

CHAPTER 160

SENATE BILL No. 116  
(Amended by Chapter 186)

AN ACT relating to certain facilities; concerning social and rehabilitation services; providing injunctive authority against unlicensed facilities; amending K.S.A. 75-3307b and K.S.A. 2004 Supp. 65-5603 and repealing the existing sections.

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

Section 1. K.S.A. 75-3307b is hereby amended to read as follows: 75-3307b. (a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for ~~the mentally ill, mentally retarded or other handicapped~~ persons *with mental illness, developmental disabilities or other persons with disabilities* is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities for ~~the mentally ill, mentally retarded or other developmentally disabled~~ persons *with mental illness, developmental disabilities or other persons with disabilities* receiving assistance through the department of social and rehabilitation services which receive or have received after June 30, 1967, any state or federal funds, or facilities where ~~mentally ill, mentally retarded or other developmentally disabled~~ persons *with mental illness or developmental disabilities* reside who require supervision or require limited assistance with the taking of medication, and the withdrawal of licenses granted for causes shown. The secretary may adopt rules and regulations that allow the facility to assist a resident with the taking of medication when the medication is in a labeled container dispensed by a pharmacist. No license for a residential facility for eight or more persons may be issued under this paragraph unless the secretary of health and environment has approved the facility as meeting the licensing standards for a lodging establishment under the food service and lodging act. No license for a residential facility for the elderly or for a residential facility for persons with disabilities not related to mental illness or ~~mental retardation~~ *developmental disability*, or both, or related conditions shall be issued under this paragraph;

(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for ~~the mentally retarded~~ persons *with developmental disabilities* and facilities serving other ~~handicapped~~ persons *with disabilities* receiving assistance through the department of social and rehabilitation services.

(b) An entity holding a license as a community mental health center under paragraph (4) of subsection (a) on the day immediately preceding the effective date of this act, but which does not meet the definition of a community mental health center set forth in this act, shall continue to be licensed as a community mental health center as long as the entity remains affiliated with a licensed community mental health center and continues to meet the licensing standards established by the secretary.

(c) *Notwithstanding the existence or pursuit of any other remedy, the secretary of social and rehabilitation services, as the licensing agency, in the manner provided by the act for judicial review and civil enforcement of agency actions, may maintain an action in the name of the state of Kansas for injunction against any person or facility to restrain or prevent the operation of a psychiatric hospital, community mental health center or facility for persons with mental illness, developmental disabilities*

or other persons with disabilities operating without a license.

(d) *The secretary of social and rehabilitation services shall license and inspect any facility or provider of residential services which serves two or more residents who are not self-directing their services and which is subject to licensure under subsection (a)(5) of this section, unless the provider of services is already licensed to provide such services.*

Sec. 2. K.S.A. 2004 Supp. 65-5603 is hereby amended to read as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602 and amendments thereto shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to ~~Kansas advocacy and protective services, in-~~ *the state protection and advocacy system* which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for

purposes of promoting continuity of care between the state psychiatric hospitals and the community mental health centers; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), "proposed patient" and "patient" shall have the meanings respectively ascribed thereto in K.S.A. 2004 Supp. 59-2946 and amendments thereto;

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study; or

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information.

(b) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

Sec. 3. K.S.A. 75-3307b and K.S.A. 2004 Supp. 65-5603 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 2005.

---