

**CORRECTED**  
*{As Amended by Senate Committee of the Whole}*

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*As Amended by Senate Committee*

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*Session of 2016*

**SENATE BILL No. 422**

By Committee on Public Health and Welfare

2-9

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1 AN ACT concerning ~~the department for aging and disability services~~  
2 *{health and healthcare}*; providing for the licensure of certain facilities  
3 and standards for treatment of certain individuals; *{prohibiting the*  
4 *privatization of state psychiatric hospitals}*; repealing K.S.A. 39-1807  
5 and 75-3307c and K.S.A. 2015 Supp. 75-3307b.  
6

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

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

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

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

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

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

23 (b) "Community mental health center" means a center organized  
24 pursuant to article 40 of chapter 19 of the Kansas Statutes Annotated, and  
25 amendments thereto, or a mental health clinic organized pursuant to article  
26 2 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

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

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

6 (h) "Licensing agency" means the secretary for aging and disability  
7 services.

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

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

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

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

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

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

39 (o) "Services" means the following types of behavioral health,  
40 intellectual disability, developmental disability and other disability  
41 services, including, but not limited to: Residential supports, day supports,  
42 care coordination, case management, workshops, sheltered domiciles,  
43 education, therapeutic services, assessments and evaluations, diagnostic

1 care, medicinal support and rehabilitative services.

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

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

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

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

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

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

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

39 (7) Administer or supervise the administration of the provisions  
40 relating to individuals with mental illness, intellectual disabilities,  
41 developmental disabilities or other disabilities pursuant to federal  
42 legislation and regulations.

43 (8) Coordinate activities and cooperate with treatment providers or

1 other facilities for those with mental illness, intellectual disabilities,  
2 developmental disabilities or other disabilities pursuant to federal  
3 legislation and regulations in this and other states for the treatment of such  
4 individuals and for the common advancement of these programs and  
5 facilities.

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

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

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

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

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

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

41 Sec. 5. All pertinent laws of this state and lawfully adopted  
42 ordinances and rules and regulations shall be strictly complied with in the  
43 operation of any center, facility, hospital or provision of services in this

1 state. All centers, facilities, hospitals and providers shall comply with all  
2 the lawfully established requirements and rules and regulations of the  
3 secretary and the state fire marshal, and any other agency of government  
4 so far as pertinent and applicable to such centers, facilities, hospitals and  
5 providers, their buildings, staff, facilities, maintenance, operation, conduct  
6 and the care and treatment of individuals.

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

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

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

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

43 (c) Each license shall be issued only for the premises or ~~persons~~

1 *providers* named in the application, or both, and shall not be transferable  
2 or assignable. The license shall be posted in a conspicuous place in the  
3 center, facility, hospital or provider's principal location. If the annual report  
4 is not so filed and a renewal of licensure fee, if any, is not paid, such  
5 license shall be automatically denied or revoked. Any license granted  
6 under the provisions of this act shall state the type of facility *or service* for  
7 which the license is granted, the number of individuals for whom granted,  
8 the person or persons to whom granted, the date and such additional  
9 information and special limitations deemed appropriate by the licensing  
10 agency.

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

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

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

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

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

37 (D) has been convicted of any act which is described in K.S.A. 21-  
38 4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp. 21-6401, and  
39 amendments thereto, or similar statutes of other states or the federal  
40 government;

41 (2) has been adjudicated a juvenile offender because of having  
42 committed an act which if committed by an adult would constitute the  
43 commission of a felony and which is a crime against persons, is any act

1 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes  
2 Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the  
3 Kansas Statutes Annotated, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-  
4 6326 or 21-6418 through 21-6421, and amendments thereto, or similar  
5 statutes of other states or the federal government, or is any act described in  
6 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp.  
7 21-6401, and amendments thereto, or similar statutes of other states or the  
8 federal government;

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

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

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

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

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

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

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

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

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

1 section.

2 (e) Any licensee or member of the staff who receives information  
3 concerning the fitness or unfitness of any person shall keep such  
4 information confidential, except that the staff person may disclose such  
5 information to the person who is the subject of the request for information.  
6 A violation of this subsection shall be an unclassified misdemeanor  
7 punishable by a fine of \$100.

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

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

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

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



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

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

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

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

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

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

1 the authority of this act wherein those rules and regulations and standards  
2 differ in any substantial respect from those in force and effect immediately  
3 prior to the effective date of this act under the provisions of chapter 59 of  
4 article 75 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

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

40 Sec. 13. (a) Whenever the licensing agency finds a substantial failure  
41 to comply with the requirements, standards or rules and regulations  
42 established under this act, it shall make an order denying, suspending or  
43 revoking the license after notice and an opportunity for a hearing in

1 accordance with the provisions of the Kansas administrative procedure act,  
2 K.S.A. 77-501 et seq., and amendments thereto. Any applicant or licensee  
3 may appeal such order in accordance with the provisions of the Kansas  
4 judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

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

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

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

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

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

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

41 (2) has had a license to operate a center, facility or hospital denied,  
42 suspended, revoked or limited, has been censured or has had other  
43 disciplinary action taken, or an application for a license denied, by the

1 proper licensing authority of another state, territory, District of Columbia  
2 or other country, a certified copy of the record of such action of the other  
3 jurisdiction being conclusive evidence thereof;

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

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

12 (5) has been convicted of a felony;

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

16 (7) has aided, abetted, sanctioned or condoned any violation of law or  
17 rules and regulations adopted pursuant to this act or to article 59 of chapter  
18 75 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

1 (b) If upon re-inspection by the state fire marshal or the marshal's  
2 representative or a duly authorized representative of the secretary, it is  
3 found that the licensee has not corrected the deficiency or deficiencies  
4 specified in the correction order, the secretary may assess a civil penalty in  
5 an amount not to exceed \$500 per day, per deficiency, against the licensee  
6 for each day subsequent to the day following the time allowed for  
7 correction of the deficiency as specified in the correction order, the  
8 maximum assessment shall not exceed \$2,500. A written notice of  
9 assessment shall be served upon the licensee either personally or by  
10 certified mail, return receipt requested.

11 (c) Before the assessment of a civil penalty, the secretary shall  
12 consider the following factors in determining the amount of the civil  
13 penalty to be assessed:

14 (1) The severity of the violation;

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

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

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

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

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

40 ***{Sec. 18. (a) Notwithstanding any other provision of law, no state***  
41 ***agency shall enter into any agreement or take any action to outsource or***  
42 ***privatize any operations or facilities of the Larned state hospital or***  
43 ***Osawatomie state hospital without prior specific authorization by an act***

1 *of the legislature or an appropriation act of the legislature.*

2 *(b) Nothing in this section shall prevent any state agency from*  
3 *renewing, in substantially the same form as an existing agreement, any*  
4 *agreement in existence prior to March 4, 2016, for services at the*  
5 *Larned state hospital or the Osawatomie state hospital.*

6 *(c) Nothing in this section shall prevent any state agency from*  
7 *entering into an agreement for services at the Larned state hospital or*  
8 *the Osawatomie state hospital with a different provider if such*  
9 *agreement is substantially similar to an agreement for services in*  
10 *existence prior to March 4, 2016.}*

11 ~~Sec. 18. {19.}~~ K.S.A. 39-1807 and 75-3307c and K.S.A. 2015 Supp.  
12 75-3307b are hereby repealed.

13 ~~Sec. 19. {20.}~~ This act shall take effect and be in force from and after  
14 its publication in the ~~statute book~~ *Kansas register*.