

Session of 2016

SENATE BILL No. 422

By Committee on Public Health and Welfare

2-9

1 AN ACT concerning the department for aging and disability services;
2 providing for the licensure of certain facilities and standards for
3 treatment of certain individuals; repealing K.S.A. 39-1807 and 75-
4 3307c and K.S.A. 2015 Supp. 75-3307b.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

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

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

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

36 (g) "Licensee" means one or more persons or entities licensed by the

1 secretary under this act.

2 (h) "Licensing agency" means the secretary for aging and disability
3 services.

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

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

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

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

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

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

35 (o) "Services" means the following types of behavioral health,
36 intellectual disability, developmental disability and other disability
37 services, including, but not limited to: Residential supports, day supports,
38 care coordination, case management, workshops, sheltered domiciles,
39 education, therapeutic services, assessments and evaluations, diagnostic
40 care, medicinal support and rehabilitative services.

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

1 providers, their buildings, staff, facilities, maintenance, operation, conduct
2 and the care and treatment of individuals.

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

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

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

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

39 (c) Each license shall be issued only for the premises or ~~persons~~ providers
40 named in the application, or both, and shall not be transferable or
41 assignable. The license shall be posted in a conspicuous place in the
42 center, facility, hospital or provider's principal location. If the annual report
43 is not so filed and a renewal of licensure fee, if any, is not paid, such

1 license shall be automatically denied or revoked. Any license granted
2 under the provisions of this act shall state the type of facility for which the
3 license is granted, the number of individuals for whom granted, the person
4 or persons to whom granted, the date and such additional information and
5 special limitations deemed appropriate by the licensing agency.

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

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

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

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

22 (C) has a conviction of any act which is described in articles 34, 35 or
23 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or
24 article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
25 K.S.A. 2015 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-
26 6421, and amendments thereto, or a conviction of an attempt under K.S.A.
27 21-3301, prior to its repeal, or K.S.A. 2015 Supp. 21-5301, and
28 amendments thereto, to commit any such act or a conviction of conspiracy
29 under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2015 Supp. 21-5302,
30 and amendments thereto, to commit such act, or similar statutes of other
31 states or the federal government; or

32 (D) has been convicted of any act which is described in K.S.A. 21-
33 4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp. 21-6401, and
34 amendments thereto, or similar statutes of other states or the federal
35 government;

36 (2) has been adjudicated a juvenile offender because of having
37 committed an act which if committed by an adult would constitute the
38 commission of a felony and which is a crime against persons, is any act
39 described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes
40 Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the
41 Kansas Statutes Annotated, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-
42 6326 or 21-6418 through 21-6421, and amendments thereto, or similar
43 statutes of other states or the federal government, or is any act described in

or service

1 or unannounced, and reported in writing by the authorized agents and
2 representatives of the licensing agency and state fire marshal, and of the
3 county, city-county and multi-county health departments as often and in
4 the manner and form prescribed by the rules and regulations promulgated
5 under the provisions of this act. Access shall be given to the premises of
6 any center, facility, hospital or provider, depending on the type of service
7 provided by the provider and locations at any time upon presenting
8 adequate identification to carry out the requirements of this section and the
9 provisions and purposes of this act. Failure to provide such access may
10 constitute grounds for denial, suspension or revocation of the license. A
11 copy of any inspection or investigation reports required by this section
12 shall be furnished to the applicant or licensee. An exit interview shall be
13 conducted with the licensee.

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

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

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

33 Sec. 13. (a) Whenever the licensing agency finds a substantial failure
34 to comply with the requirements, standards or rules and regulations
35 established under this act, it shall make an order denying, suspending or
36 revoking the license after notice and an opportunity for a hearing in
37 accordance with the provisions of the Kansas administrative procedure act,
38 K.S.A. 77-501 et seq., and amendments thereto. Any applicant or licensee
39 may appeal such order in accordance with the provisions of the Kansas
40 judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

41 (b) Except as provided in subsection (c), whenever the licensing
42 agency denies, suspends or revokes a license under this section, the
43 applicant or licensee shall not be eligible to apply for a new license or

Access shall be given to the premises of a facility that is a private residence only for cause as prescribed by rules and regulations adopted under the provisions of this act.

1 maximum assessment shall not exceed \$2,500. A written notice of
2 assessment shall be served upon the licensee either personally or by
3 certified mail, return receipt requested.

4 (c) Before the assessment of a civil penalty, the secretary shall
5 consider the following factors in determining the amount of the civil
6 penalty to be assessed:

7 (1) The severity of the violation;

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

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

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

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

28 Sec. 17. If any provision of this act or the application thereof to any
29 person or circumstances is held invalid, the invalidity shall not affect other
30 provisions or applications of the act which can be given effect without the
31 invalid provisions or application and, to this end, the provisions of this act
32 are severable.

33 Sec. 18. K.S.A. 39-1807 and 75-3307c and K.S.A. 2015 Supp. 75-
34 3307b are hereby repealed.

35 Sec. 19. This act shall take effect and be in force from and after its
36 publication in the ~~statute book~~.

Kansas register
