

## HOUSE BILL No. 2671

By Committee on Appropriations

1-24

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9 AN ACT concerning health care; relating to nurse aides, medication  
10 aides and home health aides; transferring certain powers and duties to  
11 the board of nursing; background checks; amending K.S.A. 65-1,120,  
12 65-1,121 and 65-5115 and K.S.A. 2007 Supp. 39-936, 39-970, 65-1124,  
13 65-5117 and 74-1106 and repealing the existing sections.  
14

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

16 New Section 1. (a) The licensing agency of an adult care home shall  
17 require unlicensed employees of such adult care home, employed on and  
18 after the effective date of this act who provide direct individual care to  
19 residents, do not administer medications to residents and have not com-  
20 pleted a course of education and training relating to resident care and  
21 treatment approved by the board of nursing or are not participating in  
22 such a course on the effective date of this act to complete successfully 40  
23 hours of training in basic resident care skills. Any unlicensed person who  
24 has not completed 40 hours of training relating to resident care and treat-  
25 ment approved by the board of nursing shall not provide direct individual  
26 care to residents. The 40 hours of training shall be supervised by a reg-  
27 istered professional nurse and the content and administration thereof  
28 shall comply with rules and regulations adopted by the board of nursing.  
29 The 40 hours of training may be prepared and administered by an adult  
30 care home or by any other qualified person and may be conducted on the  
31 premises of the adult care home. The 40 hours of training required in  
32 this section shall be a part of any course of education and training required  
33 by the board of nursing under subsection (b).

34 (b) The licensing agency of an adult care home may require unli-  
35 censed employees of such adult care home who provide direct individual  
36 care to residents and do not administer medications to residents, after 90  
37 days of employment, to successfully complete an approved course of in-  
38 struction and an examination relating to resident care and treatment as a  
39 condition to continued employment by such adult care home. A course  
40 of instruction may be prepared and administered by any adult care home  
41 or by any other qualified person. A course of instruction prepared and  
42 administered by an adult care home may be conducted on the premises  
43 of the adult care home which prepared and which will administer the

1 course of instruction. The licensing agency shall not require unlicensed  
2 employees of an adult care home who provide direct individual care to  
3 residents and do not administer medications to residents to enroll in any  
4 particular approved course of instruction as a condition to the taking of  
5 an examination, but the board of nursing by rules and regulations shall  
6 establish the criteria for the preparation and administration of courses of  
7 instruction and shall approve or disapprove courses of instruction. Unli-  
8 censed employees of adult care homes who provide direct individual care  
9 to residents and do not administer medications to residents may enroll in  
10 any approved course of instruction and upon successful completion of the  
11 approved course of instruction shall be eligible to take and pass an ex-  
12 amination prescribed by rules and regulations of the board of nursing.  
13 The examination prescribed by the board of nursing shall be reasonably  
14 related to the duties performed by unlicensed employees of adult care  
15 homes who provide direct individual care to residents and do not admin-  
16 ister medications to residents and shall be the same examination given by  
17 the board of nursing to all unlicensed employees of adult care homes who  
18 provide direct individual care to residents and do not administer  
19 medications.

20 (c) The board of nursing shall fix, charge and collect a fee to cover  
21 all or any part of the costs of the board under this section. The fee shall  
22 be fixed by rules and regulations of the board of nursing but shall not  
23 exceed \$30 for renewal, endorsement or reinstatement of a license or  
24 certificate for nurse aides and medication aides. All fees collected under  
25 this section shall be remitted to the state treasurer in accordance with  
26 the provisions of K.S.A. 74-1108 and 74-1109, and amendments thereto.

27 (d) The board of nursing shall establish a state registry containing  
28 information about unlicensed employees of adult care homes who provide  
29 direct individual care to residents and who do not administer medications  
30 in compliance with the requirements pursuant to 42 U.S.C. 1395i-3, as  
31 amended, and trained and certified medication aides pursuant to K.S.A.  
32 65-1,121, and amendments thereto. Such registry shall perform the func-  
33 tion of keeping track of the continuing education credits of such aides,  
34 ensuring the valid certification of such practicing aides and maintaining  
35 background check information concerning such aides.

36 (e) No adult care home shall use an individual as an unlicensed em-  
37 ployee of the adult care home who provides direct individual care to  
38 residents and does not administer medications unless the facility has in-  
39 quired of the board of nursing as to information contained in the registry  
40 concerning the individual.

41 (f) Beginning July 1, 1993, the adult care home must require any  
42 unlicensed employee of the adult care home who provides direct individ-  
43 ual care to residents, does not administer medications and since passing

1 the examination required under subsection (b) of this section has had a  
2 continuous period of 24 consecutive months during which the unlicensed  
3 employee provided no direct individual care to residents to complete an  
4 approved refresher course. The board of nursing by rules and regulations  
5 shall establish the criteria for the preparation and administration of re-  
6 fresher courses and shall approve or disapprove courses.

7 (g) Any person who has been employed as a nurse aide or medication  
8 aide employee of an adult care home in another state may be so employed  
9 in this state without an examination if the board of nursing determines  
10 that such other state requires training or examination, or both, for such  
11 employees at least equal to that required by this state.

12 (h) An adult care home licensed for the provision of services to the  
13 mentally retarded which has been granted an exception by the secretary  
14 of health and environment upon a finding by the licensing agency that an  
15 appropriate training program for unlicensed employees is in place for  
16 such adult care home shall be excepted from subsections (a) and (b) of  
17 this section.

18 New Sec. 2. All powers, duties and functions of the secretary of  
19 health and environment concerning the instruction, examination and cer-  
20 tification of nurse aides and medication aides are hereby transferred to  
21 and conferred upon the board of nursing.

22 New Sec. 3. (a) Except as otherwise provided by this act, the board  
23 of nursing shall be the successor in every way to the duties and functions  
24 of the secretary of health and environment concerning the instruction,  
25 examination and certification of nurse aides and medication aides in which  
26 the same were vested prior to the effective date of this act. Every act  
27 performed in the exercise of such powers, duties and functions by or  
28 under the authority of the board of nursing shall have the same force and  
29 effect as if performed by the secretary of health and environment in which  
30 such powers, duties and functions were vested prior to the effective date  
31 of this act.

32 (b) Except as otherwise provided by this act, whenever the secretary  
33 of health and environment, or words of like effect concerning the instruc-  
34 tion, examination and certification of nurse aides and medication aides is  
35 referred to or designated by a statute, contract or other document, such  
36 reference or designation shall be deemed to apply to the board of nursing.

37 (c) All rules and regulations of the department of health and envi-  
38 ronment concerning the instruction, examination and certification of  
39 nurse aides and medication aides on the effective date of this act shall  
40 continue to be effective and shall be deemed to be duly adopted rules  
41 and regulations of the board of nursing until revised, amended, revoked  
42 or nullified by law.

43 New Sec. 4. (a) When any conflict arises as to the disposition of any

1 power, duty or function or the unexpended balance of any appropriation  
2 concerning the instruction, examination and certification of nurse aides  
3 and medication aides as a result of any abolition, transfer, attachment or  
4 change made by or under authority of this act, such conflict shall be  
5 resolved by the governor, whose decision shall be final.

6 (b) The board of nursing shall have legal custody of all records per-  
7 taining to the instruction, examination and certification of nurse aides,  
8 the instruction, examination and certification of medication aides and the  
9 nurse aide and medication aide registry.

10 Sec. 5. K.S.A. 2007 Supp. 39-936 is hereby amended to read as fol-  
11 lows: 39-936. (a) The presence of each resident in an adult care home  
12 shall be covered by a statement provided at the time of admission, or  
13 prior thereto, setting forth the general responsibilities and services and  
14 daily or monthly charges for such responsibilities and services. Each res-  
15 ident shall be provided with a copy of such statement, with a copy going  
16 to any individual responsible for payment of such services and the adult  
17 care home shall keep a copy of such statement in the resident's file. No  
18 such statement shall be construed to relieve any adult care home of any  
19 requirement or obligation imposed upon it by law or by any requirement,  
20 standard or rule and regulation adopted pursuant thereto.

21 (b) A qualified person or persons shall be in attendance at all times  
22 upon residents receiving accommodation, board, care, training or treat-  
23 ment in adult care homes. The licensing agency may establish necessary  
24 standards and rules and regulations prescribing the number, qualifica-  
25 tions, training, standards of conduct and integrity for such qualified per-  
26 son or persons attendant upon the residents.

27 ~~(c) (1) The licensing agency shall require unlicensed employees of~~  
28 ~~an adult care home, except an adult care home licensed for the provision~~  
29 ~~of services to the mentally retarded which has been granted an exception~~  
30 ~~by the secretary of aging upon a finding by the licensing agency that an~~  
31 ~~appropriate training program for unlicensed employees is in place for~~  
32 ~~such adult care home, employed on and after the effective date of this~~  
33 ~~act who provide direct, individual care to residents and who do not ad-~~  
34 ~~minister medications to residents and who have not completed a course~~  
35 ~~of education and training relating to resident care and treatment approved~~  
36 ~~by the secretary of health and environment or are not participating in~~  
37 ~~such a course on the effective date of this act to complete successfully 40~~  
38 ~~hours of training in basic resident care skills. Any unlicensed person who~~  
39 ~~has not completed 40 hours of training relating to resident care and treat-~~  
40 ~~ment approved by the secretary of health and environment shall not pro-~~  
41 ~~vide direct, individual care to residents. The 40 hours of training shall be~~  
42 ~~supervised by a registered professional nurse and the content and admin-~~  
43 ~~istration thereof shall comply with rules and regulations adopted by the~~

1 secretary of health and environment. The 40 hours of training may be  
2 prepared and administered by an adult care home or by any other qual-  
3 ified person and may be conducted on the premises of the adult care  
4 home. The 40 hours of training required in this section shall be a part of  
5 any course of education and training required by the secretary of health  
6 and environment under subsection (c)(2). Training for paid nutrition as-  
7 sistants shall consist of at least eight hours of instruction, at a minimum,  
8 which meets the requirements of 42 C.F.R. § 483.160.

9 ~~(2) The licensing agency may require unlicensed employees of an~~  
10 ~~adult care home, except an adult care home licensed for the provision of~~  
11 ~~services to the mentally retarded which has been granted an exception~~  
12 ~~by the secretary of health and environment upon a finding by the licensing~~  
13 ~~agency that an appropriate training program for unlicensed employees is~~  
14 ~~in place for such adult care home, who provide direct, individual care to~~  
15 ~~residents and who do not administer medications to residents and who~~  
16 ~~do not meet the definition of paid nutrition assistance under paragraph~~  
17 ~~(a)(27) of K.S.A. 39-923, and amendments thereto after 90 days of em-~~  
18 ~~ployment to successfully complete an approved course of instruction and~~  
19 ~~an examination relating to resident care and treatment as a condition to~~  
20 ~~continued employment by an adult care home. A course of instruction~~  
21 ~~may be prepared and administered by any adult care home or by any~~  
22 ~~other qualified person. A course of instruction prepared and administered~~  
23 ~~by an adult care home may be conducted on the premises of the adult~~  
24 ~~care home which prepared and which will administer the course of in-~~  
25 ~~struction. The licensing agency shall not require unlicensed employees of~~  
26 ~~an adult care home who provide direct, individual care to residents and~~  
27 ~~who do not administer medications to residents to enroll in any particular~~  
28 ~~approved course of instruction as a condition to the taking of an exami-~~  
29 ~~nation, but the secretary of health and environment shall prepare guide-~~  
30 ~~lines for the preparation and administration of courses of instruction and~~  
31 ~~shall approve or disapprove courses of instruction. Unlicensed employees~~  
32 ~~of adult care homes who provide direct, individual care to residents and~~  
33 ~~who do not administer medications to residents may enroll in any ap-~~  
34 ~~proved course of instruction and upon completion of the approved course~~  
35 ~~of instruction shall be eligible to take an examination. The examination~~  
36 ~~shall be prescribed by the secretary of health and environment, shall be~~  
37 ~~reasonably related to the duties performed by unlicensed employees of~~  
38 ~~adult care homes who provide direct, individual care to residents and who~~  
39 ~~do not administer medications to residents and shall be the same exam-~~  
40 ~~ination given by the secretary of health and environment to all unlicensed~~  
41 ~~employees of adult care homes who provide direct, individual care to~~  
42 ~~residents and who do not administer medications.~~

43 ~~(3) The secretary of health and environment shall fix, charge and~~

1 collect a fee to cover all or any part of the costs of the licensing agency  
2 under this subsection (c). The fee shall be fixed by rules and regulations  
3 of the secretary of health and environment. The fee shall be remitted to  
4 the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
5 and amendments thereto. Upon receipt of each such remittance, the state  
6 treasurer shall deposit the entire amount in the state treasury to the credit  
7 of the state general fund.

8 ~~—(4) The secretary of health and environment shall establish a state~~  
9 ~~registry containing information about unlicensed employees of adult care~~  
10 ~~homes who provide direct, individual care to residents and who do not~~  
11 ~~administer medications in compliance with the requirements pursuant to~~  
12 ~~PL 100-203, Subtitle C, as amended November 5, 1990.~~

13 ~~—(5) No adult care home shall use an individual as an unlicensed em-~~  
14 ~~ployee of the adult care home who provides direct, individual care to~~  
15 ~~residents and who does not administer medications unless the facility has~~  
16 ~~inquired of the state registry as to information contained in the registry~~  
17 ~~concerning the individual.~~

18 ~~—(6) Beginning July 1, 1993, the adult care home must require any~~  
19 ~~unlicensed employee of the adult care home who provides direct, indi-~~  
20 ~~vidual care to residents and who does not administer medications and~~  
21 ~~who since passing the examination required under paragraph (2) of this~~  
22 ~~subsection has had a continuous period of 24 consecutive months during~~  
23 ~~none of which the unlicensed employee provided direct, individual care~~  
24 ~~to residents to complete an approved refresher course. The secretary of~~  
25 ~~health and environment shall prepare guidelines for the preparation and~~  
26 ~~administration of refresher courses and shall approve or disapprove~~  
27 ~~courses.~~

28 ~~—(d) Any person who has been employed as an unlicensed employee~~  
29 ~~of an adult care home in another state may be so employed in this state~~  
30 ~~without an examination if the secretary of health and environment deter-~~  
31 ~~mines that such other state requires training or examination, or both, for~~  
32 ~~such employees at least equal to that required by this state.~~

33 ~~—(e) (c) All medical care and treatment shall be given under the di-~~  
34 ~~rection of a physician authorized to practice under the laws of this state~~  
35 ~~and shall be provided promptly as needed.~~

36 ~~(f) (d) No adult care home shall require as a condition of admission~~  
37 ~~to or as a condition to continued residence in the adult care home that a~~  
38 ~~person change from a supplier of medication needs of their choice to a~~  
39 ~~supplier of medication selected by the adult care home. Nothing in this~~  
40 ~~subsection (f) shall be construed to abrogate or affect any agreements~~  
41 ~~entered into prior to the effective date of this act between the adult care~~  
42 ~~home and any person seeking admission to or resident of the adult care~~  
43 ~~home.~~

1     ~~(g)~~ (e) Except in emergencies as defined by rules and regulations of  
2 the licensing agency and except as otherwise authorized under federal  
3 law, no resident may be transferred from or discharged from an adult  
4 care home involuntarily unless the resident or legal guardian of the res-  
5 ident has been notified in writing at least 30 days in advance of a transfer  
6 or discharge of the resident.

7     ~~(h)~~ (f) No resident who relies in good faith upon spiritual means or  
8 prayer for healing shall, if such resident objects thereto, be required to  
9 undergo medical care or treatment.

10     New Sec. 6. The administrator of an adult care home shall inquire  
11 of the secretary of health and environment concerning a background  
12 check on unlicensed and uncertified employees of the adult care home  
13 who do not provide direct individual care to residents and who do not  
14 administer medications to residents. Such administrator shall keep a reg-  
15 istry of such information in the administrator's office. No adult care home  
16 shall use an individual as an unlicensed and uncertified employee of the  
17 adult care home unless the administrator has inquired regarding such  
18 individuals background and such individual has not violated any of the  
19 provisions of K.S.A. 39-970, and amendments thereto.

20     Sec. 7. K.S.A. 2007 Supp. 39-970 is hereby amended to read as fol-  
21 lows: 39-970. (a) (1) No person shall knowingly operate an adult care  
22 home if, in the adult care home, there works any person who has been  
23 convicted of or has been adjudicated a juvenile offender because of having  
24 committed an act which if done by an adult would constitute the com-  
25 mission of capital murder, pursuant to K.S.A. 21-3439 and amendments  
26 thereto, first degree murder, pursuant to K.S.A. 21-3401 and amend-  
27 ments thereto, second degree murder, pursuant to subsection (a) of  
28 K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pur-  
29 suant to K.S.A. 21-3403 and amendments thereto, assisting suicide pur-  
30 suant to K.S.A. 21-3406 and amendments thereto, mistreatment of a de-  
31 pendent adult, pursuant to K.S.A. 21-3437 and amendments thereto,  
32 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-  
33 erties with a child, pursuant to K.S.A. 21-3503 and amendments thereto,  
34 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and  
35 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-  
36 3506 and amendments thereto, indecent solicitation of a child, pursuant  
37 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-  
38 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,  
39 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-  
40 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-  
41 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518  
42 and amendments thereto, an attempt to commit any of the crimes listed  
43 in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments

1 thereto, a conspiracy to commit any of the crimes listed in this subsection  
2 (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal  
3 solicitation of any of the crimes listed in this subsection (a)(1), pursuant  
4 to K.S.A. 21-3303, and amendments thereto, or similar statutes of other  
5 states or the federal government.

6 (2) A person operating an adult care home may employ an applicant  
7 who has been convicted of any of the following if five or more years have  
8 elapsed since the applicant satisfied the sentence imposed or was dis-  
9 charged from probation, a community correctional services program, pa-  
10 role, postrelease supervision, conditional release or a suspended sentence;  
11 or if five or more years have elapsed since the applicant has been finally  
12 discharged from the custody of the commissioner of juvenile justice or  
13 from probation or has been adjudicated a juvenile offender, whichever  
14 time is longer: (A) a felony conviction for a crime which is described in: (A)  
15 Article 34 of chapter 21 of the Kansas Statutes Annotated and amend-  
16 ments thereto, except those crimes listed in subsection (a)(1); (B) articles  
17 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments  
18 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
19 3605 and amendments thereto; (C) an attempt to commit any of the  
20 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and  
21 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
22 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
23 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
24 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
25 utes of other states or the federal government.

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

31 (c) The secretary of health and environment shall have access to any  
32 criminal history record information in the possession of the Kansas bureau  
33 of investigation regarding *unlicensed and noncertified employees and the*  
34 *board of nursing shall have access to any criminal history record infor-*  
35 *mation in the possession of the Kansas bureau of investigation regarding*  
36 *employees who are certified nurse aides or medication aides and unli-*  
37 *censed and noncertified employees in training to become a certified nurse*  
38 *aide or medication aide regarding* felony convictions, convictions under  
39 K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudi-  
40 cations of a juvenile offender which if committed by an adult would have  
41 been a felony conviction, and adjudications of a juvenile offender for an  
42 offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amend-  
43 ments thereto, concerning persons working in an adult care home. The



1 secretary *and the board* shall have access to these records for the purpose  
2 of determining whether or not the adult care home meets the require-  
3 ments of this section. The Kansas bureau of investigation may charge to  
4 the department of health and environment *and the board* a reasonable  
5 fee for providing criminal history record information under this  
6 subsection.

7 (d) For the purpose of complying with this section, the operator of  
8 an adult care home shall request from the department of health and  
9 environment *and the board* information regarding only felony convictions,  
10 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amend-  
11 ments thereto, adjudications of a juvenile offender which if committed  
12 by an adult would have been a felony conviction, and adjudications of a  
13 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and  
14 21-3701, and amendments thereto, and which relates to a person who  
15 works in the adult care home, or is being considered for employment by  
16 the adult care home, for the purpose of determining whether such person  
17 is subject to the provision of this section. For the purpose of complying  
18 with this section, the operator of an adult care home shall receive from  
19 any employment agency which provides employees to work in the adult  
20 care home written certification that such employees are not prohibited  
21 from working in the adult care home under this section. For the purpose  
22 of complying with this section, information relating to convictions and  
23 adjudications by the federal government or to convictions and adjudica-  
24 tions in states other than Kansas shall not be required until such time as  
25 the secretary of health and environment *or the board of nursing* deter-  
26 mines the search for such information could reasonably be performed  
27 and the information obtained within a two-week period. For the purpose  
28 of complying with this section, a person who operates an adult care home  
29 may hire an applicant for employment on a conditional basis pending the  
30 results from the department of health and environment *or the board of*  
31 *nursing* of a request for information under this subsection. No adult care  
32 home, the operator or employees of an adult care home or an employment  
33 agency, or the operator or employees of an employment agency, shall be  
34 liable for civil damages resulting from any decision to employ, to refuse  
35 to employ or to discharge from employment any person based on such  
36 adult care home's compliance with the provisions of this section if such  
37 adult care home or employment agency acts in good faith to comply with  
38 this section.

39 (e) The secretary of health and environment *and the board of nursing*  
40 shall charge each person requesting information under this section a fee  
41 equal to cost, not to exceed \$10, for each name about which an infor-  
42 mation request has been submitted to the department *and the board of*  
43 *nursing* under this section.

- 1 (f) (1) The secretary of health and environment *and the board of*  
2 *nursing* shall provide each operator requesting information under this  
3 section with the criminal history record information concerning felony  
4 convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701,  
5 and amendments thereto, in writing and within three working days of  
6 receipt of such information from the Kansas bureau of investigation. The  
7 criminal history record information shall be provided regardless of  
8 whether the information discloses that the subject of the request has been  
9 convicted of an offense enumerated in subsection (a).
- 10 (2) When an offense enumerated in subsection (a) exists in the crim-  
11 inal history record information, and when further confirmation regarding  
12 criminal history record information is required from the appropriate court  
13 of jurisdiction or Kansas department of corrections, the secretary *or the*  
14 *board* shall notify each operator that requests information under this sec-  
15 tion in writing and within three working days of receipt from the Kansas  
16 bureau of investigation that further confirmation is required. The secre-  
17 tary *or the board* shall provide to the operator requesting information  
18 under this section information in writing and within three working days  
19 of receipt of such information from the appropriate court of jurisdiction  
20 or Kansas department of corrections regarding confirmation ~~regarding~~ *of*  
21 the criminal history record information.
- 22 (3) Whenever the criminal history record information reveals that the  
23 subject of the request has no criminal history on record, the secretary *or*  
24 *the board* shall provide notice to each operator requesting information  
25 under this section, in writing and within three working days after receipt  
26 of such information from the Kansas bureau of investigation.
- 27 (4) The secretary of health and environment *and the board of nursing*  
28 shall not provide each operator requesting information under this section  
29 with the juvenile criminal history record information which relates to a  
30 person subject to a background check as is provided by K.S.A. 2007 Supp.  
31 38-2326, and amendments thereto, except for adjudications of a juvenile  
32 offender for an offense described in K.S.A. 21-3701, and amendments  
33 thereto. The secretary *or the board* shall notify the operator that re-  
34 quested the information, in writing and within three working days of  
35 receipt of such information from the Kansas bureau of investigation,  
36 whether juvenile criminal history record information received pursuant  
37 to this section reveals that the operator would or would not be prohibited  
38 by this section from employing the subject of the request for information  
39 and whether such information contains adjudications of a juvenile of-  
40 fender for an offense described in K.S.A. 21-3701, and amendments  
41 thereto.
- 42 (5) An operator who receives criminal history record information un-  
43 der this subsection (f) shall keep such information confidential, except

1 that the operator may disclose such information to the person who is the  
2 subject of the request for information. A violation of this paragraph (5)  
3 shall be an unclassified misdemeanor punishable by a fine of \$100.

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

9 (h) A person who volunteers in an adult care home shall not be sub-  
10 ject to the provisions of this section because of such volunteer activity.

11 (i) No person who has been employed by the same adult care home  
12 for five consecutive years immediately prior to the effective date of this  
13 act shall be subject to the provisions of this section while employed by  
14 such adult care home.

15 (j) The operator of an adult care home shall not be required under  
16 this section to ~~conduct~~ request a background check on an applicant for  
17 employment with the adult care home if the applicant has been the sub-  
18 ject of a background check under this act within one year prior to the  
19 application for employment with the adult care home. The operator of  
20 an adult care home where the applicant was the subject of such back-  
21 ground check may release a copy of such background check to the op-  
22 erator of an adult care home where the applicant is currently applying.

23 (k) No person who is in the custody of the secretary of corrections  
24 and who provides services, under direct supervision in nonpatient areas,  
25 on the grounds or other areas designated by the superintendent of the  
26 Kansas soldiers' home or the Kansas veterans' home shall be subject to  
27 the provisions of this section while providing such services.

28 (l) For purposes of this section, the Kansas bureau of investigation  
29 shall only report felony convictions, convictions under K.S.A. 21-3437,  
30 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-  
31 nile offender which if committed by an adult would have been a felony  
32 conviction, and adjudications of a juvenile offender for an offense de-  
33 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
34 thereto, to the secretary of health and environment *or the board of nurs-*  
35 *ing* when a background check is requested.

36 (m) This section shall be part of and supplemental to the adult care  
37 home licensure act.

38 Sec. 8. K.S.A. 65-1,120 is hereby amended to read as follows: 65-  
39 1,120. As used in this act:

40 (a) "Medication aide" means an unlicensed person certified as having  
41 satisfactorily completed a training program in medication administration  
42 approved by the ~~secretary of health and environment~~ *board of nursing*  
43 for the purposes of subsection (i) of K.S.A. 65-1124 and amendments

1 thereto.

2 (b) "Secretary" means secretary of health and environment.

3 (c) "Board" means the board of nursing.

4 Sec. 9. K.S.A. 65-1,121 is hereby amended to read as follows: 65-  
5 1,121. ~~(a)~~ On and after the effective date of this act, no person shall be a  
6 medication aide for the purposes of subsection (i) of K.S.A. 65-1124 and  
7 amendments thereto unless such person completes a program of contin-  
8 uing education at least every two years, as established by the ~~secretary~~  
9 *board*. The ~~secretary~~ *board* by duly adopted rules and regulations shall  
10 establish the requirements for such a program as soon as possible after  
11 the effective date of this act. The ~~secretary~~ *board* shall update the certifi-  
12 cate of a medication aide upon the completion by such medication aide  
13 of any continuing education program as provided in this section. The  
14 ~~secretary~~ *board* shall determine a fee by rules and regulations in an  
15 amount sufficient to cover the costs of the department to administer the  
16 provisions of this act.

17 Sec. 10. K.S.A. 2007 Supp. 65-1124 is hereby amended to read as  
18 follows: 65-1124. No provisions of this law shall be construed as  
19 prohibiting:

- 20 (a) Gratuitous nursing by friends or members of the family;
- 21 (b) the incidental care of the sick by domestic servants or persons  
22 primarily employed as housekeepers;
- 23 (c) caring for the sick in accordance with tenets and practices of any  
24 church or religious denomination which teaches reliance upon spiritual  
25 means through prayer for healing;
- 26 (d) nursing assistance in the case of an emergency;
- 27 (e) the practice of nursing by students as part of a clinical course  
28 offered through a school of professional or practical nursing or program  
29 of advanced registered professional nursing approved in the United States  
30 or its territories;
- 31 (f) the practice of nursing in this state by legally qualified nurses of  
32 any of the other states as long as the engagement of any such nurse  
33 requires the nurse to accompany and care for a patient temporarily re-  
34 siding in this state during the period of one such engagement not to  
35 exceed six months in length, and as long as such nurses do not represent  
36 or hold themselves out as nurses licensed to practice in this state;
- 37 (g) the practice by any nurse who is employed by the United States  
38 government or any bureau, division or agency thereof, while in the dis-  
39 charge of official duties;
- 40 (h) auxiliary patient care services performed in medical care facilities,  
41 adult care homes or elsewhere by persons under the direction of a person  
42 licensed to practice medicine and surgery or a person licensed to practice  
43 dentistry or the supervision of a registered professional nurse or a licensed

- 1 practical nurse;
- 2 (i) the administration of medications to residents of adult care homes  
3 or to patients in hospital-based long-term care units, including state op-  
4 erated institutions for the mentally retarded, by an unlicensed person who  
5 has been certified as having satisfactorily completed a training program  
6 in medication administration approved by the ~~secretary of health and~~  
7 ~~environment~~ *board of nursing* and has completed the program on con-  
8 tinuing education adopted by the ~~secretary~~ *board*, or by an unlicensed  
9 person while engaged in and as a part of such training program in med-  
10 ication administration;
- 11 (j) the practice of mental health technology by licensed mental health  
12 technicians as authorized under the mental health technicians' licensure  
13 act;
- 14 (k) performance in the school setting of nursing procedures when  
15 delegated by a licensed professional nurse in accordance with the rules  
16 and regulations of the board;
- 17 (l) performance of attendant care services directed by or on behalf  
18 of an individual in need of in-home care as the terms "attendant care  
19 services" and "individual in need of in-home care" are defined under  
20 K.S.A. 65-6201 and amendments thereto;
- 21 (m) performance of a nursing procedure by a person when that pro-  
22 cedure is delegated by a licensed nurse, within the reasonable exercise of  
23 independent nursing judgment and is performed with reasonable skill and  
24 safety by that person under the supervision of a registered professional  
25 nurse or a licensed practical nurse;
- 26 (n) the practice of nursing by an applicant for Kansas nurse licensure  
27 in the supervised clinical portion of a refresher course; or
- 28 (o) the teaching of the nursing process in this state by legally qualified  
29 nurses of any of the other states while in consultation with a licensed  
30 Kansas nurse as long as such individuals do not represent or hold them-  
31 selves out as nurses licensed to practice in this state.
- 32 Sec. 11. K.S.A. 65-5115 is hereby amended to read as follows: 65-  
33 5115. (a) The secretary may require, as a condition to continued employ-  
34 ment by a home health agency that home health aides, after 90 days of  
35 employment, successfully complete an approved course of instruction and  
36 take and satisfactorily pass an examination prescribed by the secretary.  
37 The secretary may not require as a condition to employment or continued  
38 employment by a home health agency that persons providing only atten-  
39 dant care services as an employee of a home health agency complete any  
40 course of instruction or pass any examination.
- 41 (b) A course of instruction for home health aides may be prepared  
42 and administered by any home health agency or by any other qualified  
43 person. A course of instruction prepared and administered by a home

1 health agency may be conducted on the premises of the home health  
2 agency which prepared and which will administer the course of instruc-  
3 tion. The secretary shall not require home health aides to enroll in any  
4 particular approved course of instruction, but the ~~secretary~~ *board of nurs-*  
5 *ing shall prepare guidelines by rules and regulations establish criteria* for  
6 the preparation and administration of courses of instruction and shall  
7 approve or disapprove courses of instruction.

8 (c) Prior to July 1, ~~1991~~ 2008, the secretary may require that home  
9 health aides complete the course of instruction and pass the examination  
10 established pursuant to subsection (c)(3) of K.S.A. 39-936 and amend-  
11 ments thereto before enrolling in an approved course of instruction au-  
12 thorized by this section. On and after July 1, ~~1991~~ 2008, the secretary  
13 may not require that home health aides complete the course of instruction  
14 and pass the examination established pursuant to subsection ~~(c)(3)~~ *(c)(1)*  
15 of K.S.A. 39-936 and amendments thereto before enrolling in an ap-  
16 proved course of instruction authorized by this section. Home health  
17 aides may enroll in any ~~approved~~ *approved by the*  
18 *board of nursing.*

19 (d) The examination required under this section shall be prescribed  
20 by the ~~secretary~~ *board of nursing* and shall be reasonably related to the  
21 duties performed by home health aides. The same examination shall be  
22 given by the secretary to all home health aides.

23 (e) The ~~secretary~~ *board of nursing* shall fix, charge and collect an  
24 examination fee to cover all or any part of the cost of the examination  
25 required under subsection (a). The examination fee shall be fixed by rules  
26 and regulations of the ~~secretary~~ *board of nursing.* The examination fee  
27 shall be ~~deposited in the state treasury and credited to the state general~~  
28 ~~fund~~ *remitted to the state treasurer in accordance with the provisions of*  
29 *K.S.A. 74-1108 and 74-1109, and amendments thereto.*

30 Sec. 12. K.S.A. 2007 Supp. 65-5117 is hereby amended to read as  
31 follows: 65-5117. (a) (1) No person shall knowingly operate a home health  
32 agency if, for the home health agency, there works any person who has  
33 been convicted of or has been adjudicated a juvenile offender because of  
34 having committed an act which if done by an adult would constitute the  
35 commission of capital murder, pursuant to K.S.A. 21-3439 and amend-  
36 ments thereto, first degree murder, pursuant to K.S.A. 21-3401 and  
37 amendments thereto, second degree murder, pursuant to subsection (a)  
38 of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pur-  
39 suant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pur-  
40 suant to K.S.A. 21-3406 and amendments thereto, mistreatment of a de-  
41 pendent adult, pursuant to K.S.A. 21-3437 and amendments thereto,  
42 rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent lib-  
43 erities with a child, pursuant to K.S.A. 21-3503 and amendments thereto,

1 aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and  
2 amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-  
3 3506 and amendments thereto, indecent solicitation of a child, pursuant  
4 to K.S.A. 21-3510 and amendments thereto, aggravated indecent solici-  
5 tation of a child, pursuant to K.S.A. 21-3511 and amendments thereto,  
6 sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amend-  
7 ments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amend-  
8 ments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518  
9 and amendments thereto, an attempt to commit any of the crimes listed  
10 in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments  
11 thereto, a conspiracy to commit any of the crimes listed in this subsection  
12 (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal  
13 solicitation of any of the crimes listed in this subsection (a)(1), pursuant  
14 to K.S.A. 21-3303, and amendments thereto, or similar statutes of other  
15 states or the federal government.

16 (2) A person operating a home health agency may employ an appli-  
17 cant who has been convicted of any of the following if five or more years  
18 have elapsed since the applicant satisfied the sentence imposed or was  
19 discharged from probation, a community correctional services program,  
20 parole, postrelease supervision, conditional release or a suspended sen-  
21 tence; or if five or more years have elapsed since the applicant has been  
22 finally discharged from the custody of the commissioner of juvenile justice  
23 or from probation or has been adjudicated a juvenile offender, whichever  
24 time is longer: (A) a felony conviction for a crime which is described in: (A)  
25 Article 34 of chapter 21 of the Kansas Statutes Annotated and amend-  
26 ments thereto, except those crimes listed in subsection (a)(1); (B) articles  
27 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments  
28 thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-  
29 3605 and amendments thereto; (C) an attempt to commit any of the  
30 crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and  
31 amendments thereto; (D) a conspiracy to commit any of the crimes listed  
32 in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto;  
33 (E) criminal solicitation of any of the crimes listed in subsection (a)(2)  
34 pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar stat-  
35 utes of other states or the federal government.

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

41 (c) The secretary of health and environment *and the board of nursing*  
42 shall have access to any criminal history record information in the pos-  
43 session of the Kansas bureau of investigation regarding felony convictions,

1 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amend-  
2 ments thereto, adjudications of a juvenile offender which if committed  
3 by an adult would have been a felony conviction, and adjudications of a  
4 juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and  
5 21-3701, and amendments thereto, concerning persons working for a  
6 home health agency. The secretary shall have access to these records for  
7 the purpose of determining whether or not the home health agency meets  
8 the requirements of this section. *The board of nursing shall have access*  
9 *to these records for the purpose of determining whether or not a home*  
10 *health aide meets the requirements of this section.* The Kansas bureau of  
11 investigation may charge to the department of health and environment a  
12 reasonable fee for providing criminal history record information under  
13 this subsection.

14 (d) For the purpose of complying with this section, the operator of a  
15 home health agency shall request from the department of health and  
16 environment information *concerning employees of the home health*  
17 *agency who are not home health aides and the board of nursing shall*  
18 *request information concerning home health aides* regarding only felony  
19 convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and  
20 amendments thereto, adjudications of a juvenile offender which if com-  
21 mitted by an adult would have been a felony conviction, and adjudications  
22 of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517  
23 and 21-3701, and amendments thereto, and which relates to a person  
24 who works for the home health agency or is being considered for em-  
25 ployment by the home health agency, for the purpose of determining  
26 whether such person is subject to the provisions of this section. For the  
27 purpose of complying with this section, information relating to convictions  
28 and adjudications by the federal government or to convictions and adju-  
29 dications in states other than Kansas shall not be required until such time  
30 as the secretary of health and environment *or the board of nursing* de-  
31 termines the search for such information could reasonably be performed  
32 and the information obtained within a two-week period. For the purpose  
33 of complying with this section, the operator of a home health agency shall  
34 receive from any employment agency which provides employees to work  
35 for the home health agency written certification that such employees are  
36 not prohibited from working for the home health agency under this sec-  
37 tion. For the purpose of complying with this section, a person who op-  
38 erates a home health agency may hire an applicant for employment on a  
39 conditional basis pending the results from the department of health and  
40 environment *or the board of nursing* of a request for information under  
41 this subsection. No home health agency, the operator or employees of a  
42 home health agency or an employment agency, or the operator or em-  
43 ployees of an employment agency, which provides employees to work for



1 the home health agency shall be liable for civil damages resulting from  
2 any decision to employ, to refuse to employ or to discharge from em-  
3 ployment any person based on such home health agency's compliance  
4 with the provisions of this section if such home health agency or employ-  
5 ment agency acts in good faith to comply with this section.

6 (e) The secretary of health and environment *or the board of nursing*  
7 shall charge each person requesting information under this section a fee  
8 equal to cost, not to exceed \$10, for each name about which an infor-  
9 mation request has been submitted under this section.

10 (f) (1) The secretary of health and environment shall provide each  
11 operator requesting information under this section with the criminal his-  
12 tory record information concerning felony convictions and convictions  
13 under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto,  
14 in writing and within three working days of receipt of such information  
15 from the Kansas bureau of investigation. The criminal history record in-  
16 formation shall be provided regardless of whether the information dis-  
17 closes that the subject of the request has been convicted of an offense  
18 enumerated in subsection (a).

19 (2) When an offense enumerated in subsection (a) exists in the crim-  
20 inal history record information, and when further confirmation regarding  
21 criminal history record information is required from the appropriate court  
22 of jurisdiction or Kansas department of corrections, the secretary *or the*  
23 *board of nursing* shall notify each operator that requests information un-  
24 der this section in writing and within three working days of receipt from  
25 the Kansas bureau of investigation that further confirmation is required.  
26 The secretary *or the board of nursing* shall provide to the operator re-  
27 questing information under this section information in writing and within  
28 three working days of receipt of such information from the appropriate  
29 court of jurisdiction or Kansas department of corrections regarding con-  
30 firmation regarding the criminal history record information.

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

36 (4) ~~Neither the secretary of health and environment nor the board of~~  
37 ~~nursing shall not provide each~~ *any* operator requesting information under  
38 this section with the juvenile criminal history record information which  
39 relates to a person subject to a background check as is provided by K.S.A.  
40 2007 Supp. 38-2326, and amendments thereto, except for adjudications  
41 of a juvenile offender for an offense described in K.S.A. 21-3701, and  
42 amendments thereto. The secretary *or the board of nursing* shall notify  
43 the operator that requested the information, in writing and within three

1 working days of receipt of such information from the Kansas bureau of  
2 investigation, whether juvenile criminal history record information re-  
3 ceived pursuant to this section reveals that the operator would or would  
4 not be prohibited by this section from employing the subject of the re-  
5 quest for information and whether such information contains adjudica-  
6 tions of a juvenile offender for an offense described in K.S.A. 21-3701,  
7 and amendments thereto.

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

13 (g) No person who works for a home health agency and who is cur-  
14 rently licensed or registered by an agency of this state to provide profes-  
15 sional services in this state and who provides such services as part of the  
16 work which such person performs for the home health agency shall be  
17 subject to the provisions of this section.

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

21 (i) No person who has been employed by the same home health  
22 agency for five consecutive years immediately prior to the effective date  
23 of this act shall be subject to the requirements of this section while em-  
24 ployed by such home health agency.

25 (j) The operator of a home health agency shall not be required under  
26 this section to conduct a background check on an applicant for employ-  
27 ment with the home health agency if the applicant has been the subject  
28 of a background check under this act within one year prior to the appli-  
29 cation for employment with the home health agency. The operator of a  
30 home health agency where the applicant was the subject of such back-  
31 ground check may release a copy of such background check to the op-  
32 erator of a home health agency where the applicant is currently applying.

33 (k) For purposes of this section, the Kansas bureau of investigation  
34 shall only report felony convictions, convictions under K.S.A. 21-3437,  
35 21-3517 and 21-3701, and amendments thereto, adjudications of a juve-  
36 nile offender which if committed by an adult would have been a felony  
37 conviction, and adjudications of a juvenile offender for an offense de-  
38 scribed in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
39 thereto, to the secretary of health and environment when a background  
40 check is requested.

41 (l) This section shall be part of and supplemental to the provisions of  
42 article 51 of chapter 65 of the Kansas Statutes Annotated and acts amen-  
43 datory thereof or supplemental thereto.

1 New Sec. 13. All powers, duties and functions of the secretary of  
2 health and environment concerning the course of instruction and exam-  
3 ination of home health aides is hereby transferred to and conferred upon  
4 the board of nursing.

5 New Sec. 14. (a) Except as otherwise provided by this act, the board  
6 of nursing shall be the successor in every way to the duties and functions  
7 of the secretary of health and environment concerning the course of in-  
8 struction and examination of home health aides in which the same was  
9 vested prior to the effective date of this act. Every act performed in the  
10 exercise of such powers, duties and functions by or under the authority  
11 of the board of nursing shall have the same force and effect as if per-  
12 formed by the secretary of health and environment in which such powers,  
13 duties and functions were vested prior to the effective date of this act.

14 (b) Except as otherwise provided by this act, whenever the secretary  
15 of health and environment or words of like effect concerning the course  
16 of instruction and examination of home health aides is referred to or  
17 designated by a statute, contractor or other document, such reference or  
18 designation shall be deemed to apply to the board of nursing.

19 (c) All rules and regulations of the department of health and envi-  
20 ronment concerning the course of instruction and examination of home  
21 health aides on the effective date of this act shall continue to be effective  
22 and shall be deemed to be duly adopted rules and regulations of the board  
23 until revised, amended, revoked or nullified by law.

24 New Sec. 15. (a) When any conflict arises as to the disposition of any  
25 power, duty or function or the unexpended balance of any appropriation  
26 as a result of any abolition, transfer, attachment or change made by or  
27 under authority of this act, such conflict shall be resolved by the governor,  
28 whose decision shall be final.

29 (b) The board of nursing shall have legal custody of all records per-  
30 taining to the training and certification of home health aides and the home  
31 health aide registry.

32 Sec. 16. K.S.A. 2007 Supp. 74-1106 is hereby amended to read as  
33 follows: 74-1106. (a) *Appointment, term of office.* (1) The governor shall  
34 appoint a board consisting of 11 members of which six shall be registered  
35 professional nurses, two shall be licensed practical nurses and three shall  
36 be members of the general public, which shall constitute a board of nurs-  
37 ing, with the duties, power and authority set forth in this act.

38 (2) Upon the expiration of the term of any registered professional  
39 nurse, the Kansas state nurses association shall submit to the governor a  
40 list of registered professional nurses containing names of not less than  
41 three times the number of persons to be appointed, and appointments  
42 shall be made after consideration of such list for terms of four years and  
43 until a successor is appointed and qualified.

1       (3) On the effective date of this act, the Kansas federation of licensed  
2 practical nurses shall submit to the governor a list of licensed practical  
3 nurses containing names of not less than three times the number of per-  
4 sons to be appointed, and appointments shall be made after consideration  
5 of such list, with the first appointment being for a term of four years and  
6 the second appointment being for a term of two years. Upon the expi-  
7 ration of the term of any licensed practical nurse, a successor of like  
8 qualifications shall be appointed in the same manner as the original ap-  
9 pointment for a term of four years and until a successor is appointed and  
10 qualified.

11       (4) Each member of the general public shall be appointed for a term  
12 of four years and successors shall be appointed for a like term.

13       (5) Whenever a vacancy occurs on the board of nursing, it shall be  
14 filled by appointment for the remainder of the unexpired term in the  
15 same manner as the preceding appointment. No person shall serve more  
16 than two consecutive terms as a member of the board of nursing and  
17 appointment for the remainder of an unexpired term shall constitute a  
18 full term of service on such board. With the expiration of terms for the  
19 registered professional nurse from education and one public member in  
20 July, 2003, the next appointments for those two positions will be for only  
21 one year. Thereafter the two positions shall be appointed for terms of  
22 four years.

23       (b) *Qualifications of members.* Each member of the board shall be a  
24 citizen of the United States and a resident of the state of Kansas. Regis-  
25 tered professional nurse members shall possess a license to practice as a  
26 professional nurse in this state with at least five years' experience in nurs-  
27 ing as such and shall be actively engaged in professional nursing in Kansas  
28 at the time of appointment and reappointment. The licensed practical  
29 nurse members shall be licensed to practice practical nursing in the state  
30 with at least five years' experience in practical nursing and shall be actively  
31 engaged in practical nursing in Kansas at the time of appointment and  
32 reappointment. The governor shall appoint successors so that the regis-  
33 tered professional nurse membership of the board shall consist of at least  
34 two members who are engaged in nursing service, at least two members  
35 who are engaged in nursing education and at least one member who is  
36 engaged in practice as an advanced registered nurse practitioner or a  
37 registered nurse anesthetist. The consumer members shall represent the  
38 interests of the general public. At least one consumer member shall not  
39 have been involved in providing health care. Each member of the board  
40 shall take and subscribe the oath prescribed by law for state officers,  
41 which oath shall be filed with the secretary of state.

42       (c) *Duties and powers.* (1) The board shall meet annually at Topeka  
43 during the month of September and shall elect from its members a pres-

1 ident, vice-president and secretary, each of whom shall hold their re-  
2 spective offices for one year. The board shall employ an executive ad-  
3 ministrator, who shall be a registered professional nurse, who shall not  
4 be a member of the board and who shall be in the unclassified service  
5 under the Kansas civil service act, and shall employ such other employees,  
6 who shall be in the classified service under the Kansas civil service act as  
7 necessary to carry on the work of the board. As necessary, the board shall  
8 be represented by an attorney appointed by the attorney general as pro-  
9 vided by law, whose compensation shall be determined and paid by the  
10 board with the approval of the governor. The board may hold such other  
11 meetings during the year as may be deemed necessary to transact its  
12 business.

13 (2) The board shall adopt rules and regulations consistent with this  
14 act necessary to carry into effect the provisions thereof, and such rules  
15 and regulations may be published and copies thereof furnished to any  
16 person upon application.

17 (3) The board shall prescribe curricula and standards for professional  
18 and practical nursing programs, *nurse aide programs* and mental health  
19 technician programs, and provide for surveys of such schools and courses  
20 at such times as it may deem necessary. It shall accredit such schools and  
21 approve courses as meet the requirements of the appropriate act and rules  
22 and regulations of the board.

23 (4) The board shall examine, license and renew licenses of duly qual-  
24 ified applicants and conduct hearings upon charges for limitation, sus-  
25 pension or revocation of a license or approval of professional and practical  
26 nursing and mental health technician programs and may limit, deny, sus-  
27 pend or revoke for proper legal cause, licenses or approval of professional  
28 and practical nursing, *nurse aide programs* and mental health technician  
29 programs, as hereinafter provided. Examination for applicants for regis-  
30 tration shall be given at least twice each year and as many other times as  
31 deemed necessary by the board. The board shall promote improved  
32 means of nursing education and standards of nursing care through insti-  
33 tutes, conferences and other means.

34 (5) The board shall have a seal of which the executive administrator  
35 shall be the custodian. The president and the secretary shall have the  
36 power and authority to administer oaths in transacting business of the  
37 board, and the secretary shall keep a record of all proceedings of the  
38 board and a register of professional and practical nurses, *nurse aides* and  
39 mental health technicians licensed and showing the certificates of regis-  
40 tration or licenses granted or revoked, which register shall be open at all  
41 times to public inspection.

42 (6) The board may enter into contracts as may be necessary to carry  
43 out its duties.

1 (7) The board is hereby authorized to apply for and to accept grants  
2 and may accept donations, bequests or gifts. The board shall remit all  
3 moneys received by it under this paragraph (7) to the state treasurer in  
4 accordance with the provisions of K.S.A. 75-4215, and amendments  
5 thereto. Upon receipt of each such remittance, the state treasurer shall  
6 deposit the entire amount in the state treasury to the credit of the grants  
7 and gifts fund which is hereby created. All expenditures from such fund  
8 shall be made in accordance with appropriation acts upon warrants of the  
9 director of accounts and reports issued pursuant to vouchers approved  
10 by the president of the board or a person designated by the president.

11 (8) A majority of the board of nursing including two professional  
12 nurse members shall constitute a quorum for the transaction of business.

13 (d) *Subpoenas.* In all investigations and proceedings, the board shall  
14 have the power to issue subpoenas and compel the attendance of wit-  
15 nesses and the production of all relevant and necessary papers, books,  
16 records, documentary evidence and materials. Any person failing or re-  
17 fusing to appear or testify regarding any matter about which such person  
18 may be lawfully questioned or to produce any books, papers, records,  
19 documentary evidence or relevant materials in the matter, after having  
20 been required by order of the board or by a subpoena of the board to do  
21 so, upon application by the board to any district judge in the state, may  
22 be ordered by such judge to comply therewith. Upon failure to comply  
23 with the order of the district judge, the court may compel obedience by  
24 attachment for contempt as in the case of disobedience of a similar order  
25 or subpoena issued by the court. A subpoena may be served upon any  
26 person named therein anywhere within the state with the same fees and  
27 mileage by an officer authorized to serve subpoenas in civil actions in the  
28 same procedure as is prescribed by the code of civil procedure for sub-  
29 poenas issued out of the district courts of this state.

30 (e) *Compensation and expenses.* Members of the board of nursing  
31 attending meetings of such board, or attending a subcommittee meeting  
32 thereof authorized by such board, shall be paid compensation, subsistence  
33 allowances, mileage and other expenses as provided in K.S.A. 75-3223,  
34 and amendments thereto. No member of the board of nursing shall be  
35 paid an amount as provided in K.S.A. 75-3223, and amendments thereto,  
36 if such member receives an amount from another governmental or private  
37 entity for the purpose for which such amount is payable under K.S.A. 75-  
38 3223, and amendments thereto.

39 (f) *For the purpose of this act, "nurse aide" means nurse aides and*  
40 *medication aides under the adult care home licensure act, K.S.A. 39-923*  
41 *et seq., and amendments thereto, and the home health aides under the*  
42 *home health agency act, K.S.A. 65-5101 et seq., and amendments thereto.*  
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1     Sec. 17. K.S.A. 65-1,120, 65-1,121, and 65-5115 and K.S.A. 2007  
2     Supp. 39-936, 39-970, 65-1124, 65-5117 and 74-1106 are hereby  
3     repealed.  
4     Sec. 18. This act shall take effect and be in force from and after its  
5     publication in the statute book.