

SENATE BILL No. 449

AN ACT concerning the Kansas department for aging and disability services; relating to powers, duties and functions; licensure of facilities; standards of treatment of certain individuals; prohibiting the privatization of state psychiatric hospitals; client assessment, referral and evaluation program; amending K.S.A. 2015 Supp. 39-968 and repealing the existing section; also repealing K.S.A. 39-1807 and 79-3307c and K.S.A. 2015 Supp. 75-3307b.

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

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

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

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

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

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

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

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

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

(e) "Hospital" means a psychiatric hospital.

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

(g) "Licensee" means one or more persons or entities licensed by the secretary under this act.

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

(i) "Other disabilities" means any condition for which individuals receive home and community based waiver services.

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

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

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

(m) "Residential care facility" means any place or facility, or a contiguous portion of a place or facility, providing services for two or more individuals not related within the third degree of relationship to the administrator, provider or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and supervised nursing care to compensate for activities of daily living limitations, and which place or facility includes individual living units and provides or

coordinates personal care or supervised nursing care available on a 24-hour, seven-days-a-week basis for the support of an individual's independence, including crisis residential care facilities.

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

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

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

(1) Enforce the laws relating to the hospitalization of mentally ill individuals of this state in a psychiatric hospital and the diagnosis, care, training or treatment of individuals receiving services through community mental health centers, psychiatric residential treatment facilities for individuals with mental illness, residential care facilities or other facilities and services for individuals with mental illness, intellectual disabilities, developmental disabilities or other disabilities.

(2) Inspect, license, certify or accredit centers, facilities, hospitals and providers for individuals with mental illness, intellectual disabilities, developmental disabilities or other disabilities pursuant to federal legislation, and to deny, suspend or revoke a license granted for causes shown.

(3) Set standards for centers, facilities, hospitals and providers for individuals with mental illness, intellectual disabilities, developmental disabilities or other disabilities pursuant to federal legislation.

(4) Set standards for, inspect and license all providers and facilities for individuals with mental illness, intellectual disabilities, developmental disabilities or other disabilities receiving assistance through the Kansas department for aging and disability services which receive or have received after June 30, 1967, any state or federal funds, or facilities where individuals with mental illness, intellectual disabilities or developmental disabilities reside who require supervision or require limited assistance with the taking of medication. The secretary may adopt rules and regulations that allow the facility to assist an individual with the taking of medication when the medication is in a labeled container dispensed by a pharmacist.

(5) Enter into contracts necessary or incidental to the performance of the secretary's duties and the execution of the secretary's powers.

(6) Solicit and accept for use any gift of money or property, real or personal, made by will or otherwise, and any grant of money, services or property from the federal government, the state or any political subdivision thereof or any private source and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant.

(7) Administer or supervise the administration of the provisions relating to individuals with mental illness, intellectual disabilities, developmental disabilities or other disabilities pursuant to federal legislation and regulations.

(8) Coordinate activities and cooperate with treatment providers or other facilities for those with mental illness, intellectual disabilities, developmental disabilities or other disabilities pursuant to federal legislation and regulations in this and other states for the treatment of such individuals and for the common advancement of these programs and facilities.

(9) Keep records, gather relevant statistics, and make and disseminate analyses of the same.

(10) Do other acts and things necessary to execute the authority expressly granted to the secretary.

(b) Notwithstanding the existence or pursuit of any other remedy, the secretary for aging and disability services, as the licensing agency, in the manner provided by the Kansas judicial review act, may maintain an action in the name of the state of Kansas for an injunction against any person or facility to restrain or prevent the operation of a residential care facility, crisis residential care facility, private or public psychiatric hospital, psychiatric residential treatment facility, provider of services, community

mental health center or any other facility providing services to individuals without a license.

(c) Reports and information shall be furnished to the secretary by the superintendents, executive or other administrative officers of all psychiatric hospitals, community mental health centers or facilities serving individuals with intellectual disabilities or developmental disabilities and facilities serving other disabilities receiving assistance through the Kansas department for aging and disability services.

Sec. 4. (a) The secretary may adopt rules and regulations necessary to carry out the provisions of this act. Such rules and regulations may prescribe minimum standards and requirements relating to: The location, building, size of centers, facilities and hospitals; environmental standards; capacity; the individuals allowed; the types of services offered; the records to be kept; medication management; policies and procedures specific to centers, facilities, hospitals and providers; the kind and frequency of reports and inventories to be made; and may generally establish such requirements as may be deemed necessary to protect the health, safety, hygiene, welfare and comfort of the individuals.

(b) The authority granted to the secretary under this act is in addition to other statutory authority the secretary has to require the licensing and operation of centers, facilities, hospitals and providers and is not to be construed to limit any of the powers and duties of the secretary under article 59 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. All pertinent laws of this state and lawfully adopted ordinances and rules and regulations shall be strictly complied with in the operation of any center, facility, hospital or provision of services in this state. All centers, facilities, hospitals and providers shall comply with all the lawfully established requirements and rules and regulations of the secretary and the state fire marshal, and any other agency of government so far as pertinent and applicable to such centers, facilities, hospitals and providers, their buildings, staff, facilities, maintenance, operation, conduct and the care and treatment of individuals.

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

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

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

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

date of this act until a different fee is established by the secretary by rules and regulations.

(c) Each license shall be issued only for the premises or providers named in the application, or both, and shall not be transferable or assignable. The license shall be posted in a conspicuous place in the center, facility, hospital or provider's principal location. If the annual report is not so filed and a renewal of licensure fee, if any, is not paid, such license shall be automatically denied or revoked. Any license granted under the provisions of this act shall state the type of facility or service for which the license is granted, the number of individuals for whom granted, the person or persons to whom granted, the date and such additional information and special limitations deemed appropriate by the licensing agency.

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

(e) (1) Programs and treatments provided by a community mental health center that have been previously licensed by the secretary for aging and disability services and that have also been accredited by the commission on accreditation of rehabilitation facilities or the joint commission, or another national accrediting body approved by the secretary for aging and disability services, shall be granted a license renewal based on such accreditation.

(2) The Kansas department for aging and disability services shall inspect accredited community mental health centers to determine compliance with state licensing standards and rules and regulations not covered by the accrediting entity's standards. Community mental health centers receiving accreditation shall continue to be subject to inspections and investigations by the Kansas department for aging and disability services resulting from complaints.

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

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

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

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

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

(2) has been adjudicated a juvenile offender because of having committed an act which if committed by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2015 Supp.

21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the Kansas department for children and families pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto, and:

(A) The person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the Kansas department for children and families; or

(B) the record has not been expunged pursuant to rules and regulations adopted by the secretary for children and families;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2015 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan;

(5) has had parental rights terminated pursuant to the revised Kansas code for the care of children or a similar statute of another state; or

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2015 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense.

(b) No licensee shall operate a center, facility, hospital or be a provider of services if such person has been found to be an adult with an impairment in need of a guardian or a conservator, or both, as provided in the act for obtaining a guardian or conservator, or both.

(c) The secretary shall notify the licensee, within 10 business days, when the result of the national criminal history record check or other appropriate review reveals unfitness as specified in subsections (a)(1) through (6) with regard to the person who is the subject of the review.

(d) No licensee, its contractors or employees, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such licensee's compliance with the provisions of this section if such licensee acts in good faith to comply with this section.

(e) Any licensee or member of the staff who receives information concerning the fitness or unfitness of any person shall keep such information confidential, except that the staff person may disclose such information to the person who is the subject of the request for information. A violation of this subsection shall be an unclassified misdemeanor punishable by a fine of \$100.

(f) The licensing agency may require a person seeking licensure or applying to work in a facility to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The licensing agency is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The licensing agency may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, work with, or provide services to individuals as applicable under this act.

(g) The secretary shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, including adjudications of a juvenile offender which if committed by an adult would have been a felony conviction for the purposes specified in this act. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(h) The secretary shall charge each person or licensee requesting information under this section a fee equal to cost for each person about which an information request has been submitted to the department under this section.

(i) For the purpose of complying with this section, the licensee operating a center, facility, hospital or a provider of services shall request from the Kansas department for aging and disability services information regarding any criminal history information relating to a person who works in the center, facility, hospital or for a provider of services, or who is being considered for employment or volunteer work in the facility, center, hospital or with the service provider, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, the licensee operating a center, facility, hospital or a provider of services shall report the dates of employment and separation of all persons working for the licensee operating a center, facility, hospital or a provider of services. For the purposes of complying with this section, any employment agency which provides employees to work in a center, facility, hospital or a provider of services shall request and receive an eligibility determination from the Kansas department for aging and disability services. Any licensee operating a center, facility, hospital or a provider of services will obtain written documentation that such employees are eligible to work. For the purpose of complying with this section, a licensee may hire an applicant for employment on a conditional basis pending the results from the Kansas department for aging and disability services of an eligibility determination under this subsection. As required by the patient protection and affordable care act, 42 U.S.C. § 18001, a person disqualified from employment due to a valid background check may appeal in accordance with requirements, standards, rules and regulations to be promulgated by the secretary.

(j) No person who works for a center, facility or hospital and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the center, facility or hospital shall be subject to the provisions of this section.

(k) A licensee may request from the Kansas department for aging and disability services criminal history information on persons employed under subsection (j).

(l) The licensee operating a center, facility, hospital or a provider of services shall not require an applicant under this section to be fingerprinted, if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the licensee operating a center, facility, hospital or a provider of services and has maintained a record of continuous employment, with no lapse of employment of over 90 days in any center, facility, hospital or a provider of services covered by this act.

(m) No person who is in the custody of the secretary of corrections and who provides services under direct supervision in non-patient areas on the grounds or other areas designated by the secretary of corrections shall be subject to the provisions of this section while providing such services.

Sec. 10. All licenses issued under the provisions of chapter 33 of article 75 of the Kansas Statutes Annotated, and amendments thereto, for centers, facilities, hospitals and providers prior to the effective date of this act shall continue in force until the license's date of expiration unless sooner suspended or revoked as provided in this act. All persons holding such licenses which are in force on the effective date of this act shall be permitted not more than four months from the effective date of this act to comply with the rules and regulations and standards promulgated under the authority of this act wherein those rules and regulations and standards differ in any substantial respect from those in force and effect immediately prior to the effective date of this act under the provisions of chapter 59 of article 75 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 11. (a) Inspections and investigations shall be made, announced or unannounced, and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multi-county health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any center, facility, hospital or provider, depending on the type of service provided by the provider and locations at any time upon present-

ing adequate identification to carry out the requirements of this section and the provisions and purposes of this act. 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. Failure to provide such access may constitute grounds for denial, suspension or revocation of the license. A copy of any inspection or investigation reports required by this section shall be furnished to the applicant or licensee. An exit interview shall be conducted with the licensee.

(b) The secretary shall 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 this act.

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

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

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

(b) Except as provided in subsection (c), whenever the licensing agency denies, suspends or revokes a license under this section, the applicant or licensee shall not be eligible to apply for a new license or reinstatement of a license for a period of two years from the date of denial, suspension or revocation.

(c) (1) Any applicant or licensee issued an emergency order by the licensing agency denying, suspending or revoking a license under this section may apply for a new license or reinstatement of a license at any time upon submission of a written waiver of any right conferred upon such applicant or licensee under the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto, to the licensing agency in a settlement agreement or other manner as approved by the licensing agency.

(2) Any licensee issued a notice of intent to take action by the licensing agency under this section may enter into a settlement agreement, as approved by the licensing agency, with the licensing agency at any time upon submission of a written waiver of any right conferred upon such licensee under the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

(d) In the event that a community mental health center accredited by the commission on accreditation of rehabilitation facilities or the joint commission, or another national accrediting body approved by the secretary for aging and disability services, loses accreditation by such accrediting entity, the community mental health center shall immediately notify the Kansas department for aging and disability services.

Sec. 14. (a) As used in this section, the term “person” means any person who is an applicant for a license or who is the licensee and who has any direct or indirect ownership interest of 25% or more in the center, facility or hospital; or who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured, in whole or in part,

by such center, facility or hospital; or any of the property or assets of such center, facility or hospital; or who, if the center, facility, hospital or provider is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

(b) The licensing agency may deny a license to any person and may suspend or revoke the license of any person who:

(1) Has willfully or repeatedly violated any provision of law or rules and regulations adopted pursuant to this act or to article 59 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto;

(2) has had a license to operate a center, facility or hospital denied, suspended, revoked or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of such action of the other jurisdiction being conclusive evidence thereof;

(3) has failed or refused to comply with the medicaid requirements of title XIX of the social security act, or medicaid regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;

(4) has failed or refused to comply with the medicare requirements of chapter 7 of title 42 of the United States code, or medicare regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;

(5) has been convicted of a felony;

(6) has failed to assure that nutrition, medication or treatment of individuals, including the use of restraints, are in accordance with acceptable medical practices; or

(7) has aided, abetted, sanctioned or condoned any violation of law or rules and regulations adopted pursuant to this act or to article 59 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 15. (a) Any person operating a center, facility, hospital or a provider of services in this state without a license under this law shall be guilty of a class B misdemeanor. Any person who shall violate any other provision of this act or the requirements of any rules and regulations promulgated hereunder shall be guilty of a class B misdemeanor.

(b) Notwithstanding the existence or pursuit of any other remedy, the secretary, as the licensing agency, in the manner provided by the Kansas judicial review act, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of a center, facility, hospital or provision of services without a license under this act.

Sec. 16. (a) A correction order may be issued by the secretary or the secretary's designee to a licensee whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary inspects or investigates a center, facility, hospital or provider and determines that the center, facility, hospital or provider is not in compliance with the provisions of this act or article 59 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations promulgated thereunder and such non-compliance is likely to adversely affect the health, safety, nutrition or sanitation of the individuals or the public. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated and shall specify the time allowed for correction.

(b) If upon re-inspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary, it is found that the licensee has not corrected the deficiency or deficiencies specified in the correction order, the secretary may assess a civil penalty in an amount not to exceed \$500 per day, per deficiency, against the licensee for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order, the maximum assessment shall not exceed \$2,500. A written notice of assessment shall be served upon the licensee either personally or by certified mail, return receipt requested.

(c) Before the assessment of a civil penalty, the secretary shall con-

sider the following factors in determining the amount of the civil penalty to be assessed:

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

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

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

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

Sec. 18. (a) Notwithstanding any other provision of law, the Kansas department for aging and disability services, solely or in consultation or cooperation with any other state agency, shall not enter into any agreement or take any action to outsource or privatize any operations or facilities of the Larned state hospital or Osawatomie state hospital without prior specific authorization by an act of the legislature or an appropriation act of the legislature.

(b) Nothing in this section shall prevent the Kansas department for aging and disability services from renewing, in substantially the same form as an existing agreement, any agreement in existence prior to March 4, 2016, for services at the Larned state hospital or the Osawatomie state hospital.

(c) Nothing in this section shall prevent the Kansas department for aging and disability services from entering into an agreement for services at the Larned state hospital or the Osawatomie state hospital with a different provider if such agreement is substantially similar to an agreement for services in existence prior to March 4, 2016.

Sec. 19. K.S.A. 2015 Supp. 39-968 is hereby amended to read as follows: 39-968. (a) To achieve a quality of life for Kansans with long-term care needs in an environment of choice that maximizes independent living capabilities and recognizes diversity, this act establishes a program which is intended to encourage a wide array of quality, cost-effective and affordable long-term care choices. This program shall be known as client assessment, referral and evaluation (CARE). The purposes of CARE is for data collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) “Assessment services” means evaluation of an individual’s health and functional status to determine the need for long-term care services and to identify appropriate service options which meet these needs utilizing the client assessment, referral and evaluation (CARE) form.

(2) “Health care data governing board” means the board abolished by K.S.A. 65-6803, and amendments thereto.

(3) “Medical care facility” shall have the meaning ascribed to such term under K.S.A. 65-425, and amendments thereto.

(4) “Nursing facility” shall have the meaning ascribed to such term under K.S.A. 39-923, and amendments thereto.

(5) “Secretary” means the secretary for aging and disability services.

(c) There is hereby established the client assessment, referral and

evaluation (CARE) program. The CARE program shall be administered by the secretary for aging and disability services and shall be implemented on a phased-in basis in accordance with the provisions of this section.

(d) All rules and regulations adopted by the health care data governing board relating to client assessment, referral and evaluation (CARE) data entry form shall be deemed to be the rules and regulations of the Kansas department of health and environment until revised, revoked or nullified pursuant to law. The purpose of this form is for data collection and referral services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The client assessment, referral and evaluation (CARE) data entry form shall include, but not be limited to, the preadmission screening and annual resident review (PASARR) questions. ~~Prior to the adoption of the client assessment, referral and evaluation (CARE) data entry form by the health care data governing board,~~ The secretary for aging and disability services shall approve the *client assessment, referral and evaluation (CARE) data entry form*. The client assessment, referral and evaluation (CARE) data entry form shall be used by all persons providing assessment services.

(e) (1) Each individual prior to admission to a nursing facility as a resident of the facility shall receive assessment services to be provided by the secretary for aging and disability services, with the assistance of area agencies on aging, except: (A) Such assessment services shall be provided by a medical care facility to a patient of the medical care facility who is considering becoming a resident of a nursing facility upon discharge from the medical care facility; and (B) as authorized by rules and regulations adopted by the secretary for aging and disability services pursuant to subsection (i).

(2) The provisions of this subsection ~~(e)~~ shall not apply to any individual exempted from preadmission screening and annual resident review under ~~42 code of federal regulations~~ *C.F.R.* 483.106.

(f) The secretary for aging and disability services shall cooperate with the area agencies on aging providing assessment services under this section.

(g) The secretary for aging and disability services shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources including all area offices of the Kansas department for children and families and local health departments. This information shall include, but not be limited to, resources available to assist persons to choose alternatives to institutional care.

(h) Nursing facilities and medical care facilities shall make available information referenced in subsection (g) to each person seeking admission or upon discharge as appropriate. Any person licensed to practice the healing arts as defined in K.S.A. 65-2802, and amendments thereto, shall make the same resource information available to any person identified as seeking or needing long-term care. Each senior center and each area agency on aging shall make available such information.

(i) The secretary shall adopt rules and regulations to govern such matters as the secretary deems necessary for the administration of this act.

(j) (1) There is hereby established an eleven-member voluntary oversight council which shall meet monthly for the purpose of assisting the secretary for aging and disability services in restructuring the assessment and referral program in a manner consistent with this act and shall meet quarterly thereafter for the purpose of monitoring and advising the secretary regarding the CARE program. The council shall be advisory only, except that the secretary for aging and disability services shall file with the council each six months the secretary's response to council comments or recommendations.

(2) The secretary for aging and disability services shall appoint two representatives of hospitals, two representatives of nursing facilities, two consumers and two representatives of providers of home and community-based services. The secretary of health and environment and the secretary for children and families, or their designees, shall be members of the council in addition to the eight appointed members. The secretary for aging and disability services shall serve as chairperson of the council. The appointive members of the council shall serve at the pleasure of their appointing authority. Members of the voluntary oversight council shall

not be paid compensation, subsistence allowances, mileage or other expenses as otherwise may be authorized by law for attending meetings, or subcommittee meetings, of the council.

(k) The secretary for aging and disability services shall report to the governor and to the legislature on or before December 31, 1995, and each year thereafter on or before such date, an analysis of the information collected under this section. In addition, the secretary for aging and disability services shall provide data from the CARE data forms to the *Kansas* department of health and environment. Such data shall be provided in such a manner so as not to identify individuals.

Sec. 20. K.S.A. 39-1807 and 75-3307c and K.S.A. 2015 Supp. 39-968 and 75-3307b are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.