to the termination of a provisional license, the department shall inspect the agency and, if the applicant substantially meets the requirements for licensure, it shall issue a license under this section.

(b) (1) The secretary may also issue a provisional license to any licensed agency which does not substantially comply with the provisions of article 51, chapter 65 of the Kansas Statutes Annotated, and amendments thereto, provided that the secretary finds that the public health, safety and welfare will be protected during the period for which such provisional license is issued. The term of such provisional license shall not exceed 120 days.

(2) The secretary shall advise the licensee of the following:
(A) The conditions under which such provisional license is issued;
(B) the manner in which the licensee fails to comply with the provisions of K.S.A. 65-5101 et seq., and amendments thereto; and
(C) the time within which the corrections necessary for the agency to substantially comply with K.S.A. 65-5101 et seq., and amendments thereto, shall be completed.

(3) The secretary may extend the term of a provisional license for an additional 120 days if the secretary finds that the agency has made substantial progress toward correcting the violations and bringing the agency into full compliance with K.S.A. 65-5101 et seq., and amendments thereto.

(c) Each application for a home health agency provisional license shall contain the following information:
(1) Name, address and location of the agency;
(2) organization and governing structure of agency;
(3) number and qualification of staff;
(4) sources of financing of services and agency;
(5) service area and service charges;
(6) patient load;
(7) affiliation agreements with other health care providers; and
(8) such other information as the department may require.

(d) An annual license shall be issued by the department to any person conducting or maintaining a home health agency upon receipt of an application, payment of a licensure fee, compliance with the requirements of K.S.A. 65-5101 et seq., and amendments thereto, and approval of the secretary after a survey inspection.

(e) The department may adopt reasonable rules and regulations necessary to accommodate a person that meets the requirements for licensure to obtain licensure singly or in any combination for the categories authorized under K.S.A. 65-5101 et seq., and amendments thereto. The department shall develop and implement one application to be used even if a combination of licenses authorized under K.S.A. 65-5101 et seq., and amendments thereto, is sought. Applicants for multiple licenses under this system shall pay higher licensure fees to be established by rules and regulations of the secretary.

Sec. 4. K.S.A. 2010 Supp. 65-5104 is hereby amended to read as follows: 65-5104. (a) The secretary shall review the applications and shall issue a license to applicants who have complied with the requirements of this act and have received approval of the secretary after a survey inspection.

(b) A license shall remain in effect unless suspended or revoked, when the following conditions have been met:

(1) An annual report is filed upon such uniform dates and containing such information in such form as the secretary prescribes and is accompanied by the payment of an annual fee;

(2) the home health agency is in compliance with the requirements established pursuant to K.S.A. 65-5101 et seq., and amendments thereto, under the provisions of this act as evidenced by an on-site survey conducted at least once every 36 months subsequent to any previous survey inspection; and

(3) the annual report is accompanied by a statement of any changes in the information previously filed with the secretary pursuant to under K.S.A. 65-5101 et seq., 65-5103 and amendments thereto.

(c) If the annual report is not filed and the annual fee is not paid, such license is automatically canceled. The annual licensure fee and renewal of licensure fee shall be fixed by rules and regulations of the secretary. The license fee for renewal of a license in effect immediately prior to the effective date of this act shall constitute the annual fee until
an annual fee is established by the secretary under this subsection.

(d) Each license shall be issued only for the home health agency listed in the application and annual report. Licenses shall be posted in a conspicuous place in the main offices of the licensed home health agency.

(e) A license shall not be transferable or assignable. When a home health agency is sold or ownership or management is transferred, or the corporate legal organization status is substantially changed, the license of the agency shall be voided and a new license obtained. Application for a new license shall be made to the secretary in writing, at least 90 days prior to the effective date of the sale, transfer or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by the license fee. The secretary may issue a temporary operating permit for the continuation of the operation of the home health agency for a period of not more than 90 days pending the survey inspection and the final disposition of the application. The secretary shall require all licensed home health agencies to submit statistical reports. The content, format and frequency of such reports shall be determined by the secretary.

(f) Notwithstanding the foregoing provisions of this section, the secretary may enter into reciprocal agreements with states bordering Kansas whereby licenses may be granted, without an on-site survey and upon the filing of the prescribed application and payment of the prescribed fee, to home health agencies, home services agencies or home nursing agencies duly licensed in a bordering state, so long as the secretary finds that the requirements for licensure of the state from which the applicant applies are substantially the same as those in Kansas and the applicant is recommended favorably in writing by the licensing agency of the bordering state in which the applicant is licensed. If a bordering state does not license home nursing agencies, home health agencies or home services agencies, or does not have licensing requirements substantially the same as those in Kansas, home nursing agencies, home health agencies or home service agencies located in that state which do business in Kansas shall meet all requirements of K.S.A. 65-5101, and amendments thereto, this act and shall operate in Kansas from offices located in Kansas.

Sec. 5. K.S.A. 65-5105 is hereby amended to read as follows: 65-5105. (a) In addition to the survey inspection required for licensing or for a license to remain in effect, the secretary may make other survey inspections during normal business hours.

(b) Each home health agency shall allow the secretary or the authorized representatives of the secretary to enter upon the premises of the home health agency during normal business hours for the purpose
of conducting the survey inspection. Failure to allow such entry upon its premises shall constitute grounds for denial, suspension or revocation of a license.

Sec. 6. K.S.A. 65-5106 is hereby amended to read as follows: 65-5106. After completion of each survey inspection, a written report of the findings with respect to compliance or noncompliance with the provisions of K.S.A. 65-5101 et seq., and amendments thereto, this act and the standards established hereunder as well as a list of deficiencies found shall be prepared. The list of deficiencies shall specifically state the statute or rule and regulation which the home health agency is alleged to have violated. A copy of the survey inspection report shall be furnished to the applicant, except that a copy of the preliminary survey inspection report signed jointly by a representative of the home health agency and the inspector shall be left with the applicant when an inspection is completed. This preliminary survey inspection report shall constitute the final record of deficiencies assessed against the home health agency during the inspection, all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary survey inspection report. Upon request, every home health agency shall provide to any person a copy of the most recent survey inspection report and related documents, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

Sec. 7. K.S.A. 65-5107 is hereby amended to read as follows: 65-5107. Any person may make a complaint against an home health agency licensed under the provisions of K.S.A. 65-5101, et seq., and amendments thereto, this act by filing a complaint in writing with the secretary stating the details and facts supporting the complaint. If the secretary determines after an investigation that the charges are sufficient to warrant a hearing to determine whether the license of the home health agency should be suspended or revoked, the secretary shall fix a time and place for a hearing and require the home health agency to appear and defend against the complaint in accordance with the provisions of the Kansas administrative procedure act. A copy of the complaint shall be given to the home health agency at the time it is notified of the hearing. The notice of the hearing shall be given at least 20 days prior to the date of the hearing.

Sec. 8. K.S.A. 65-5108 is hereby amended to read as follows: 65-5108. (a) The secretary shall refuse to issue or shall suspend or shall revoke the license of any home health agency for failure to substantially comply with any provision of K.S.A. 65-5101, et seq., and amendments thereto, this act or with any rule and regulation or standard of the
secretary adopted under the provisions of K.S.A. 65-5101, et seq., and amendments thereto, this act or for obtaining the license by means of fraud, misrepresentation or concealment of material facts.

(b) Any home health agency which has been refused a license or which has had its license revoked or suspended by the secretary may request a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 9. K.S.A. 65-5109 is hereby amended to read as follows: 65-5109. (a) The secretary may adopt reasonable rules and regulations necessary to carry out the provisions of K.S.A. 65-5101 et seq., and amendments thereto, this act. The rules and regulations shall be initially adopted within one year of the effective date of this act.

(b) The rules and regulations adopted by the secretary under the provisions of K.S.A. 65-5101 et seq., and amendments thereto, this act shall apply to all home nursing services, home health services and home services covered by K.S.A. 65-5101 et seq., and amendments thereto, this act which are rendered to any patient being served by any home health agency regardless of source of payment for the service, patient's condition or place of residence.

Sec. 10. K.S.A. 65-5111 is hereby amended to read as follows: 65-5111. The secretary may file an action in the district court for the county in which any home health agency alleged to be violating the provisions of K.S.A. 65-5101 et seq., and amendments thereto, this act resides or may be found for an injunction to restrain the home health agency from continuing the violation.

Sec. 11. K.S.A. 2010 Supp. 65-5112 is hereby amended to read as follows: 65-5112. The provisions of this act shall not apply to:

(a) Individuals who personally provide one or more home nursing services, home health services or home services if such persons are not under the direct control and doing work for and employed by any home health agency;

(b) individuals performing attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 65-6201, and amendments thereto, if the individuals performing such services are not under the direct control and doing work for and employed by any home health agency; or

(c) any person or organization conducting any home health agency by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church, religious denomination or sect;
(d) a hospice which is certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq., and amendments thereto, and which provides services only to hospice patients; or

(e) a program for all-inclusive care for the elderly (PACE) which is certified to participate in the medicare or medicaid program under 42 code of federal regulations, chapter IV, subchapter E, section 460.2 et seq., and amendments thereto, and which provides services only to PACE participants.

Sec. 12. K.S.A. 65-5115 is hereby amended to read as follows: 65-5115. (a) The secretary may require, as a condition to continued employment by a home health agency that home health aides, after 90 days of employment, successfully complete an approved course of instruction and take and satisfactorily pass an examination prescribed by the secretary. The secretary may not require as a condition to employment or continued employment by a home health agency that persons providing only attendant care services as an employee of a home health agency complete any course of instruction or pass any examination.

(b) A course of instruction for home health aides may be prepared and administered by any home health agency or by any other qualified person. A course of instruction prepared and administered by a home health agency may be conducted on the premises of the home health agency which prepared and which will administer the course of instruction. The secretary shall not require home health aides to enroll in any particular approved course of instruction, but the secretary shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction.

(c) Prior to July 1, 1991, the secretary may require that home health aides complete the course of instruction and pass the examination established pursuant to subsection (c)(3) of K.S.A. 39-936 and amendments thereto before enrolling in an approved course of instruction authorized by this section. On and after July 1, 1991, the secretary may not require that home health aides complete the course of instruction and pass the examination established pursuant to subsection (c)(3) of K.S.A. 39-936, and amendments thereto, before enrolling in an approved course of instruction authorized by this section. Home health aides may enroll in any approved course of instruction.

(d) The examination required under this section shall be prescribed by the secretary and shall be reasonably related to the duties performed by home health aides. The same examination shall be given by the secretary to all home health aides.

(e) The secretary shall fix, charge and collect an examination fee to cover all or any part of the cost of the examination required under
subsection (a). The examination fee shall be fixed by rules and regulations of the secretary. The examination fee shall be deposited in the state treasury and credited to the state general fund.

Sec. 13. K.S.A. 65-5116 is hereby amended to read as follows: 65-5116. (a) As used in this section "home health agency" means any home health agency licensed in accordance with the provisions of K.S.A. 65-5101 et seq., and amendments thereto, through 65-5115 and K.S.A. 75-5614.

(b) No unlicensed person employed by any home health agency, in the course of employment with any home health agency, shall prefill insulin syringes for any patient served by the home health agency.

(c) Any person who violates the provisions of subsection (b) shall be guilty of a class C misdemeanor.

Sec. 14. K.S.A. 2010 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) No person shall knowingly operate any home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437, and amendments thereto, rape, pursuant to K.S.A. 21-3502, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is
employed by a home health agency on the effective date of this act and
while continuously employed by the same home health agency.

(2) A person operating an home health agency may employ an
applicant who has been convicted of any of the following if five or more
years have elapsed since the applicant satisfied the sentence imposed or
was discharged from probation, a community correctional services
program, parole, postrelease supervision, conditional release or a
suspended sentence; or if five or more years have elapsed since the
applicant has been finally discharged from the custody of the
commissioner of juvenile justice or from probation or has been
adjudicated a juvenile offender, whichever time is longer: A felony
conviction for a crime which is described in: (A) Article 34 of chapter 21
of the Kansas Statutes Annotated, and amendments thereto, except those
crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of
the Kansas Statutes Annotated, and amendments thereto, except those
crimes listed in subsection (a)(1) and K.S.A. 21-3605, and amendments
thereto; (C) K.S.A. 21-3701, and amendments thereto; (D) an attempt to
commit any of the crimes listed in this subsection (a)(2) pursuant to
K.S.A. 21-3301, and amendments thereto; (E) a conspiracy to commit
any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302,
and amendments thereto; (F) criminal solicitation of any of the crimes
listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments
thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate an home health agency if such person
has been found to be a person in need of a guardian or a conservator, or
both, as provided in K.S.A. 59-3050 through 59-3095, and amendments
thereto. The provisions of this subsection shall not apply to a minor found
to be in need of a guardian or conservator for reasons other than
impairment.

(c) The secretary of health and environment shall have access to any
criminal history record information in the possession of the Kansas
bureau of investigation regarding any criminal history information,
convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and
amendments thereto, adjudications of a juvenile offender which if
committed by an adult would have been a felony conviction, and
adjudications of a juvenile offender for an offense described in K.S.A.
21-3437, 21-3517 and 21-3701, and amendments thereto, concerning
persons working for an home health agency. The secretary shall have
access to these records for the purpose of determining whether or not the
home health agency meets the requirements of this section. The Kansas
bureau of investigation may charge to the department of health and
environment a reasonable fee for providing criminal history record
information under this subsection.
(d) For the purpose of complying with this section, the operator of an home health agency shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of an home health agency shall receive from any placement agency, which provides employees who work for the home health agency, written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates an home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of an home health agency or a placement agency, the operator or employees of a placement agency, which provides employees to work for an home health agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or placement agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed $10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and
amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2010 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of $100.

(g) No person who works for an home health agency and who is currently licensed or registered by an agency of this state to provide
professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist an home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same home health agency since July 1, 1992, shall be subject to the requirements of this section while employed by such home health agency.

(k) The operator of an home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of an home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of an home health agency where the applicant is currently applying.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 15. (a) Before January 1, 2012, the department shall adopt standards for the licensure and operation of home nursing agencies operated in this state. After consideration and recommendations by the home health and home services advisory council, the department shall adopt such rules and regulations as are necessary for the proper regulation of home nursing agencies. Requirements for licensure as a home nursing agency shall include the following:

(1) Compliance with the requirements of K.S.A. 65-5101 et seq., and amendments thereto;

(2) notification, in a form and manner established by rules and regulations adopted by the secretary to home nursing agency workers and
consumers as to the party or parties responsible under state and federal
laws for payment of employment taxes, social security taxes, and
workers' compensation, liability, the day-to-day supervision of workers,
and the hiring, firing, and discipline of workers with the placement
arrangement for home nursing services;
(3) compliance with any rules or regulations adopted by the
secretary, with regards to:
   (A) Reporting by the licensee of any known or suspected incidences
   of abuse, neglect, or exploitation of an eligible adult, as defined in K.S.A.
   39-923 et seq., and amendments thereto, by a home nursing services
   worker employed by or placed by the licensee; or
   (B) reports to a law enforcement agency in connection with any
   other individual protected under the laws of the state of Kansas;
(4) compliance with rules and regulations as adopted by the
secretary, addressing the public health, safety, and welfare of persons
receiving home nursing services.
(b) The secretary may establish licensure fees for home services
agencies and home nursing agencies through the adoption of rules and
regulations. Notwithstanding any other provision of this section, the
secretary may not charge any fee to a certified local health department in
connection with the licensure of a home services or home nursing agency.
(c) Before January 1, 2012, the department shall adopt standards for
the licensure and operation of home services agencies operated in this
state. The structure of the standards shall be based on the concept of
home services and its focus on assistance with activities of daily living,
housekeeping, personal laundry, and companionship being provided to a
person intended to enable that person to remain safely and comfortably
within such person's own personal residence. As home services do not
include services that would be required to be performed by an individual
licensed under the Kansas nurse practice act, the standards shall be
developed from a similar concept. After consideration and
recommendations by the home health and home services advisory
committee, the department shall adopt such rules and regulations as are
necessary for the proper regulation of home services agencies.
Requirements for licensure as a home services agency shall include the
following:
   (1) Compliance with the requirements of K.S.A. 65-5101 et seq.,
and amendments thereto;
   (2) notification, in a form and manner established by rules and
regulations adopted by the secretary to home services workers and
consumers as to the party or parties responsible under state and federal
laws for payment of employment taxes, social security taxes, and
workers' compensation, liability, the day-to-day supervision of workers,
and the hiring, firing, and discipline of workers with the placement
arrangement for home services;
(3) compliance with any rules or regulations adopted by the
secretary, with regards to:
(A) Reporting by the licensee of any known or suspected incidences
of abuse, neglect, or exploitation of an eligible adult, as defined in K.S.A.
39-923 et seq., and amendments thereto, by a home services worker
employed by or placed by the licensee; or
(B) reports to a law enforcement agency in connection with any
other individual protected under the laws of the state of Kansas;
(4) compliance with rules and regulations as adopted by the
secretary, addressing the public health, safety, and welfare of persons
receiving home services.

New Sec. 16. (a) The secretary shall appoint a home health and
home services advisory council composed of 15 persons to advise and
consult with the secretary in the administration of this act:
(1) Five of the appointed members shall represent the home health
agency profession. Of these five members, one shall represent voluntary
home health agencies, one shall represent for-profit home health
agencies, one shall represent private not-for-profit home health agencies,
one shall represent institution-based home health agencies and one shall
represent home health agencies operated by local health departments;
(2) four of the appointed members shall represent the home services
agency profession;
(3) four of the appointed members shall represent the general public
in the following categories:
(A) One individual who is a consumer of home health services or a
family member of a consumer of home health services;
(B) one individual who is a consumer of home services or a family
member of a consumer of home services;
(C) one individual who is a home services worker; and
(D) one individual who is a representative of an organization that
advocates for consumers;
(4) one member shall be a person licensed to practice medicine and
surgery under the Kansas healing arts act; and
(5) one member shall be an registered professional nurse licensed
under the Kansas nurse practice act, with home health agency experience.
The recommendations of professional, home health industry and home
services industry organizations may be considered in selecting individuals
for appointment to the home health and home services advisory council.

(b) (1) Each member shall hold office for a term of three years,
except that any member appointed to fill a vacancy occurring prior to the
expiration of the term for which his predecessor was appointed shall be

appointed for the remainder of such term and the terms of office of the
members first taking office shall expire, as designated at the time of
appointment, one at the end of the first year, one at the end of the second
year, and three at the end of the third year.

(2) The term of office of each of the original appointees shall
commence on January 1, 2012.

(c) The council shall provide input and recommendations to the
department on the development of rules for the licensure of home
services agencies and home nursing agencies operating in this state. On
or before July 1, 2012, the council shall issue an interim report to the
appropriate committee of the house of representatives, on the status of
development and implementation of the rules for home services agency
and home nursing agency licensure.

(d) The council shall meet at least once each year at a time and place
of its choosing and at such other times as may be necessary on the
chairperson's call or on the request of a majority of the council's
members.

(e) A majority of the council constitutes a quorum. No action may be
taken by the council except by affirmative vote of the majority of the
members present and voting.

Supp. 65-5104, 65-5112 and 65-5117 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its
publication in the statute book.