

## HOUSE BILL No. 2316

By Committee on Health and Human Services

Requested by Representative Bryce on behalf of the Department for Aging and Disability Services

2-6

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1 AN ACT concerning health and healthcare; relating to the collection of  
2 civil penalties for violations of correction orders; establishing the  
3 disability community services providers civil monetary penalty  
4 reinvestment fund and the adult care homes civil monetary penalty  
5 reinvestment fund; amending K.S.A. 39-949 and K.S.A. 2024 Supp.  
6 39-2016 and repealing the existing sections.

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

9 Section 1. K.S.A. 39-949 is hereby amended to read as follows: 39-  
10 949. All civil penalties collected pursuant to the provisions of this act shall  
11 be deposited ~~in the state general fund~~ *with the state treasurer in*  
12 *accordance with K.S.A. 75-4215, and amendments thereto. There is hereby*  
13 *established in the state treasury the adult care homes civil monetary*  
14 *penalty reinvestment fund. All moneys credited to the adult care homes*  
15 *civil monetary penalty reinvestment fund shall be used by the Kansas*  
16 *department for aging and disability services exclusively for grants*  
17 *awarded to current licensees under K.S.A. 39-923 et seq., and*  
18 *amendments thereto, for projects approved by the department that will*  
19 *benefit the health, safety and welfare of the residents served by adult care*  
20 *homes. All expenditures from the adult care homes civil monetary penalty*  
21 *reinvestment fund shall be made in accordance with appropriation acts*  
22 *upon warrants of the director of accounts and reports issued pursuant to*  
23 *vouchers approved by the secretary for aging and disability services or the*  
24 *secretary's designee.*

25 Sec. 2. K.S.A. 2024 Supp. 39-2016 is hereby amended to read as  
26 follows: 39-2016. (a) A correction order may be issued by the secretary or  
27 the 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 adopted by the secretary pursuant to such authority and such  
34 ~~non-compliance~~ *noncompliance* is likely to adversely affect the health,

1 safety, nutrition or sanitation of the individuals or the public. The  
2 correction order shall be served upon the licensee either personally or by  
3 certified mail, return receipt requested. The correction order shall be in  
4 writing, ~~shall~~ state the specific deficiency, cite the specific statutory  
5 provision or rule and regulation alleged to have been violated and ~~shall~~  
6 specify the time allowed for correction.

7 (b) If upon ~~re-inspection~~ *reinspection* by the state fire marshal or the  
8 marshal's representative or a duly authorized representative of the  
9 secretary, it is found that the licensee has not corrected the deficiency or  
10 deficiencies specified in the correction order, the secretary may assess a  
11 civil penalty in an amount not to exceed \$500 per day, per deficiency,  
12 against the licensee for each subsequent day following the time allowed  
13 for correction of the deficiency as specified in the correction order. The  
14 maximum assessment shall not exceed \$2,500. A written notice of  
15 assessment shall be served upon the licensee either personally or by  
16 certified mail, return receipt requested. Such notice of assessment shall  
17 advise the licensee of the opportunity to be heard in accordance with the  
18 Kansas administrative procedure act and to appeal such order in  
19 accordance with the provisions of the Kansas judicial review act.

20 (c) Before the assessment of a civil penalty, the secretary shall  
21 consider the following factors in determining the amount of the ~~civil~~  
22 ~~penalty to be assessed~~ *assessment*:

- 23 (1) The severity of the violation;  
24 (2) the good faith effort exercised by the center, facility, hospital or  
25 provider to correct the violation; and  
26 (3) the history of compliance of the licensee of the center, facility,  
27 hospital or provider with the rules and regulations. If the secretary finds  
28 that some or all deficiencies cited in the correction order have also been  
29 cited against the center, facility, hospital or provider as a result of any  
30 inspection or investigation ~~which~~ *that* occurred within 18 months prior to  
31 the inspection or investigation ~~which~~ *that* resulted in such correction order,  
32 the secretary may double the civil penalty assessed against the licensee.  
33 The maximum *assessment shall not to* exceed \$5,000.

34 (d) All civil penalties assessed shall be due and payable within 10  
35 days after written notice of assessment is served on the licensee, unless a  
36 longer period of time is granted by the secretary. If a civil penalty is not  
37 paid within the applicable time period, the secretary may file a certified  
38 copy of the notice of assessment with the clerk of the district court in the  
39 county where the center, facility, hospital or provider is located. The notice  
40 of assessment shall be enforced in the same manner as a judgment of the  
41 district court.

42 (e) Any licensee against whom a civil penalty has been assessed, may  
43 appeal such assessment to the secretary within 10 days after receiving a

1 written notice of assessment by filing a written notice of appeal with the  
2 office of administrative hearings specifying why such civil penalty should  
3 not be assessed. Such appeal shall not operate to stay the payment of the  
4 civil penalty. Upon receipt of the notice of appeal, the office of  
5 administrative hearings shall conduct a hearing in accordance with the  
6 provisions of the Kansas administrative procedure act. If the initial order  
7 issued by the office of administrative hearings finds in favor of the  
8 appellant and the secretary affirms the initial order, any civil penalties  
9 collected shall be refunded to the appellant licensee. Either party may  
10 appeal the final order in accordance with the Kansas judicial review act.

11 (f) All civil penalties collected pursuant to the provisions of this act  
12 shall be deposited with the state treasurer in accordance with K.S.A. 75-  
13 4215, and amendments thereto. ~~Upon receipt the state treasurer shall~~  
14 ~~deposit the entire amount in the state general fund~~ *There is hereby*  
15 *established in the state treasury the disability community services*  
16 *providers civil monetary penalty reinvestment fund. All moneys credited to*  
17 *the disability community services providers civil monetary penalty*  
18 *reinvestment fund shall be used by the Kansas department for aging and*  
19 *disability services exclusively for grants awarded to current licensees*  
20 *under K.S.A. 39-2001 et seq., and amendments thereto, for projects*  
21 *approved by the department that will benefit the health, safety and welfare*  
22 *of program participants served by the center, facility, hospital or provider.*  
23 *All expenditures from the disability community services providers civil*  
24 *monetary penalty reinvestment fund shall be made in accordance with*  
25 *appropriation acts upon warrants of the director of accounts and reports*  
26 *issued pursuant to vouchers approved by the secretary for aging and*  
27 *disability services or the secretary's designee.*

28 Sec. 3. K.S.A. 39-949 and K.S.A. 2024 Supp. 39-2016 are hereby  
29 repealed.

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