

Substitute for SENATE BILL No. 354

AN ACT concerning alcohol and drug addiction treatment; relating to regulations of treatment and treatment facilities therefor; relating to community alcoholism and intoxication program fund; amending K.S.A. 59-29b46, 65-4001, 65-4006, 65-4007, 65-4011, 65-4012, 65-4013, 65-4014, 65-4023 and 65-4024 and K.S.A. 2006 Supp. 74-7336 and repealing the existing sections; also repealing K.S.A. 65-4002, 65-4020, 65-4022, 65-4056, 65-4601, 65-4602, 65-4603, 65-4604, 65-4605, 65-4606, 65-4607, 65-4608, 65-4609, 65-4610 and 65-4611.

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

Section 1. K.S.A. 65-4001 is hereby amended to read as follows: 65-4001. It shall be the purpose of this act to provide for the development, establishment and enforcement of standards:

(1) For the care and treatment of individuals in public and private treatment facilities as defined herein;

(2) for the construction, maintenance and operation of public and private treatment facilities as defined herein, which will promote safe and adequate treatment of such individuals in alcohol or other drug treatment facilities.

New Sec. 2. As used in this act:

(a) "Act" means the alcohol or other drug addiction treatment act;

(b) "Alcohol or other drug addiction" means a pattern of substance use, leading to significant impairment or distress, manifested by three or more of the following occurring at any time in the same 12-month period:

(1) Tolerance, defined as: (A) A need for markedly increased amounts of the substance to achieve intoxication or desired effect or (B) a markedly diminished effect with continued use of the same amount of substance;

(2) withdrawal, as manifested by either of the following: (A) The characteristic withdrawal syndrome for the substance or (B) the same or a closely related substance is taken to relieve or avoid withdrawal symptoms;

(3) the substance is often taken in larger amounts or over a longer period than was intended;

(4) there is a persistent desire or unsuccessful efforts to cut down or control substance use;

(5) a great deal of time is spent in activities necessary to obtain the substance, use the substance or recover from its effects;

(6) important social, occupational or recreational activities are given up or reduced because of substance use;

(7) the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.

(c) "Care or treatment" means such necessary services as are in the best interests of the physical and mental health of the patient.

(d) "Committee" means the Kansas citizens committee on alcohol and other drug abuse.

(e) "Counselor" means an individual whose education, experience and training has been evaluated and approved by the department of social and rehabilitation services to provide the scope of practice afforded to an alcohol and drug credentialed counselor or counselor assistant working in a licensed, certified alcohol and drug treatment program.

(f) "Department" means the department of social and rehabilitation services.

(g) "Designated state funded assessment center" or "assessment center" means a treatment facility designated by the secretary.

(h) "Discharge" shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(i) "Government unit" means any county, municipality or other political subdivision of the state; or any department, division, board or other agency of any of the foregoing.

(j) "Head of the treatment facility" shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(k) "Incapacitated by alcohol" shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(l) "Intoxicated individual" means an individual who is under the influence of alcohol or drugs or both.

(m) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(n) "Patient" shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(o) “Private treatment facility” shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(p) “Public treatment facility” shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(q) “Treatment” shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(r) “Treatment facility” shall have the meaning ascribed to it in K.S.A. 59-29b46 and amendments thereto.

(s) “Secretary” means the secretary of social and rehabilitation services.

Sec. 3. K.S.A. 65-4006 is hereby amended to read as follows: 65-4006. The secretary may:

(1) Plan for, establish, amend, and revise standards for treatment programs as necessary or desirable;

(2) make contracts necessary or incidental to the performance of ~~its~~ *the secretary’s* duties and the execution of ~~its~~ *the secretary’s* powers;

(3) solicit and accept for use any gift of money or property, real or personal, made by will or otherwise, and any grant of money, services; or property from the federal government, the state; or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(4) administer or supervise the administration of the provisions relating to ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction* of any state plan submitted for federal funding pursuant to federal health, welfare; or treatment legislation;

(5) coordinate its activities and cooperate with ~~alcoholism~~ *treatment facilities for alcohol or other drug addiction* programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local; or private agencies in this and other states for the treatment of ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction* and for the common advancement of ~~alcoholism~~ *programs treatment facilities*;

(6) keep records, gather relevant statistics and make and disseminate analysis of same;

(7) do other acts and things necessary to execute the authority expressly granted to ~~it~~ *the secretary*.

Sec. 4. K.S.A. 65-4007 is hereby amended to read as follows: 65-4007. (a) The duties of the secretary shall be to:

(1) Develop, encourage and foster statewide, regional and local plans and programs for the ~~identification and prevention of alcohol abuse, alcoholism and treatment of alcoholics and intoxicated persons~~ *and treatment of persons with alcohol or other drug addiction* in cooperation with public and private agencies, organizations and individuals and provide technical assistance and consultation services for these purposes;

(2) coordinate the efforts and enlist the assistance of all interested public and private agencies, organizations and individuals in ~~identification and the prevention of alcohol abuse, alcoholism and treatment of alcoholics and intoxicated persons~~ *and treatment of persons with alcohol and other drug addiction*;

(3) cooperate with the secretary of corrections and the Kansas adult authority in establishing and conducting programs to provide treatment for ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction* in or on parole from penal institutions;

(4) cooperate with the department of education, boards of education, schools, police departments, courts and other public and private agencies, organizations and individuals in establishing programs for the ~~identification and prevention of alcohol abuse, alcoholism and treatment of alcoholics and intoxicated persons~~ *and treatment of persons with alcohol and other drug addiction* and preparing curriculum materials thereon for use at all levels of education;

(5) prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of ~~alcohol and alcoholism~~ *alcohol or other drug addiction*;

(6) develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction*, which program

shall include the dissemination of information concerning the nature and effects of alcohol ~~and alcoholism or other drugs~~;

(7) organize and foster training programs for all persons engaged in treatment of ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction*;

(8) sponsor and encourage research into the causes and nature of ~~alcohol abuse, alcoholism and treatment of alcoholics and intoxicated persons~~ *addiction and the treatment of persons with alcohol or other drug addiction* and serve as a clearing house for information relating to ~~alcohol abuse and alcoholism~~ *alcohol or other drug addiction*;

(9) specify uniform methods for keeping statistical information by public and private agencies, organizations and individuals and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission and frequency, duration and nature of treatment;

(10) advise the governor in the preparation of a comprehensive plan for treatment of ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction* for inclusion in the state's comprehensive health plan;

(11) review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation and advise the governor on provisions to be included relating to ~~alcohol abuse, alcoholism and intoxicated persons~~ *addiction and treatment of persons with alcohol or other drug addiction*;

(12) assist in the development of, and cooperate with, alcohol *and drug addiction* education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) utilize the support and assistance of interested persons in the community, ~~particularly recovered alcoholics~~, to encourage ~~alcoholics~~ persons *in alcohol or other drug addiction* voluntarily to undergo treatment;

(14) cooperate with the superintendent of the Kansas highway patrol and secretary of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while ~~intoxicated~~ *under the influence of alcohol or other drugs*;

(15) encourage medical care facilities to admit, without discrimination, ~~alcoholics and intoxicated~~ persons *under the influence of alcohol or other drugs* and to provide them with adequate and appropriate treatment within their capabilities;

(16) encourage all health and disability insurance programs to include ~~alcoholism~~ *addiction to alcohol or other drugs* as a covered illness; and

(17) submit to the governor and the legislature an annual report covering the activities of the Kansas citizens' committee on alcohol and other drug abuse.

(b) The secretary is ~~hereby charged with the administration of the alcoholism program of the state agency responsible for the prevention and treatment of alcohol or other drug addiction for the state of Kansas~~ and may accept and disburse any moneys available from the federal government for such purpose, in accordance with appropriation acts of this state.

Sec. 5. K.S.A. 65-4011 is hereby amended to read as follows: 65-4011. (a) The secretary shall establish a comprehensive and coordinated ~~program for the plan for the prevention and~~ treatment of ~~alcoholics and intoxicated~~ persons *with alcohol or other drug addiction*. The secretary shall divide the state into appropriate regions for the conduct of the ~~program plan~~ and establish standards for the development of the ~~program plan~~ on the regional level. In establishing the regions, consideration shall be given to any existing regional organization being utilized by other state agencies engaged in the delivery of health care.

(b) The ~~program plan~~ of the secretary shall include:

(1) Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(2) inpatient treatment;

(3) intermediate treatment;

(4) outpatient and ~~follow-up~~ *after care* treatment; and

(5) prevention education and training.

(c) ~~The secretary shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under K.S.A. 65-4025 to 65-4049, inclusive, and any amendments thereto. No person shall~~

~~be incarcerated in a correctional institution for purposes of such treatment.~~

~~—(d) The secretary shall prepare, publish and distribute annually a list of all public and private treatment facilities.~~

Sec. 6. K.S.A. 65-4012 is hereby amended to read as follows: 65-4012. (a) No person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, ~~conduct or maintain~~ *a or operate a public or private treatment facility* in this state without a license under this law.

(b) *Violation of this section is a class C misdemeanor.*

Sec. 7. K.S.A. 65-4013 is hereby amended to read as follows: 65-4013. (a) An application for a license to establish, conduct, manage or operate a treatment facility shall be made to the secretary upon forms provided by the secretary and shall contain such information as the secretary may require, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as are lawfully adopted ~~under pursuant to this act and amendments thereto. In addition, the secretary may require that all. All applications must be accompanied by an application fee of not to exceed \$100 as prescribed by such rules and regulations of the secretary fixed by the secretary by rules and regulations. The application fee in effect under this section on the day preceding the effective date of this act shall continue in effect until the secretary fixes a different application fee by rules and regulations.~~

(b) The secretary of health and environment may adopt ~~reasonable~~ rules and regulations with regard to the health standards which must be maintained by treatment facilities and may enforce such rules and regulations in accordance with the authority granted the secretary of health and environment under K.S.A. 65-425 et seq. and amendments thereto. If the rules and regulations of the secretary of health and environment establish such standards, an application under this section shall be accompanied by certification from the secretary of health and environment that the applicant has met the requirements established by such rules and regulations.

Sec. 8. K.S.A. 65-4014 is hereby amended to read as follows: 65-4014. (a) ~~Upon receipt of an application for license, if the secretary approves the applicant as meeting the minimum requirements established by or pursuant to this act for a treatment facility, The secretary shall issue a license if the applicant meets the minimum requirements established by or pursuant to this act for a treatment facility. A license, unless suspended or revoked, shall be renewable as set forth in subsection (b) upon the filing of an annual report upon uniform dates and containing information in the form as the secretary requires by rules and regulations. Such rules and regulations may require that all applications for renewal of a license be accompanied by a fee, in an amount prescribed by such rules and regulations, not to exceed \$100. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the secretary. Licenses shall be posted in a conspicuous place on the licensed premises.~~

(b) The secretary may ~~issue~~ *renew* a license ~~renewable~~ at the end of one, two or three years depending upon a facility's level of compliance with the ~~standards and~~ rules and regulations adopted by the secretary pursuant to K.S.A. 65-4016 and amendments thereto.

New Sec. 9. The secretary shall remit all moneys received from fees for licensing alcohol or other drug treatment facilities to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the other state fees fund of the department of social and rehabilitation services.

Sec. 10. K.S.A. 65-4023 is hereby amended to read as follows: 65-4023. (a) ~~It shall be unlawful for any person, corporation or governmental unit to establish, conduct, manage or operate a treatment facility for alcoholics without first obtaining a license therefor. Any violation of this subsection shall constitute a class C misdemeanor.~~

~~—(b) Notwithstanding the existence or pursuit of any other remedy,~~

the secretary may maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, ~~conduct, management~~ or operation of a treatment facility without a license under this law.

New Sec. 11. (a) The secretary, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which the secretary finds that there has been a substantial failure to comply with the requirements established under this act. Such notice shall fix a date not less than 30 days from the date of such notice, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing.

(b) Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 12. K.S.A. 65-4024 is hereby amended to read as follows: 65-4024. The secretary shall adopt rules and regulations for acceptance of persons into ~~the treatment program for the purpose of early and effective treatment of alcoholics and intoxicated persons~~ *a licensed treatment facility*. In adopting rules and regulations the secretary shall be guided by the following standards:

(1) If possible a ~~patient~~ *patient person* shall be treated on a voluntary rather than an involuntary basis.

(2) A ~~patient person shall be initially assigned or transferred to out-patient or intermediate treatment~~ *be assessed to determine the appropriateness of the treatment and shall receive treatment in the least restrictive treatment environment possible.*

(3) A person shall not be denied treatment solely because such person has withdrawn from treatment against medical advice on a prior occasion or because such person has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each ~~patient~~ *patient person*.

(5) Provisions shall be made for a continuum of coordinated treatment services, so ~~that~~ a person who leaves a facility or a form of treatment will have available other appropriate treatment.

New Sec. 13. K.S.A. 65-4001, 65-4006, 65-4007, 65-4011 through 65-4019, 65-4023, 65-4024, and sections 2, 9, 11, 13 and 14, and amendments thereto, shall be known and may be cited as the alcohol or other drug addiction treatment act.

New Sec. 14. (a) The rules and regulations adopted by the secretary under K.S.A. 65-4001 through 65-4024, and amendments thereto, or K.S.A. 65-4601 through 65-4611, and amendments thereto, and in effect on the day preceding the effective date of this act are hereby specifically continued in full force and effect on the effective date of this act as duly adopted rules and regulations subject to amendment and revocation under the provisions of this act.

(b) Each license issued by the secretary under K.S.A. 65-4603, prior to that statute's repeal on the effective date of this act, shall continue to be effective as a license for the treatment facility for which it was issued and for the license period for which it was issued, shall be subject to being suspended or revoked in accordance with the provisions of this act, and may be renewed in accordance with the provisions of this act.

(c) For the period commencing on July 1, 1998, and ending on the effective date of this act, any action taken by the secretary of the department of social and rehabilitation services in the performance of any duty assigned to the secretary by K.S.A. 65-4001, 65-4002, 65-4006, 65-4007, 65-4011 through 65-4020 and 65-4022 through 65-4024, and amendments thereto, shall be deemed to have been authorized and done in compliance with the provisions of such statutes in existence at the time of the performance of such duty and the performance of such duty is hereby validated.

Sec. 15. K.S.A. 59-29b46 is hereby amended to read as follows: 59-29b46. When used in the care and treatment act for persons with an alcohol or substance abuse problem:

(a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A.

59-29b50 and amendments thereto or by an order of a court issued pursuant to K.S.A. 59-29b73 and amendments thereto.

(b) “Head of a treatment facility” means the administrative director of a treatment facility or such person’s designee.

(c) “Law enforcement officer” shall have the meaning ascribed to it in K.S.A. 22-2202 and amendments thereto.

(d) “Other facility for care or treatment” means any mental health clinic, medical care facility, nursing home, the detox units at either Osawatomie state hospital or Larned state hospital, any physician or any other institution or individual authorized or licensed by law to give care or treatment to any person.

(e) “Patient” means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) “Voluntary patient” means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 59-29b49 and amendments thereto.

(2) “Proposed patient” means a person for whom a petition pursuant to K.S.A. 59-29b52 or 59-29b57 and amendments thereto has been filed.

(3) “Involuntary patient” means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 59-29b54 and amendments thereto.

(f) “Person with an alcohol or substance abuse problem” means a person who: (1) Lacks self-control as to the use of alcoholic beverages or any substance as defined in subsection (k); or

(2) uses alcoholic beverages or any substance as defined in subsection (k) to the extent that the person’s health may be substantially impaired or endangered without treatment.

(g) (1) “Person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment” means a person with an alcohol or substance abuse problem, as defined in subsection (f), who also is incapacitated by alcohol or any substance and is likely to cause harm to self or others.

(2) “Incapacitated by alcohol or any substance” means that the person, as the result of the use of alcohol or any substance as defined in subsection (k), has impaired judgment resulting in the person: (A) Being incapable of realizing and making a rational decision with respect to the need for treatment; or

(B) lacking sufficient understanding or capability to make or communicate responsible decisions concerning either the person’s well-being or estate.

(3) “Likely to cause harm to self or others” means that the person, by reason of the person’s use of alcohol or any substance: (A) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another’s property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state’s interest in protecting the property from such harm outweighs the person’s interest in personal liberty; or

(B) is substantially unable, except for reason of indigency, to provide for any of the person’s basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person’s ability to function on the person’s own.

(h) “Physician” means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) “Psychologist” means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(j) “State certified alcohol and drug abuse counselor” means a person approved by the secretary of social and rehabilitation services to perform assessments using the American Society of Addiction Medicine criteria and employed at a state funded and designated assessment center.

(k) “Substance” means: (1) The same as the term “controlled substance” as defined in K.S.A. 65-4101 and amendments thereto; or

(2) fluorocarbons, toluene or volatile hydrocarbon solvents.

(l) “Treatment” means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to persons with an alcohol or substance abuse problem.

(m) (1) “Treatment facility” means a *treatment program*, public or private treatment facility, or any facility of the United States government available to treat a person for an alcohol or other substance abuse problem, but such term shall not include a licensed medical care facility, a licensed adult care home, a facility licensed under K.S.A. 75-3307b and amendments thereto, a community-based alcohol and drug safety action program certified under K.S.A. 8-1008 and amendments thereto, and performing only those functions for which the program is certified to perform under K.S.A. 8-1008 and amendments thereto, or a ~~psychologist~~ *professional licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders at the independent level* or a physician, who may treat in the usual course of the ~~psychologist’s behavioral sciences regulatory board licensee’s~~ or physician’s professional practice individuals incapacitated by alcohol or other substances, but who are not ~~exclusively~~ *primarily* engaged in the usual course of the individual’s professional practice in treating such individuals, or any state institution, even if detoxification services may have been obtained at such institution.

(2) “Private treatment facility” means a private agency providing facilities for the care and treatment or lodging of persons with either an alcohol or other substance abuse problem and meeting the standards prescribed in either K.S.A. 65-4013 or 65-4603 and amendments thereto, and licensed under either K.S.A. 65-4014 or 65-4607 and amendments thereto.

(3) “Public treatment facility” means a treatment facility owned and operated by any political subdivision of the state of Kansas and licensed under either K.S.A. 65-4014 or 65-4603 and amendments thereto, as an appropriate place for the care and treatment or lodging of persons with an alcohol or other substance abuse problem.

(n) The terms defined in K.S.A. 59-3051 and amendments thereto shall have the meanings provided by that section.

Sec. 16. K.S.A. 2006 Supp. 74-7336 is hereby amended to read as follows: 74-7336. (a) Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly, the state treasurer shall credit 11.99% to the crime victims compensation fund, 2.45% to the crime victims assistance fund, ~~2.01%~~ 3.01% to the community alcoholism and intoxication programs fund, 2.01% to the department of corrections alcohol and drug abuse treatment fund and 0.17% to the boating fee fund. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

Sec. 17. K.S.A. 59-29b46, 65-4001, 65-4002, 65-4006, 65-4007, 65-4011, 65-4012, 65-4013, 65-4014, 65-4020, 65-4022, 65-4023, 65-4024, 65-4056, 65-4601, 65-4602, 65-4604, 65-4605, 65-4606, 65-4607, 65-4608, 65-4609, 65-4610 and 65-4611 and K.S.A. 2006 Supp. 74-7336 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.