

MEMO

To: Members of the House Committee on Health and Human Services
From: Norm Furse, Revisor of Statutes Office
Date: February 23, 2015
Re: HB 2315 (Licensure Bill for KDADS)

At the committee meeting on February 19, 2015, I was asked to summarize the sources for HB 2315. I learned after the meeting that the Department of Aging and Disability Services had worked up such a document. The Department provided me with a copy and authorized me to share the information with you. I believe that this excellent comparison of the bill's provisions to current law by the department was what the committee had in mind in requesting me to review the sources of the bill. Therefore, I have attached a copy of the document to this memo for your information. (See attached document "Cross Walk comparing current KDADS authorities with HB 2315.") Please note in composing this bill the department relied on both statutes and administrative rules and regulations which are mentioned in the document.

Questions on this document may be addressed to one or both of the following individuals at the department:

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If you would like to have me do any follow-up on this information, please let me know.

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Cross Walk comparing current KDADS authorities with HB 2315

HB 2315 Section 1: Purpose (overview of the Agency responsibilities and the KDADS licensed facilities and providers covered by the act)

Current statutes list the same licensed facilities and providers:

- **K.S.A. 75-3307b(a)** states the Secretary is responsible : Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary
- **K.S.A. 39-1909** states that the Secretary has powers and duties relating to Psychiatric Residential Treatment Facilities
- For further clarification please see: Executive Reorganization Order No. 41 and K.S.A. 39-1901 through 39-1914

HB 2135 Section 2: Definitions

- **Community Mental Health Center**: The new definition was taken from K.S.A. 75-3307c (to be repealed per Section 18) with some additional language added from the definition used by the Centers for Medicare and Medicaid Services.
- **Facility**: The existing definition in regulation was determined to be overly broad. K.A.R. 30-42-6 currently defines facility as “any private *person*, group, association, or corporation, or any community or local government department undertaking to provide residential care within the meaning of these regulations”. The modified definition in HB 2135 undertakes to recognize that people are not facilities, but places are; therefore the definition starts with “any place.”
- **Providers**: K.S.A. 75-3307b states that the Secretary has authority over “facilities for persons with mental illness, developmental disabilities or other persons with disabilities”, but treatment and/or care for these individuals occurs outside of a “facility” building since facility currently means “any private person..”; therefore the HB 2315 definition was crafted to encompass the people, partnerships, etc. that provide services to these individuals.
- **Psychiatric Residential Treatment Facility**: the definition was drafted to be consistent with the Centers for Medicare and Medicaid Services definition as well as K.A.R. 28-4-1201.
- **Psychiatric hospital**: the definition was drafted to provide clarity regarding the types of hospitals licensed. K.S.A. 75-3307b provides KDADS with licensing authority and enforcement authority over psychiatric hospitals, but not to be confused with the facilities as described under K.S.A. 76-12a01 (KNI, OSH, Parsons, and Larned).

- **Residential Care Facility**: The definition is meant to encompass not just RFCs but also those that may provide crisis RFC services as well. Recently providers have expressed interest in crisis RFC services and KDADS believes that encouraging the availability of additional crisis RFC facilities will enhance local communities efforts to support individuals and avoid the need for hospitalization. The number of individuals in the “facility” are **2 or more**, as specified in current statute K.S.A. 75-3307b.
 - Note: Not all RFCs will be considered crisis facilities. Regulations to be drafted with the input of providers will provide additional detail based on size, services offered, etc.
 - An individual choosing RFC services is not required to need both personal care and supervised nursing care, but if the individual does; the RFC should comply with the regulatory requirements applicable to the services offered.
- **Services**: provides an overview of the types of services that could be provided by any of these entities. It is not meant to be an exhaustive list or to imply that all entities will provide these services. Regulations will provide further guidance in this area with a focus on increased availability of services within communities.

HB 2315 Section 3: Power and duties of the Secretary

- K.S.A. 75-3307b currently provides KDADS with authority for:
 - Inspecting, licensing, certifying, and setting standards are all mentioned in K.S.A. 75-3307b(a) for the Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary
- K.S.A. 39-1909 et seq. provides the powers and duties related to Psychiatric Residential Treatment Facilities

Section 4: Adoption and enforcement of rules, regulations and standards

- K.S.A. 75-3307b(a) provides authority to set rules, regulations and standards for Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary.
HB 2315 replaces this blanket authority with more clearly defined regulatory authority to improve transparency.
- K.S.A. 75-3307b (a) (1) states KDADS is responsible for licensing, certifying or accrediting private hospitals. With the power to create and adopt rules and regulations, KDADS currently utilizes K.A.R. 30-2-3 to create standards for the these hospitals

- K.S.A. 39-1909 provides authority for KDADS related to the PRTFs, specifically under the regulations that were transferred to KDADS under Executive Reorganization Order. Those regulations are K.A.R. 28-4-1203 through K.A.R. 28-4-1216.
- HB 2315 consolidates these scattered regulatory authorities into one act.

Section 5: Compliance with laws and regulations

- K.S.A. 75-3307b and K.S.A. 39-1909

Section 6: License required to operate; compliance with regulations

- This is currently provided for in 2 rather awkward ways:
 - (1) K.S.A. 75-3307b(c), authorizes the Secretary to take injunctive action “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.”
 - (2) Because the statute does not provide simple language stating that it is unlawful to operate without a license, regulations address the issue in varied ways for some but not all entities.

Four examples:

1. Private Psychiatric Hospitals: K.A.R. 30-22-5 discusses licensing and a few regulations immediately preceding this regulation discuss standards that must be met, however, the language is not as clear as it could be to state that it is unlawful to operate one of these hospitals without a license.

2. Residential Care Facilities, K.A.R. 30-42-7 states that “each facility shall apply for a license on application forms provided by the department.” It is not clear that it is unlawful to operate an RCF without a license. KDADS has received complaints concerning an number of unlicensed RCF facilities where individuals reside in poor, unsanitary conditions that place them at risk.

3. Community Mental Health Centers: K.A.R. 30-60-6 states “each agency or licensee desiring a new or renewed license as a “community mental health center” or an “affiliated community mental health center” shall submit an application for that license, or for renewal of its license to the secretary in the format prescribed by the division.”

4. K.S.A. 39-1909 provides authority for KDADS related to the PRTFs, specifically under the regulations that were transferred to KDADS under Executive Reorganization Order. That regulation is K.A.R. 28-4-1201(a) which states, “Each applicant and each licensee shall meet all the following requirements in order to obtain and maintain a license to operate a PRTF”.

Section 7: Licensing; required for; content; limitations

- K.S.A. 75-3307b(a) provides authority to set rules, regulations and standards for Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary
 - For Community Mental Health Centers: K.A.R. 30-60-6
 - For Residential Care Facilities: K.A.R. 30-42-7
 - For Community Service Providers: K.A.R. 30-63-10 and K.A.R. 30-63-12
- K.S.A. 75-3307b (a) (1) states KDADS is responsible for licensing, certifying or accrediting private hospitals. With the power to create and adopt rules and regulations, KDADS utilizes: K.A.R. 30-22-6.
- For Psychiatric Residential Treatment Facilities: K.A.R. 28-4-1201 and K.A.R. 28-4-1202

Section 8: Issuance of license, when; fees; inspections and investigations; reports; time license effective; nonrefundable; display; contents of license

- K.S.A. 75-3307b(a)(1) and (3) authorizes licensing and inspections for private psychiatric hospitals
- K.S.A. 75-3307b(a)(4) authorizes licensing and inspections for community mental health centers
- K.S.A. 75-3307b(a)(5) authorizes licensing and inspections of all facilities for persons with mental illness, developmental disabilities or other persons with disabilities (this includes the Residential Care Facilities and Community Service providers)
- Currently the only facilities charging a license fee are Psychiatric Residential Treatment Facilities. K.S.A. 39-1909 transfers authority regarding the Psychiatric Residential Treatment Facilities. From the transferred authority please see: K.S.A. 65-505, K.A.R. 28-4-1202 & K.A.R. 28-4-92.

Section 9: Background checks

- K.S.A. 39-1909 transfers Psychiatric Residential Treatment Facilities to KDADS, specifically K.S.A. 65-516 specifies the specific crimes and acts and is the statute which provided the structure for this portion of HB 2315.
- K.S.A. 75-3307b allows for the adoption of rules and regs for Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary – includes Residential Care Facilities and Community Service providers . Per this rulemaking authority; has the authority to request that providers working with vulnerable individuals pass a background check)
- Community Service providers are specifically required under the Medicaid Waiver to conduct background checks for those working with individuals receiving care/services.

Section 10: License in effect on effective date of act continued in effect; exceptions

- HB 2315 includes this common transition provision to assist licensees.

Section 11: Inspections and investigations; reporting; access to premises; exit interviews; unannounced inspections; inspection reports, posting and access; when required

- K.S.A. 75-3307b(a)(3) authorizes inspections for private psychiatric hospitals
- K.S.A. 75-3307b(a)(4) authorizes inspections for community mental health centers
- K.S.A. 75-3307b(a)(5) authorizes inspections of all facilities for persons with mental illness, developmental disabilities or other persons with disabilities (includes Residential Care Facilities and Community Service providers)
- K.S.A. 75-3307b(d)
- K.S.A. 39-1909 transfers authority regarding the Psychiatric Residential Treatment Facilities.

Section 12: Provisional Licenses

- K.S.A. 75-3307b authorizes adoption of rules and regs for Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary – includes Residential Care Facilities and Community Service providers
 - Specifically for Private psychiatric hospitals: K.A.R. 30-22-9
 - Specifically for Community mental health centers: K.A.R. 30-60-6
 - Specifically for Residential Care Facilities: K.A.R. 30-42-7(c)
 - Specifically for Community Service Providers: K.A.R. 30-63-12(f) this refers to a temporary license, seemingly the equivalent.
- K.S.A. 39-1909 transfers authority regarding the Psychiatric Residential Treatment Facilities. From the transferred authority see: K.A.R. 28-4-1203-- this refers to a temporary license, seemingly the equivalent.

Section 13: Denying, Suspending, or revocation of license; emergency orders settlement agreements; certain licensure limitations

- **Revocation authority is not specifically mentioned in the existing statute.** K.S.A. 75-3307b authorizes adoption of rules and regulations for Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary – includes Residential Care Facilities and Community Service providers
 - Specifically for Private psychiatric hospitals: K.A.R. 30-22-7
 - Specifically for Community mental health centers: K.A.R. 30-60-7
 - Specifically for Residential Care Facilities: K.A.R. 30-42-9
 - Specifically for Community Service Providers: K.A.R. 30-63-13 and K.A.R. 30-63-14
- K.S.A. 39-1909 provides authority for KDADS related to the PRTFs, specifically under the regulations that were transferred to KDADS under Executive Reorganization Order.

Section 14: Same; grounds; person defined

- Generally the structure for this legislation was drafted utilizing the Adult Care Home Act, specifically K.S.A. 39-931a.
- Specifically for Private psychiatric hospitals: K.A.R. 30-22-7 (the revocation would be of the hospital that meets the requirements as set forth in K.A.R. 30-22-2 through K.A.R. 30-22-4a)
- Specifically for Community mental health centers: K.A.R. 30-60-7 (the revocation would be of the center or affiliated center that meets the definition of K.A.R. 30-60-2 (b) and (c))
- Specifically for Residential Care Facilities: K.A.R. 30-42-9 (the revocation would be of the facility that meets the definition of K.A.R. 30-42-6(c))
- Specifically for Community Service Providers: K.A.R. 30-63-13 and K.A.R. 30-63-14 (the revocation would be of the entities defined under K.A.R. 30-63-1(a))

Section 15: Penalties, Injunctions, and other process

- K.S.A. 3307b(c) Injunctions for Private Psychiatric Hospitals, Community Mental Health Centers, Facilities for persons with mental illness, developmental disabilities or other persons with disabilities entrusted to the Secretary – includes Residential Care Facilities and Community Service providers:
- Penalties:
 - K.S.A. 39-1807 currently provides for Community Service Providers penalties.
 - HB 2315 adds penalty authority for other entities under the act in an effort to provide an intermediate enforcement step thereby avoiding the need to

proceed directly to revocation in situations of repeated noncompliance.
This will minimize the impacts of revocation on individuals.

- **Section 16: Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement**

This section was modeled after existing statutes providing for similar authority including: K.S.A. 39-946 and K.S.A. 65-526

- **Section 17: Severability**
- **Section 18: Repeals**
- **Section 19: Effective on publication**