

## HOUSE BILL No. 2315

By Committee on Aging and Long Term Care

2-11

1 AN ACT concerning public health; relating to the licensure of home  
2 nursing agencies, home health agencies and home services agencies;  
3 amending K.S.A. 65-5101, 65-5102, 65-5103, 65-5105, 65-5106, 65-  
4 5107, 65-5108, 65-5109, 65-5111, 65-5115 and 65-5116 and K.S.A.  
5 2010 Supp. 65-5104, 65-5112 and 65-5117 and repealing the existing  
6 sections.

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

9 Section 1. K.S.A. 65-5101 is hereby amended to read as follows: 65-  
10 5101. As used in this *article 51 of chapter 65 of the Kansas Statutes*  
11 *Annotated, and amendments thereto*~~act~~, unless the context otherwise  
12 requires:

13 (a) "Agency" means a home health agency, home nursing agency or  
14 home services agency unless specifically stated otherwise;

15 (b) "attendant care services" shall have the meaning ascribed to  
16 such term under K.S.A. 65-6201, and amendments thereto;

17 ~~(a)~~(c) "council" means the home health and home services advisory  
18 council ~~created by this act~~;

19 (d) "department" means the department of health and environment;

20 ~~(b)~~(e) "home health agency" means a public or private agency or  
21 organization ~~or a subdivision or subunit of such agency or organization~~  
22 that provides for a fee one or more ~~home health~~ skilled nursing services  
23 and at least one other home health service at the residence of a patient  
24 but does not include local health departments which are not federally  
25 certified home health agencies, durable medical equipment companies  
26 which provide home health services by use of specialized equipment,  
27 independent living agencies, the department of social and rehabilitation  
28 services and the department of health and environment;

29 ~~(e)~~(f) "home health services" means any of the following services  
30 provided at the residence of the patient on a full-time, part-time or  
31 intermittent basis: Nursing, physical therapy, speech therapy, nutritional  
32 or dietetic consulting, occupational therapy, respiratory therapy, home  
33 health aid, attendant care services or medical social service;

34 (g) "home nursing agency" means an agency that provides services  
35 directly for a fee, or acts as a placement agency, in order to deliver  
36 skilled nursing and home health aide services to persons in their

1 *personal residences. A home nursing agency does not:*

2 *(1) Require licensure as a home health agency; or*

3 *(2) include an individually licensed nurse acting as a private*  
4 *contractor or a person that provides or procures temporary employment*  
5 *in an adult care home, as defined in K.S.A. 39-923, and amendments*  
6 *thereto;*

7 *(h) "home services" or "in-home services" means assistance with*  
8 *activities of daily living, housekeeping, personal laundry and*  
9 *companionship provided to an individual in such individual's personal*  
10 *residence which are intended to enable that individual to remain safely*  
11 *and comfortably in such individual's residence. "Home services" or "in-*  
12 *home services" does not include services that would be required to be*  
13 *performed by an individual licensed under the Kansas nurse practice act;*

14 *(i) "home services agency" means an agency that provides services*  
15 *directly, or acts as a placement agency, for the purpose of placing*  
16 *individuals as workers providing home services for consumers in their*  
17 *personal residences. "Home services agency" does not include an agency*  
18 *that limits its business exclusively to providing housecleaning services;*

19 ~~(j)~~ *"home health aide" means an employee of a home health*  
20 *agency who is not licensed or professionally registered to provide home*  
21 *health services but who assists, under supervision, in the provision of*  
22 *home health services and who provides related health care to patients, but*  
23 *shall not include employees of a home health agency providing only*  
24 *attendant care services;*

25 ~~(k)~~ *"independent living agency" means a public or private agency*  
26 *or organization or a subunit of such agency or organization whose*  
27 *primary function is to provide at least four independent living services,*  
28 *including independent living skills training, advocacy, peer counseling*  
29 *and information and referral as defined by the rehabilitation act of 1973,*  
30 *title VII, part B, and such agency shall be recognized by the secretary of*  
31 *social and rehabilitation services as an independent living agency. Such*  
32 *agencies include independent living centers and programs which meet the*  
33 *following quality assurances:*

34 *(1) Accreditation by a nationally recognized accrediting body such*  
35 *as the commission on accreditation of rehabilitation facilities; or*

36 *(2) receipt of grants from the state or the federal government and*  
37 *currently meets standards for independent living under the rehabilitation*  
38 *act of 1973, title VII, part B, sections (a) through (k), or comparable*  
39 *standards established by the state; or*

40 *(3) compliance with requirements established by the federal*  
41 *government under rehabilitation services administration standards for*  
42 *centers for independent living;*

43 ~~(l)~~ *"part-time or intermittent basis" means the providing of home*

1 health services in an interrupted interval sequence on the average of not  
2 to exceed three hours in any twenty-four-hour period;

3 ~~(g)~~(m) "patient's residence" means the actual place of residence of  
4 the person receiving home health services, including institutional  
5 residences as well as individual dwelling units;

6 (n) "placement agency" means any person engaged for gain or  
7 profit in the business of securing or attempting to secure work for hire for  
8 persons seeking work or workers for employers. "Placement agency"  
9 includes a private employment agency and any other entity that places a  
10 worker for private hire by a consumer in that consumer's residence for  
11 purposes of providing home services. "Placement agency" does not  
12 include a person that provides or procures temporary employment in an  
13 adult care home, as defined in K.S.A. 39-923, and amendments thereto;

14 (o) "person" means any individual, firm, partnership, corporation,  
15 company, association or joint-stock association, and the legal successor  
16 thereof;

17 ~~(h)~~(p) "secretary" means secretary of health and environment; and

18 ~~(i)~~(q) "subunit" or "subdivision" means any organizational unit of a  
19 larger organization which can be clearly defined as a separate entity  
20 within the larger structure, which can meet all of the requirements of this  
21 act independent of the larger organization, which can be held accountable  
22 for the care of patients it is serving and which provides to all patients care  
23 and services meeting the standards and requirements of this act. ~~and~~

24 (j) "attendant care services" shall have the meaning ascribed to such  
25 term under K.S.A. 65-6201 and amendments thereto.

26 Sec. 2. K.S.A. 65-5102 is hereby amended to read as follows: 65-  
27 5102.

28 (a) (1) ~~No home health agency, including medicare and medicaid~~  
29 ~~providers, shall Provide one or more of the home health services specified~~  
30 ~~in subsection (c) of K.S.A. 65-5101 and amendments thereto, other than~~  
31 ~~attendant care services, or shall No person shall open, manage, conduct,~~  
32 ~~maintain, advertise or hold oneself out to the public as a home nursing~~  
33 ~~agency unless it is licensed by the department;~~

34 (2) ~~no person shall open, manage, conduct, maintain, advertise or~~  
35 ~~hold oneself out to the public as providing one or more of such home~~  
36 ~~health services, other than attendant care services, or as a home health~~  
37 ~~agency unless it is licensed by the department; and in accordance with the~~  
38 ~~provisions of this act.~~

39 (3) ~~no person shall open, manage, conduct, maintain, advertise or~~  
40 ~~hold oneself out to the public as a home services agency unless it is~~  
41 ~~licensed by the department.~~

42 (b) ~~The department shall adopt rules and regulations as necessary~~  
43 ~~to protect the public health, safety or welfare in order to implement the~~

1 *provisions of this section.*

2 Sec. 3. K.S.A. 65-5103 is hereby amended to read as follows: 65-  
3 5103. ~~(a) Persons desiring to receive a license to operate a home health~~  
4 ~~agency shall file a written application with the secretary on a form~~  
5 ~~prescribed by the secretary.~~

6 ~~(b) The application shall be accompanied by a license fee fixed by~~  
7 ~~rules and regulations of the secretary which establish a sliding scale for~~  
8 ~~such fee based upon the actual or estimated number of home health visits~~  
9 ~~to be performed by a home health agency during a calendar year. The~~  
10 ~~initial license fee may be greater than subsequent annual fees as~~  
11 ~~established by the secretary by rules and regulations.~~

12 *(a) If an applicant for licensure has not been previously licensed, or*  
13 *if the home health agency, home services agency or home nursing agency*  
14 *is not in operation at the time application is made, the department may*  
15 *issue a provisional license. A provisional license shall be valid for a*  
16 *period of 120 days unless sooner suspended or revoked pursuant to*  
17 *K.S.A. 65-5101 et seq., and amendments thereto. Within 30 days prior to*  
18 *the termination of a provisional license, the department shall inspect the*  
19 *agency and, if the applicant substantially meets the requirements for*  
20 *licensure, it shall issue a license under this section.*

21 *(b) (1) The secretary may also issue a provisional license to any*  
22 *licensed agency which does not substantially comply with the provisions*  
23 *of article 51, chapter 65 of the Kansas Statutes Annotated, and*  
24 *amendments thereto, provided that the secretary finds that the public*  
25 *health, safety and welfare will be protected during the period for which*  
26 *such provisional license is issued. The term of such provisional license*  
27 *shall not exceed 120 days.*

28 *(2) The secretary shall advise the licensee of the following:*

29 *(A) The conditions under which such provisional license is issued;*

30 *(B) the manner in which the licensee fails to comply with the*  
31 *provisions of K.S.A. 65-5101 et seq., and amendments thereto; and*

32 *(C) the time within which the corrections necessary for the agency*  
33 *to substantially comply with K.S.A. 65-5101 et seq., and amendments*  
34 *thereto, shall be completed.*

35 *(3) The secretary may extend the term of a provisional license for an*  
36 *additional 120 days if the secretary finds that the agency has made*  
37 *substantial progress toward correcting the violations and bringing the*  
38 *agency into full compliance with K.S.A. 65-5101 et seq., and amendments*  
39 *thereto.*

40 *(c) Each application for a home health agency provisional license*  
41 *shall contain the following information:*

42 *(1) Name, address and location of the agency;*

43 *(2) organization and governing structure of agency;*

- 1 (3) *number and qualification of staff;*
- 2 (4) *sources of financing of services and agency;*
- 3 (5) *service area and service charges;*
- 4 (6) *patient load;*
- 5 (7) *affiliation agreements with other health care providers; and*
- 6 (8) *such other information as the department may require.*

7 (d) *An annual license shall be issued by the department to any*  
 8 *person conducting or maintaining a home health agency upon receipt of*  
 9 *an application, payment of a licensure fee, compliance with the*  
 10 *requirements of K.S.A. 65-5101 et seq., and amendments thereto, and*  
 11 *approval of the secretary after a survey inspection.*

12 (e) *The department may adopt reasonable rules and regulations*  
 13 *necessary to accommodate a person that meets the requirements for*  
 14 *licensure to obtain licensure singly or in any combination for the*  
 15 *categories authorized under K.S.A. 65-5101 et seq., and amendments*  
 16 *thereto. The department shall develop and implement one application to*  
 17 *be used even if a combination of licenses authorized under K.S.A. 65-*  
 18 *5101 et seq., and amendments thereto, is sought. Applicants for multiple*  
 19 *licenses under this system shall pay higher licensure fees to be*  
 20 *established by rules and regulations of the secretary.*

21 Sec. 4. K.S.A. 2010 Supp. 65-5104 is hereby amended to read as  
 22 follows: 65-5104. ~~(a) The secretary shall review the applications and shall~~  
 23 ~~issue a license to applicants who have complied with the requirements of~~  
 24 ~~this act and have received approval of the secretary after a survey~~  
 25 ~~inspection.~~

26 ~~(b)~~(a) A license shall remain in effect unless suspended or revoked,  
 27 when the following conditions have been met:

28 (1) An annual report is filed upon such uniform dates and containing  
 29 such information in such form as the secretary prescribes and is  
 30 accompanied by the payment of an annual fee;

31 (2) the ~~home health~~ agency is in compliance with the requirements  
 32 established *pursuant to K.S.A. 65-5101 et seq., and amendments*  
 33 ~~thereo, under the provisions of this act~~ as evidenced by an on-site survey  
 34 conducted at least once every 36 months subsequent to any previous  
 35 survey inspection; and

36 (3) the annual report is accompanied by a statement of any changes  
 37 in the information previously filed with the secretary *pursuant to* ~~under~~  
 38 *K.S.A. 65-5101 et seq.,* ~~65-5103~~ and amendments thereto.

39 (c) If the annual report is not filed and the annual fee is not paid,  
 40 such license is automatically canceled. The annual *licensure fee and*  
 41 *renewal of licensure fee* shall be fixed by rules and regulations of the  
 42 secretary. ~~The license fee for renewal of a license in effect immediately~~  
 43 ~~prior to the effective date of this act shall constitute the annual fee until~~

1 ~~an annual fee is established by the secretary under this subsection.~~

2 (d) Each license shall be issued only for the ~~home health~~ agency  
3 listed in the application and annual report. Licenses shall be posted in a  
4 conspicuous place in the main offices of the licensed ~~home health~~ agency.

5 (e) A license shall not be transferable or assignable. When a ~~home~~  
6 ~~health~~ *an* agency is sold or ownership or management is transferred, or  
7 the corporate legal organization status is substantially changed, the  
8 license of the agency shall be voided and a new license obtained.  
9 Application for a new license shall be made to the secretary in writing, at  
10 least 90 days prior to the effective date of the sale, transfer or change in  
11 corporate status. The application for a new license shall be on the same  
12 form, containing the same information required for an original license,  
13 and shall be accompanied by the license fee. The secretary may issue a  
14 temporary operating permit for the continuation of the operation of the  
15 ~~home health~~ agency for a period of not more than 90 days pending the  
16 survey inspection and the final disposition of the application. The  
17 secretary shall require all licensed ~~home health~~ agencies to submit  
18 statistical reports. The content, format and frequency of such reports shall  
19 be determined by the secretary.

20 (f) Notwithstanding the foregoing provisions of this section, the  
21 secretary may enter into reciprocal agreements with states bordering  
22 Kansas whereby licenses may be granted, without an on-site survey and  
23 upon the filing of the prescribed application and payment of the  
24 prescribed fee, to home health agencies, *home services agencies or home*  
25 *nursing agencies* duly licensed in a bordering state, so long as the  
26 secretary finds that the requirements for licensure of the state from which  
27 the applicant applies are substantially the same as those in Kansas and the  
28 applicant is recommended favorably in writing by the licensing agency of  
29 the bordering state in which the applicant is licensed. If a bordering state  
30 does not license *home nursing agencies*, home health agencies *or home*  
31 *services agencies*, or does not have licensing requirements substantially  
32 the same as those in Kansas, *home nursing agencies*, home health  
33 agencies *or home service agencies* located in that state which do business  
34 in Kansas shall meet all requirements of *K.S.A. 65-5101, and*  
35 *amendments thereto,*~~this act~~ and shall operate in Kansas from offices  
36 located in Kansas.

37 Sec. 5. K.S.A. 65-5105 is hereby amended to read as follows: 65-  
38 5105. (a) In addition to the survey inspection required for licensing or for  
39 a license to remain in effect, the secretary may make other survey  
40 inspections during normal business hours.

41 (b) Each ~~home health~~ agency shall allow the secretary or the  
42 authorized representatives of the secretary to enter upon the premises of  
43 ~~the home health~~ agency during normal business hours for the purpose

1 of conducting the survey inspection. Failure to allow such entry upon its  
2 premises shall constitute grounds for denial, suspension or revocation of a  
3 license.

4 Sec. 6. K.S.A. 65-5106 is hereby amended to read as follows: 65-  
5 5106. After completion of each survey inspection, a written report of the  
6 findings with respect to compliance or noncompliance with the provisions  
7 of *K.S.A. 65-5101 et seq., and amendments thereto*, ~~this act and the~~  
8 ~~standards established hereunder as well as~~ a list of deficiencies found  
9 shall be prepared. The list of deficiencies shall specifically state the  
10 statute or rule and regulation which the ~~home health~~ agency is alleged to  
11 have violated. A copy of the survey inspection report shall be furnished to  
12 the applicant, except that a copy of the preliminary survey inspection  
13 report signed jointly by a representative of the ~~home health~~ agency and  
14 the inspector shall be left with the applicant when an inspection is  
15 completed. This preliminary survey inspection report shall constitute the  
16 final record of deficiencies assessed against the ~~home health~~ agency  
17 during the inspection, all deficiencies shall be specifically listed and no  
18 additional deficiencies based upon the data developed at that time shall be  
19 assessed at a later time. An exit interview shall be conducted in  
20 conjunction with the joint signing of the preliminary survey inspection  
21 report. Upon request, every ~~home health~~ agency shall provide to any  
22 person a copy of the most recent survey inspection report and related  
23 documents, provided the person requesting such report agrees to pay a  
24 reasonable charge to cover copying costs.

25 Sec. 7. K.S.A. 65-5107 is hereby amended to read as follows: 65-  
26 5107. Any person may make a complaint against ~~an a home health~~  
27 ~~agency licensed under the provisions of K.S.A. 65-5101, et seq., and~~  
28 ~~amendments thereto~~, ~~this act~~ by filing a complaint in writing with the  
29 secretary stating the details and facts supporting the complaint. If the  
30 secretary determines after an investigation that the charges are sufficient  
31 to warrant a hearing to determine whether the license of the ~~home health~~  
32 ~~agency should be suspended or revoked~~, the secretary shall fix a time and  
33 place for a hearing and require the ~~home health~~ agency to appear and  
34 defend against the complaint in accordance with the provisions of the  
35 Kansas administrative procedure act. A copy of the complaint shall be  
36 given to the ~~home health~~ agency at the time it is notified of the hearing.  
37 The notice of the hearing shall be given at least 20 days prior to the date  
38 of the hearing.

39 Sec. 8. K.S.A. 65-5108 is hereby amended to read as follows: 65-  
40 5108. (a) The secretary shall refuse to issue or shall suspend or shall  
41 revoke the license of any ~~home health~~ agency for failure to substantially  
42 comply with any provision of *K.S.A. 65-5101, et seq., and amendments*  
43 ~~thereto~~, ~~this act~~ or with any rule and regulation or standard of the

1 secretary adopted under the provisions of *K.S.A. 65-5101, et seq., and*  
2 *amendments thereto*, ~~this act~~ or for obtaining the license by means of  
3 fraud, misrepresentation or concealment of material facts.

4 (b) Any ~~home health~~ agency which has been refused a license or  
5 which has had its license revoked or suspended by the secretary may  
6 request a hearing which shall be conducted in accordance with the  
7 provisions of the Kansas administrative procedure act.

8 Sec. 9. K.S.A. 65-5109 is hereby amended to read as follows: 65-  
9 5109. (a) The secretary may adopt reasonable rules and regulations  
10 necessary to carry out the provisions of *K.S.A. 65-5101 et seq., and*  
11 *amendments thereto*.~~this act. The rules and regulations shall be initially~~  
12 ~~adopted within one year of the effective date of this act.~~

13 (b) The rules and regulations adopted by the secretary under the  
14 provisions of *K.S.A. 65-5101 et seq., and amendments thereto*, ~~this act~~  
15 shall apply to all *home nursing services, home health services and home*  
16 *services covered* addressed by *K.S.A. 65-5101 et seq., and amendments*  
17 *thereto*,~~this act~~ which are rendered to any patient being served by ~~ana~~  
18 ~~home health~~ agency regardless of source of payment for the service,  
19 patient's condition or place of residence.

20 Sec. 10. K.S.A. 65-5111 is hereby amended to read as follows: 65-  
21 5111. The secretary may file an action in the district court for the county  
22 in which any ~~home health~~ agency alleged to be violating the provisions of  
23 *K.S.A. 65-5101 et seq., and amendments thereto*,~~this act~~ resides or may be  
24 found for an injunction to restrain the ~~home health~~ agency from  
25 continuing the violation.

26 Sec. 11. K.S.A. 2010 Supp. 65-5112 is hereby amended to read as  
27 follows: 65-5112. The provisions of this act shall not apply to:

28 (a) Individuals who personally provide one or more *home nursing*  
29 *services, home health services or home services* if such persons are not  
30 under the direct control and doing work for and employed by ~~ana~~  
31 ~~home health~~ agency;

32 (b) individuals performing attendant care services directed by or on  
33 behalf of an individual in need of in-home care as the terms "attendant  
34 care services" and "individual in need of in-home care" are defined under  
35 K.S.A. 65-6201, and amendments thereto, if the individuals performing  
36 such services are not under the direct control and doing work for and  
37 employed by ~~ana~~ ~~home health~~ agency; ~~or~~

38 (c) any person or organization conducting ~~ana~~ ~~home health~~ agency  
39 by and for the adherents of any recognized church or religious  
40 denomination or sect for the purpose of providing services for the care or  
41 treatment of the sick or infirm who depend upon prayer or spiritual means  
42 for healing in the practice of the religion of such church, religious  
43 denomination or sect;



1 (d) a hospice which is certified to participate in the medicare  
2 program under 42 code of federal regulations, chapter IV, section 418.1 et  
3 seq., and amendments thereto, and which provides services only to  
4 hospice patients; or

5 (e) a program for all-inclusive care for the elderly (PACE) which is  
6 certified to participate in the medicare or medicaid program under 42  
7 code of federal regulations, chapter IV, subchapter E, section 460.2 et  
8 seq., and amendments thereto, and which provides services only to PACE  
9 participants.

10 Sec. 12. K.S.A. 65-5115 is hereby amended to read as follows: 65-  
11 5115. (a) The secretary may require, as a condition to continued  
12 employment by ~~ana home health~~ agency that home health aides, after 90  
13 days of employment, successfully complete an approved course of  
14 instruction and take and satisfactorily pass an examination prescribed by  
15 the secretary. The secretary may not require as a condition to employment  
16 or continued employment by ~~ana home health~~ agency that persons  
17 providing only attendant care services as an employee of ~~ana home health~~  
18 agency complete any course of instruction or pass any examination.

19 (b) A course of instruction for home health aides may be prepared  
20 and administered by any ~~home health~~ agency or by any other qualified  
21 person. A course of instruction prepared and administered by ~~ana home~~  
22 ~~health~~ agency may be conducted on the premises of the ~~home health~~  
23 agency which prepared and which will administer the course of  
24 instruction. The secretary shall not require home health aides to enroll in  
25 any particular approved course of instruction, but the secretary shall  
26 prepare guidelines for the preparation and administration of courses of  
27 instruction and shall approve or disapprove courses of instruction.

28 (c) ~~Prior to July 1, 1991, the secretary may require that home health~~  
29 ~~aides complete the course of instruction and pass the examination~~  
30 ~~established pursuant to subsection (c)(3) of K.S.A. 39-936 and~~  
31 ~~amendments thereto before enrolling in an approved course of instruction~~  
32 ~~authorized by this section. On and after July 1, 1991, The secretary may~~  
33 ~~not require that home health aides complete the course of instruction and~~  
34 ~~pass the examination established pursuant to subsection (c)(3) of K.S.A.~~  
35 ~~39-936, and amendments thereto, before enrolling in an approved course~~  
36 ~~of instruction authorized by this section. Home health aides may enroll in~~  
37 ~~any approved course of instruction.~~

38 (d) The examination required under this section shall be prescribed  
39 by the secretary and shall be reasonably related to the duties performed  
40 by home health aides. The same examination shall be given by the  
41 secretary to all home health aides.

42 (e) The secretary shall fix, charge and collect an examination fee to  
43 cover all or any part of the cost of the examination required under

1 subsection (a). The examination fee shall be fixed by rules and  
2 regulations of the secretary. The examination fee shall be deposited in the  
3 state treasury and credited to the state general fund.

4 Sec. 13. K.S.A. 65-5116 is hereby amended to read as follows: 65-  
5 5116. (a) As used in this section "~~home health~~ agency" means *ana home*  
6 ~~health~~ agency licensed in accordance with the provisions of K.S.A. 65-  
7 5101 *et seq.*, and amendments thereto. ~~through 65-5115 and K.S.A. 75-~~  
8 ~~5614.~~

9 (b) No unlicensed person employed by ~~ana home health~~ agency, in  
10 the course of employment with ~~ana home health~~ agency, shall prefill  
11 insulin syringes for any patient served by the ~~home health~~ agency.

12 (c) Any person who violates the provisions of subsection (b) shall be  
13 guilty of a class C misdemeanor.

14 Sec. 14. K.S.A. 2010 Supp. 65-5117 is hereby amended to read as  
15 follows: 65-5117. (a) (1) No person shall knowingly operate ~~ana home~~  
16 ~~health~~ agency if, for the ~~home health~~ agency, there works any person who  
17 has been convicted of or has been adjudicated a juvenile offender because  
18 of having committed an act which if done by an adult would constitute  
19 the commission of capital murder, pursuant to K.S.A. 21-3439, and  
20 amendments thereto, first degree murder, pursuant to K.S.A. 21-3401,  
21 and amendments thereto, second degree murder, pursuant to subsection  
22 (a) of K.S.A. 21-3402, and amendments thereto, voluntary manslaughter,  
23 pursuant to K.S.A. 21-3403, and amendments thereto, assisting suicide,  
24 pursuant to K.S.A. 21-3406, and amendments thereto, mistreatment of a  
25 dependent adult, pursuant to K.S.A. 21-3437, and amendments thereto,  
26 rape, pursuant to K.S.A. 21-3502, and amendments thereto, indecent  
27 liberties with a child, pursuant to K.S.A. 21-3503, and amendments  
28 thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-  
29 3504, and amendments thereto, aggravated criminal sodomy, pursuant to  
30 K.S.A. 21-3506, and amendments thereto, indecent solicitation of a child,  
31 pursuant to K.S.A. 21-3510, and amendments thereto, aggravated  
32 indecent solicitation of a child, pursuant to K.S.A. 21-3511, and  
33 amendments thereto, sexual exploitation of a child, pursuant to K.S.A.  
34 21-3516, and amendments thereto, sexual battery, pursuant to K.S.A. 21-  
35 3517, and amendments thereto, or aggravated sexual battery, pursuant to  
36 K.S.A. 21-3518, and amendments thereto, an attempt to commit any of  
37 the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301,  
38 and amendments thereto, a conspiracy to commit any of the crimes listed  
39 in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments  
40 thereto, or criminal solicitation of any of the crimes listed in this  
41 subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto,  
42 or similar statutes of other states or the federal government. The  
43 provisions of subsection (a)(2)(C) shall not apply to any person who is

1 employed by a home health agency on the effective date of this act and  
2 while continuously employed by the same home health agency.

3 (2) A person operating ~~ana-home-health~~ agency may employ an  
4 applicant who has been convicted of any of the following if five or more  
5 years have elapsed since the applicant satisfied the sentence imposed or  
6 was discharged from probation, a community correctional services  
7 program, parole, postrelease supervision, conditional release or a  
8 suspended sentence; or if five or more years have elapsed since the  
9 applicant has been finally discharged from the custody of the  
10 commissioner of juvenile justice or from probation or has been  
11 adjudicated a juvenile offender, whichever time is longer: A felony  
12 conviction for a crime which is described in: (A) Article 34 of chapter 21  
13 of the Kansas Statutes Annotated, and amendments thereto, except those  
14 crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of  
15 the Kansas Statutes Annotated, and amendments thereto, except those  
16 crimes listed in subsection (a)(1) and K.S.A. 21-3605, and amendments  
17 thereto; (C) K.S.A. 21-3701, and amendments thereto; (D) an attempt to  
18 commit any of the crimes listed in this subsection (a)(2) pursuant to  
19 K.S.A. 21-3301, and amendments thereto; (E) a conspiracy to commit  
20 any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302,  
21 and amendments thereto; (F) criminal solicitation of any of the crimes  
22 listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments  
23 thereto; or (G) similar statutes of other states or the federal government.

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

30 (c) The secretary of health and environment shall have access to any  
31 criminal history record information in the possession of the Kansas  
32 bureau of investigation regarding any criminal history information,  
33 convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and  
34 amendments thereto, adjudications of a juvenile offender which if  
35 committed by an adult would have been a felony conviction, and  
36 adjudications of a juvenile offender for an offense described in K.S.A.  
37 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning  
38 persons working for ~~ana-home-health~~ agency. The secretary shall have  
39 access to these records for the purpose of determining whether or not the  
40 ~~home-health~~ agency meets the requirements of this section. The Kansas  
41 bureau of investigation may charge to the department of health and  
42 environment a reasonable fee for providing criminal history record  
43 information under this subsection.

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

36 (e) The secretary of health and environment shall charge each person  
37 requesting information under this section a fee equal to cost, not to  
38 exceed \$10, for each name about which an information request has been  
39 submitted under this section.

40 (f) (1) The secretary of health and environment shall provide each  
41 operator requesting information under this section with the criminal  
42 history record information concerning any criminal history information  
43 and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and

1 amendments thereto, in writing and within three working days of receipt  
2 of such information from the Kansas bureau of investigation. The  
3 criminal history record information shall be provided regardless of  
4 whether the information discloses that the subject of the request has been  
5 convicted of an offense enumerated in subsection (a).

6 (2) When an offense enumerated in subsection (a) exists in the  
7 criminal history record information, and when further confirmation  
8 regarding criminal history record information is required from the  
9 appropriate court of jurisdiction or Kansas department of corrections, the  
10 secretary shall notify each operator that requests information under this  
11 section in writing and within three working days of receipt from the  
12 Kansas bureau of investigation that further confirmation is required. The  
13 secretary shall provide to the operator requesting information under this  
14 section information in writing and within three working days of receipt of  
15 such information from the appropriate court of jurisdiction or Kansas  
16 department of corrections regarding confirmation regarding the criminal  
17 history record information.

18 (3) Whenever the criminal history record information reveals that  
19 the subject of the request has no criminal history on record, the secretary  
20 shall provide notice to each operator requesting information under this  
21 section, in writing and within three working days after receipt of such  
22 information from the Kansas bureau of investigation.

23 (4) The secretary of health and environment shall not provide each  
24 operator requesting information under this section with the juvenile  
25 criminal history record information which relates to a person subject to a  
26 background check as is provided by K.S.A. 2010 Supp. 38-2326, and  
27 amendments thereto, except for adjudications of a juvenile offender for  
28 an offense described in K.S.A. 21-3701, and amendments thereto. The  
29 secretary shall notify the operator that requested the information, in  
30 writing and within three working days of receipt of such information  
31 from the Kansas bureau of investigation, whether juvenile criminal  
32 history record information received pursuant to this section reveals that  
33 the operator would or would not be prohibited by this section from  
34 employing the subject of the request for information and whether such  
35 information contains adjudications of a juvenile offender for an offense  
36 described in K.S.A. 21-3701, and amendments thereto.

37 (5) An operator who receives criminal history record information  
38 under this subsection (f) shall keep such information confidential, except  
39 that the operator may disclose such information to the person who is the  
40 subject of the request for information. A violation of this paragraph ~~(5)~~  
41 shall be an unclassified misdemeanor punishable by a fine of \$100.

42 (g) No person who works for ~~ana-home-health~~ agency and who is  
43 currently licensed or registered by an agency of this state to provide

1 professional services in this state and who provides such services as part  
2 of the work which such person performs for ~~the home health~~ *an* agency  
3 shall be subject to the provisions of this section.

4 (h) A person who volunteers to assist ~~ana home health~~ agency shall  
5 not be subject to the provisions of this section because of such volunteer  
6 activity.

7 (i) An operator may request from the department of health and  
8 environment criminal history information on persons employed under  
9 subsections (g) and (h).

10 (j) No person who has been employed by the same home health  
11 agency since July 1, 1992, shall be subject to the requirements of this  
12 section while employed by such home health agency.

13 (k) The operator of ~~ana home health~~ agency shall not be required  
14 under this section to conduct a background check on an applicant for  
15 employment with the ~~home health~~ agency if the applicant has been the  
16 subject of a background check under this act within one year prior to the  
17 application for employment with the ~~home health~~ agency. The operator of  
18 ~~ana home health~~ agency where the applicant was the subject of such  
19 background check may release a copy of such background check to the  
20 operator of ~~ana home health~~ agency where the applicant is currently  
21 applying.

22 (l) For purposes of this section, the Kansas bureau of investigation  
23 shall only report felony convictions, convictions under K.S.A. 21-3437,  
24 21-3517 and 21-3701, and amendments thereto, adjudications of a  
25 juvenile offender which if committed by an adult would have been a  
26 felony conviction, and adjudications of a juvenile offender for an offense  
27 described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments  
28 thereto, to the secretary of health and environment when a background  
29 check is requested.

30 (m) This section shall be part of and supplemental to the provisions  
31 of article 51 of chapter 65 of the Kansas Statutes Annotated, and  
32 ~~amendments acts amendatory thereof or supplemental thereto.~~

33 New Sec. 15. (a) Before January 1, 2012, the department shall  
34 adopt standards for the licensure and operation of home nursing agencies  
35 operated in this state. After consideration and recommendations by the  
36 home health and home services advisory council, the department shall  
37 adopt such rules and regulations as are necessary for the proper regulation  
38 of home nursing agencies. Requirements for licensure as a home nursing  
39 agency shall include the following:

40 (1) Compliance with the requirements of K.S.A. 65-5101 et seq.,  
41 and amendments thereto;

42 (2) notification, in a form and manner established by rules and  
43 regulations adopted by the secretary to home nursing agency workers and

1 consumers as to the party or parties responsible under state and federal  
2 laws for payment of employment taxes, social security taxes, and  
3 workers' compensation, liability, the day-to-day supervision of workers,  
4 and the hiring, firing, and discipline of workers with the placement  
5 arrangement for home nursing services;

6 (3) compliance with any rules or regulations adopted by the  
7 secretary, with regards to:

8 (A) Reporting by the licensee of any known or suspected incidences  
9 of abuse, neglect, or exploitation of an eligible adult, as defined in K.S.A.  
10 39-923 et seq., and amendments thereto, by a home nursing services  
11 worker employed by or placed by the licensee; or

12 (B) reports to a law enforcement agency in connection with any  
13 other individual protected under the laws of the state of Kansas;

14 (4) compliance with rules and regulations as adopted by the  
15 secretary, addressing the public health, safety, and welfare of persons  
16 receiving home nursing services.

17 (b) The secretary may establish licensure fees for home services  
18 agencies and home nursing agencies through the adoption of rules and  
19 regulations. Notwithstanding any other provision of this section, the  
20 secretary may not charge any fee to a certified local health department in  
21 connection with the licensure of a home services or home nursing agency.

22 (c) Before January 1, 2012, the department shall adopt standards for  
23 the licensure and operation of home services agencies operated in this  
24 state. The structure of the standards shall be based on the concept of  
25 home services and its focus on assistance with activities of daily living,  
26 housekeeping, personal laundry, and companionship being provided to a  
27 person intended to enable that person to remain safely and comfortably  
28 within such person's own personal residence. As home services do not  
29 include services that would be required to be performed by an individual  
30 licensed under the Kansas nurse practice act, the standards shall be  
31 developed from a similar concept. After consideration and  
32 recommendations by the home health and home services advisory  
33 committee, the department shall adopt such rules and regulations as are  
34 necessary for the proper regulation of home services agencies.  
35 Requirements for licensure as a home services agency shall include the  
36 following:

37 (1) Compliance with the requirements of K.S.A. 65-5101 et seq.,  
38 and amendments thereto;

39 (2) notification, in a form and manner established by rules and  
40 regulations adopted by the secretary to home services workers and  
41 consumers as to the party or parties responsible under state and federal  
42 laws for payment of employment taxes, social security taxes, and  
43 workers' compensation, liability, the day-to-day supervision of workers,

1 and the hiring, firing, and discipline of workers with the placement  
2 arrangement for home services;

3 (3) compliance with any rules or regulations adopted by the  
4 secretary, with regards to:

5 (A) Reporting by the licensee of any known or suspected incidences  
6 of abuse, neglect, or exploitation of an eligible adult, as defined in K.S.A.  
7 39-923 et seq., and amendments thereto, by a home services worker  
8 employed by or placed by the licensee; or

9 (B) reports to a law enforcement agency in connection with any  
10 other individual protected under the laws of the state of Kansas;

11 (4) compliance with rules and regulations as adopted by the  
12 secretary, addressing the public health, safety, and welfare of persons  
13 receiving home services.

14 New Sec. 16. (a) The secretary shall appoint a home health and  
15 home services advisory council composed of 15 persons to advise and  
16 consult with the secretary in the administration of this act:

17 (1) Five of the appointed members shall represent the home health  
18 agency profession. Of these five members, one shall represent voluntary  
19 home health agencies, one shall represent for-profit home health  
20 agencies, one shall represent private not-for-profit home health agencies,  
21 one shall represent institution-based home health agencies and one shall  
22 represent home health agencies operated by local health departments;

23 (2) four of the appointed members shall represent the home services  
24 agency profession;

25 (3) four of the appointed members shall represent the general public  
26 in the following categories:

27 (A) One individual who is a consumer of home health services or a  
28 family member of a consumer of home health services;

29 (B) one individual who is a consumer of home services or a family  
30 member of a consumer of home services;

31 (C) one individual who is a home services worker; and

32 (D) one individual who is a representative of an organization that  
33 advocates for consumers;

34 (4) one member shall be a person licensed to practice medicine and  
35 surgery under the Kansas healing arts act; and

36 (5) one member shall be an registered professional nurse licensed  
37 under the Kansas nurse practice act, with home health agency experience.

38 The recommendations of professional, home health industry and home  
39 services industry organizations may be considered in selecting individuals  
40 for appointment to the home health and home services advisory council.

41 (b) (1) Each member shall hold office for a term of three years,  
42 except that any member appointed to fill a vacancy occurring prior to the  
43 expiration of the term for which his predecessor was appointed shall be



1 appointed for the remainder of such term and the terms of office of the  
2 members first taking office shall expire, as designated at the time of  
3 appointment, one at the end of the first year, one at the end of the second  
4 year, and three at the end of the third year.

5 (2) The term of office of each of the original appointees shall  
6 commence on January 1, 2012.

7 (c) The council shall provide input and recommendations to the  
8 department on the development of rules for the licensure of home  
9 services agencies and home nursing agencies operating in this state. On  
10 or before July 1, 2012, the council shall issue an interim report to the  
11 appropriate committee of the house of representatives, on the status of  
12 development and implementation of the rules for home services agency  
13 and home nursing agency licensure.

14 (d) The council shall meet at least once each year at a time and place  
15 of its choosing and at such other times as may be necessary on the  
16 chairperson's call or on the request of a majority of the council's  
17 members.

18 (e) A majority of the council constitutes a quorum. No action may be  
19 taken by the council except by affirmative vote of the majority of the  
20 members present and voting.

21 Sec. 17. K.S.A. 65-5101, 65-5102, 65-5103, 65-5105, 65-5106, 65-  
22 5107, 65-5108, 65-5109, 65-5111, 65-5115 and 65-5116 and K.S.A. 2010  
23 Supp. 65-5104, 65-5112 and 65-5117 are hereby repealed.

24 Sec. 18. This act shall take effect and be in force from and after its  
25 publication in the statute book.  
26