

SENATE BILL No. 422

By Committee on Public Health and Welfare

2-9

1 AN ACT concerning the department for aging and disability services;
2 providing for the licensure of certain facilities and standards for
3 treatment of certain individuals; repealing K.S.A. 39-1807 and 75-
4 3307c and K.S.A. 2015 Supp. 75-3307b.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. The purpose of this act is the development, establishment
8 and enforcement of standards:

9 (a) For the care, treatment, health, safety, welfare and comfort of
10 individuals residing in or receiving treatment or services provided by
11 residential care facilities, residential and day support facilities, private and
12 public psychiatric hospitals, psychiatric residential treatment facilities,
13 community mental health centers and providers of other disability services
14 licensed by the secretary for aging and disability services; and

15 (b) for the construction, maintenance or operation, or any
16 combination thereof, of facilities, hospitals, centers and providers of
17 services that will promote safe and adequate accommodation, care and
18 treatment of such individuals.

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

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

22 (b) "Community mental health center" means a center organized
23 pursuant to article 40 of chapter 19 of the Kansas Statutes Annotated, and
24 amendments thereto, or a mental health clinic organized pursuant to article
25 2 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

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

28 (d) "Facility" means any place other than a center or hospital that
29 meets the requirements as set forth by regulations created and adopted by
30 the secretary, where individuals reside and receive treatment or services
31 provided by a person or entity licensed under this act.

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

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

36 (g) "Licensee" means one or more persons or entities licensed by the

1 secretary under this act.

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

4 (i) "Other disabilities" means any condition for which individuals
5 receive ~~mental health~~ or home and community based waiver services.

6 (j) "Provider" means a person, partnership or corporation employing
7 or contracting with appropriately credentialed persons that provide
8 behavioral health, excluding substance use disorder services for purposes
9 of this act, intellectual disability, developmental disability or other
10 disability services in accordance with the requirements as set forth by rules
11 and regulations created and adopted by the secretary.

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

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

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

34 (n) "Secretary" means the secretary for aging and disability services.

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

41 Sec. 3. (a) In addition to the authority, powers and duties otherwise
42 provided by law, the secretary shall have the following authority, powers
43 and duties to:

1 (1) Enforce the laws relating to the hospitalization of mentally ill
2 individuals of this state in a psychiatric hospital and the diagnosis, care,
3 training or treatment of individuals receiving services through community
4 mental health centers, psychiatric residential treatment facilities for
5 individuals with mental illness, residential care facilities or other facilities
6 and services for individuals with mental illness, intellectual disabilities,
7 developmental disabilities or other disabilities.

8 (2) Inspect, license, certify or accredit centers, facilities, hospitals and
9 providers for individuals with mental illness, intellectual disabilities,
10 developmental disabilities or other disabilities pursuant to federal
11 legislation, and to deny, suspend or revoke a license granted for causes
12 shown.

13 (3) Set standards for centers, facilities, hospitals and providers for
14 individuals with mental illness, intellectual disabilities, developmental
15 disabilities or other disabilities pursuant to federal legislation.

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

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

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

35 (7) Administer or supervise the administration of the provisions
36 relating to individuals with mental illness, intellectual disabilities,
37 developmental disabilities or other disabilities pursuant to federal
38 legislation and regulations.

39 (8) Coordinate activities and cooperate with treatment providers or
40 other facilities for those with mental illness, intellectual disabilities,
41 developmental disabilities or other disabilities pursuant to federal
42 legislation and regulations in this and other states for the treatment of such
43 individuals and for the common advancement of these programs and

1 facilities.

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

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

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

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

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

31 (b) The authority granted to the secretary under this act is in addition
32 to other statutory authority the secretary has to require the licensing and
33 operation of centers, facilities, hospitals and providers and is not to be
34 construed to limit any of the powers and duties of the secretary under
35 article 59 of chapter 75 of the Kansas Statutes Annotated, and amendments
36 thereto.

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

1 providers, their buildings, staff, facilities, maintenance, operation, conduct
2 and the care and treatment of individuals.

3 Sec. 6. It shall be unlawful for any person or entity to operate a
4 center, facility, hospital or be a provider of services within this state,
5 except upon obtaining a license for that purpose from the secretary as the
6 licensing agency upon application made therefor as provided in this act,
7 and complying with the requirements, standards, rules and regulations
8 promulgated under its provisions.

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

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

31 (b) The initial application for licensure and renewal of licensure fees
32 for a license shall be fixed by the secretary by rules and regulations. The
33 initial application for licensure fee shall be paid to the secretary when the
34 license is applied for and annually thereafter. The fee shall not be
35 refundable. Fees in effect under this subsection immediately prior to the
36 effective date of this act shall continue in effect on and after the effective
37 date of this act until a different fee is established by the secretary by rules
38 and regulations.

39 (c) Each license shall be issued only for the premises or ~~persons~~
40 **providers** named in the application, or both, and shall not be transferable
41 or assignable. The license shall be posted in a conspicuous place in the
42 center, facility, hospital or provider's principal location. If the annual report
43 is not so filed and a renewal of licensure fee, if any, is not paid, such

1 license shall be automatically denied or revoked. Any license granted
2 under the provisions of this act shall state the type of facility *or service* for
3 which the license is granted, the number of individuals for whom granted,
4 the person or persons to whom granted, the date and such additional
5 information and special limitations deemed appropriate by the licensing
6 agency.

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

14 Sec. 9. (a) No licensee shall knowingly operate a center, facility,
15 hospital or be a provider of services if any person who works in the center,
16 facility, hospital or for a provider of services:

17 (1) (A) Has a felony conviction for a crime against persons;

18 (B) has a felony conviction under K.S.A. 2010 Supp. 21-36a01
19 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the
20 Kansas Statutes Annotated, and amendments thereto, or any felony
21 violation of any provision of the uniform controlled substances act prior to
22 July 1, 2009;

23 (C) has a conviction of any act which is described in articles 34, 35 or
24 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
25 article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
26 K.S.A. 2015 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-
27 6421, and amendments thereto, or a conviction of an attempt under K.S.A.
28 21-3301, prior to its repeal, or K.S.A. 2015 Supp. 21-5301, and
29 amendments thereto, to commit any such act or a conviction of conspiracy
30 under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2015 Supp. 21-5302,
31 and amendments thereto, to commit such act, or similar statutes of other
32 states or the federal government; or

33 (D) has been convicted of any act which is described in K.S.A. 21-
34 4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp. 21-6401, and
35 amendments thereto, or similar statutes of other states or the federal
36 government;

37 (2) has been adjudicated a juvenile offender because of having
38 committed an act which if committed by an adult would constitute the
39 commission of a felony and which is a crime against persons, is any act
40 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
41 Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the
42 Kansas Statutes Annotated, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-
43 6326 or 21-6418 through 21-6421, and amendments thereto, or similar

1 statutes of other states or the federal government, or is any act described in
2 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp.
3 21-6401, and amendments thereto, or similar statutes of other states or the
4 federal government;

5 (3) has committed an act of physical, mental or emotional abuse or
6 neglect or sexual abuse and who is listed in the child abuse and neglect
7 registry maintained by the Kansas department for children and families
8 pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto, and:

9 (A) The person has failed to successfully complete a corrective action
10 plan which had been deemed appropriate and approved by the Kansas
11 department for children and families; or

12 (B) the record has not been expunged pursuant to rules and
13 regulations adopted by the secretary for children and families;

14 (4) has had a child removed from home based on a court order
15 pursuant to K.S.A. 2015 Supp. 38-2251, and amendments thereto, in this
16 state, or a court order in any other state based upon a similar statute that
17 finds the child to be deprived or a child in need of care based on a finding
18 of physical, mental or emotional abuse or neglect or sexual abuse and the
19 child has not been returned to the home or the child reaches majority
20 before being returned to the home and the person has failed to
21 satisfactorily complete a corrective action plan;

22 (5) has had parental rights terminated pursuant to the revised Kansas
23 code for the care of children or a similar statute of another state; or

24 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
25 seq., and amendments thereto, or an immediate intervention agreement
26 pursuant to K.S.A. 2015 Supp. 38-2346, and amendments thereto,
27 involving a charge of child abuse or a sexual offense.

28 (b) No licensee shall operate a center, facility, hospital or be a
29 provider of services if such person has been found to be an adult with an
30 impairment in need of a guardian or a conservator, or both, as provided in
31 the act for obtaining a guardian or conservator, or both.

32 (c) The secretary shall notify the licensee, within 10 business days,
33 when the result of the national criminal history record check or other
34 appropriate review reveals unfitness as specified in subsections (a)(1)
35 through (6) with regard to the person who is the subject of the review.

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

41 (e) Any licensee or member of the staff who receives information
42 concerning the fitness or unfitness of any person shall keep such
43 information confidential, except that the staff person may disclose such

1 information to the person who is the subject of the request for information.
2 A violation of this subsection shall be an unclassified misdemeanor
3 punishable by a fine of \$100.

4 (f) The licensing agency may require a person seeking licensure or
5 applying to work in a facility to be fingerprinted and submit to a state and
6 national criminal history record check. The fingerprints shall be used to
7 identify the person and to determine whether the person has a record of
8 criminal history in this state or other jurisdiction. The licensing agency is
9 authorized to submit the fingerprints to the Kansas bureau of investigation
10 and the federal bureau of investigation for a state and national criminal
11 history record check. The licensing agency may use the information
12 obtained from fingerprinting and the criminal history for purposes of
13 verifying the identification of the person and in the official determination
14 of the qualifications and fitness of the person to be issued or to maintain a
15 license, work with, or provide services to individuals as applicable under
16 this act.

17 (g) The secretary shall have access to any criminal history record
18 information in the possession of the Kansas bureau of investigation
19 regarding any criminal history information, including adjudications of a
20 juvenile offender which if committed by an adult would have been a
21 felony conviction for the purposes specified in this act. The Kansas bureau
22 of investigation may charge to the Kansas department for aging and
23 disability services a reasonable fee for providing criminal history record
24 information under this subsection.

25 (h) The secretary shall charge each person or licensee requesting
26 information under this section a fee equal to cost for each person about
27 which an information request has been submitted to the department under
28 this section.

29 (i) For the purpose of complying with this section, the licensee
30 operating a center, facility, hospital or a provider of services shall request
31 from the Kansas department for aging and disability services information
32 regarding any criminal history information relating to a person who works
33 in the center, facility, hospital or for a provider of services, or who is being
34 considered for employment or volunteer work in the facility, center,
35 hospital or with the service provider, for the purpose of determining
36 whether such person is subject to the provisions of this section. For the
37 purpose of complying with this section, the licensee operating a center,
38 facility, hospital or a provider of services shall report the dates of
39 employment and separation of all persons working for the licensee
40 operating a center, facility, hospital or a provider of services. For the
41 purposes of complying with this section, any employment agency which
42 provides employees to work in a center, facility, hospital or a provider of
43 services shall request and receive an eligibility determination from the

1 Kansas department for aging and disability services. Any licensee
2 operating a center, facility, hospital or a provider of services will obtain
3 written documentation that such employees are eligible to work. For the
4 purpose of complying with this section, a licensee may hire an applicant
5 for employment on a conditional basis pending the results from the Kansas
6 department for aging and disability services of an eligibility determination
7 under this subsection. As required by the patient protection and affordable
8 care act, 42 U.S.C. § 18001, and amendments thereto, a person
9 disqualified from employment due to a valid background check may
10 appeal in accordance with requirements, standards, rules and regulations to
11 be promulgated by the secretary.

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

17 (k) A licensee may request from the Kansas department for aging and
18 disability services criminal history information on persons employed under
19 subsection (j).

20 (l) The licensee operating a center, facility, hospital or a provider of
21 services shall not require an applicant under this section to be
22 fingerprinted, if the applicant has been the subject of a background check
23 under this act within one year prior to the application for employment with
24 the licensee operating a center, facility, hospital or a provider of services
25 and has maintained a record of continuous employment, with no lapse of
26 employment of over 90 days in any center, facility, hospital or a provider
27 of services covered by this act.

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

32 Sec. 10. All licenses issued under the provisions of chapter 33 of
33 article 75 of the Kansas Statutes Annotated, and amendments thereto, for
34 centers, facilities, hospitals and providers prior to the effective date of this
35 act shall continue in force until the license's date of expiration unless
36 sooner suspended or revoked as provided in this act. All persons holding
37 such licenses which are in force on the effective date of this act shall be
38 permitted not more than four months from the effective date of this act to
39 comply with the rules and regulations and standards promulgated under
40 the authority of this act wherein those rules and regulations and standards
41 differ in any substantial respect from those in force and effect immediately
42 prior to the effective date of this act under the provisions of chapter 59 of
43 article 75 of the Kansas Statutes Annotated, and amendments thereto.

1 Sec. 11. (a) Inspections and investigations shall be made, announced
2 or unannounced, and reported in writing by the authorized agents and
3 representatives of the licensing agency and state fire marshal, and of the
4 county, city-county and multi-county health departments as often and in
5 the manner and form prescribed by the rules and regulations promulgated
6 under the provisions of this act. Access shall be given to the premises of
7 any center, facility, hospital or provider, depending on the type of service
8 provided by the provider and locations at any time upon presenting
9 adequate identification to carry out the requirements of this section and the
10 provisions and purposes of this act. ***Access shall be given to the premises***
11 ***of a facility that is a private residence only for cause as prescribed by***
12 ***rules and regulations adopted under the provisions of this act.*** Failure to
13 provide such access may constitute grounds for denial, suspension or
14 revocation of the license. A copy of any inspection or investigation reports
15 required by this section shall be furnished to the applicant or licensee. An
16 exit interview shall be conducted with the licensee.

17 (b) The secretary shall inspect any facility or provider of residential
18 services which serves two or more residents who are not self-directing
19 their services, and which is subject to licensure under this act.

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

25 Sec. 12. A provisional license may be issued to any center, facility,
26 hospital or provider which is temporarily unable to conform to all the
27 standards, requirements and rules and regulations established under the
28 provisions of this act. The issuance of such provisional license shall be
29 subject to approval by the state fire marshal. A provisional license may be
30 issued for not more than six months to provide time to make necessary
31 corrections. One additional successive six-month provisional license may
32 be granted at the discretion of the licensing agency. A change of ownership
33 during the provisional licensing period will not extend the time for the
34 requirements to be met that were the basis for the provisional license, nor
35 entitle the new owner to an additional provisional license.

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

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

6 (c) (1) Any applicant or licensee issued an emergency order by the
7 licensing agency denying, suspending or revoking a license under this
8 section may apply for a new license or reinstatement of a license at any
9 time upon submission of a written waiver of any right conferred upon such
10 applicant or licensee under the Kansas administrative procedure act,
11 K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial
12 review act, K.S.A. 77-601 et seq., and amendments thereto, to the
13 licensing agency in a settlement agreement or other manner as approved
14 by the licensing agency.

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

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

32 (b) The licensing agency may deny a license to any person and may
33 suspend or revoke the license of any person who:

34 (1) Has willfully or repeatedly violated any provision of law or rules
35 and regulations adopted pursuant to this act or to article 59 of chapter 75
36 of the Kansas Statutes Annotated, and amendments thereto;

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

43 (3) has failed or refused to comply with the medicaid requirements of

1 title XIX of the social security act, or medicaid regulations under chapter
2 IV of title 42 of the code of federal regulations, a certified copy of the
3 record of such action being conclusive evidence thereof;

4 (4) has failed or refused to comply with the medicare requirements of
5 chapter 7 of title 42 of the United States code, or medicare regulations
6 under chapter IV of title 42 of the code of federal regulations, a certified
7 copy of the record of such action being conclusive evidence thereof;

8 (5) has been convicted of a felony;

9 (6) has failed to assure that nutrition, medication or treatment of
10 individuals, including the use of restraints, are in accordance with
11 acceptable medical practices; or

12 (7) has aided, abetted, sanctioned or condoned any violation of law or
13 rules and regulations adopted pursuant to this act or to article 59 of chapter
14 75 of the Kansas Statutes Annotated, and amendments thereto.

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

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

26 Sec. 16. (a) A correction order may be issued by the secretary or the
27 secretary's designee to a licensee whenever the state fire marshal or the
28 marshal's representative or a duly authorized representative of the
29 secretary inspects or investigates a center, facility, hospital or provider and
30 determines that the center, facility, hospital or provider is not in
31 compliance with the provisions of this act or article 59 of chapter 75 of the
32 Kansas Statutes Annotated, and amendments thereto, or rules and
33 regulations promulgated thereunder and such non-compliance is likely to
34 adversely affect the health, safety, nutrition or sanitation of the individuals
35 or the public. The correction order shall be served upon the licensee either
36 personally or by certified mail, return receipt requested. The correction
37 order shall be in writing, shall state the specific deficiency, cite the specific
38 statutory provision or rule and regulation alleged to have been violated and
39 shall specify the time allowed for correction.

40 (b) If upon re-inspection by the state fire marshal or the marshal's
41 representative or a duly authorized representative of the secretary, it is
42 found that the licensee has not corrected the deficiency or deficiencies
43 specified in the correction order, the secretary may assess a civil penalty in

1 an amount not to exceed \$500 per day, per deficiency, against the licensee
2 for each day subsequent to the day following the time allowed for
3 correction of the deficiency as specified in the correction order, the
4 maximum assessment shall not exceed \$2,500. A written notice of
5 assessment shall be served upon the licensee either personally or by
6 certified mail, return receipt requested.

7 (c) Before the assessment of a civil penalty, the secretary shall
8 consider the following factors in determining the amount of the civil
9 penalty to be assessed:

10 (1) The severity of the violation;

11 (2) the good faith effort exercised by the center, facility, hospital or
12 provider to correct the violation; and

13 (3) the history of compliance of the licensee of the center, facility,
14 hospital or provider with the rules and regulations. If the secretary finds
15 that some or all deficiencies cited in the correction order have also been
16 cited against the center, facility, hospital or provider as a result of any
17 inspection or investigation which occurred within 18 months prior to the
18 inspection or investigation which resulted in such correction order, the
19 secretary may double the civil penalty assessed against the licensee, the
20 maximum not to exceed \$5,000.

21 (d) All civil penalties assessed shall be due and payable within 10
22 days after written notice of assessment is served on the licensee, unless a
23 longer period of time is granted by the secretary. If a civil penalty is not
24 paid within the applicable time period, the secretary may file a certified
25 copy of the notice of assessment with the clerk of the district court in the
26 county where the center, facility, hospital or provider is located. The notice
27 of assessment shall be enforced in the same manner as a judgment of the
28 district court.

29 (e) All civil penalties collected pursuant to the provisions of this act
30 shall be deposited in the state general fund.

31 Sec. 17. If any provision of this act or the application thereof to any
32 person or circumstances is held invalid, the invalidity shall not affect other
33 provisions or applications of the act which can be given effect without the
34 invalid provisions or application and, to this end, the provisions of this act
35 are severable.

36 Sec. 18. K.S.A. 39-1807 and 75-3307c and K.S.A. 2015 Supp. 75-
37 3307b are hereby repealed.

38 Sec. 19. This act shall take effect and be in force from and after its
39 publication in the ~~statute book~~ ***Kansas register***.