

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2676

By Committee on Federal and State Affairs

2-7

1 AN ACT concerning the developmental disabilities reform act; failure of
2 community service providers to comply with requirements, standards
3 or laws.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) A correction order may be issued by the secretary for
7 aging and disability services, or the secretary's designee, to a community
8 service provider whenever a duly authorized representative of the secretary
9 inspects or investigates a community service provider and finds that the
10 community service provider is not in compliance with the provisions of the
11 developmental disabilities reform act or rules and regulations adopted
12 thereunder, and such non-compliance is likely to adversely affect the
13 health, safety, nutrition or sanitation of consumers or the public. The
14 correction order shall be served upon the community service provider
15 authorized representative or authorized designee either personally or by
16 certified mail, return receipt requested. The correction order shall be in
17 writing, shall state the specific deficiency, cite the specific statutory
18 provision or rule and regulation alleged to have been violated and shall
19 specify the time allowed for correction.

20 (b) If, upon re-inspection by a duly authorized representative of the
21 secretary, it is found that the community service provider has not corrected
22 the deficiency or deficiencies specified in the correction order, the
23 secretary may assess a civil penalty in an amount not to exceed \$500 per
24 day, per deficiency, against the community service provider for each day
25 subsequent to the day following the time allowed for correction of the
26 deficiency as specified in the correction order, the maximum assessment
27 not to exceed \$2,500. A written notice of assessment shall be served upon
28 the community service provider either personally or by certified mail,
29 return receipt requested.

30 (c) Before the assessment of a civil penalty, the secretary shall
31 consider the following factors in determining the amount of the civil
32 penalty to be assessed:

- 33 (1) The severity of the violation;
34 (2) the good faith effort exercised by the community service provider
35 to correct the violation; and
36 (3) the history of compliance of the community service provider with

1 the rules and regulations.

2 If the secretary finds that some or all deficiencies cited in the correction
3 order have also been cited against the community service provider as a
4 result of any inspection or investigation that occurred within 18 months
5 prior to the inspection or investigation that resulted in such correction
6 order, the secretary may double the civil penalty assessed against the
7 community service provider, the maximum assessment not to exceed
8 \$5,000.

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

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

19 (f) If such correction order is unable to resolve the issue of
20 compliance, and the secretary finds that the community service provider
21 has failed to carry out the plan of correction within 30 days of the
22 submission of the plan of correction, the secretary may issue a notice of
23 suspension of licensure or revocation of licensure. Such notice shall
24 include an opportunity for hearing pursuant to the Kansas administrative
25 procedure act. The secretary may extend the time in which the provider
26 has to comply with the plan of correction for good cause.

27 ~~(g) The secretary may require the community service provider to~~
28 ~~maintain consumers in place until alternative community services can be~~
29 ~~secured with reasonable compensation for actual costs and to remove the~~
30 ~~designation as community service provider, except that in the event the~~
31 ~~secretary makes written findings of fact that there appears to be a situation~~
32 ~~involving imminent danger to the health, safety or welfare of the person~~
33 ~~with a developmental disability unless immediate action is taken, the~~
34 ~~secretary may issue an emergency order. Such emergency order shall be~~
35 ~~subject to the same procedures under K.S.A. 77-536, and amendments~~
36 ~~thereto. Upon entry of such emergency order, the secretary shall promptly~~
37 ~~notify the community service provider subject to the order of:~~

38 ~~(1) The content of the order;~~

39 ~~(2) the reasons therefor; and~~

40 ~~(3) that, upon written request within 15 days after service of the~~
41 ~~order, the matter will be set for a hearing, which shall be conducted in~~
42 ~~accordance with the provisions of the Kansas administrative procedure act.~~

43 (h) If no hearing is requested and none is ordered by the secretary, the

1 order will remain in effect until it is modified or vacated by the secretary.
2 If a hearing is requested or ordered, the secretary, after notice of and an
3 opportunity for hearing to the community service provider subject to the
4 order, by written findings of fact and conclusions of law, shall vacate,
5 modify or make permanent the order.

6 **(h) No order for the suspension or revocation of a license shall be**
7 **effective until such time as the secretary has approved the licensee's**
8 **transition plan for moving all consumers currently receiving services**
9 **from the licensee to another licensed community service provider, and**
10 **such transition of consumers has been completed. The secretary shall**
11 **work in cooperation with the community developmental disability**
12 **organization to guarantee the orderly transition of services as**
13 **described in the transition plan. The department shall provide**
14 **extraordinary funding to any community service provider that begins**
15 **providing services to consumers pursuant to a transition plan for at**
16 **least the first 60 days after the transition is completed. The**
17 **department shall provide the necessary funding for community**
18 **developmental disability organizations to prepare and implement**
19 **community crisis plans in order to facilitate the transition of services**
20 **when necessary. Nothing in this subsection shall be construed to waive**
21 **or otherwise limit the ability of a community service provider to**
22 **proceed under the Kansas administrative procedure act with respect**
23 **to any pending order for the suspension or revocation of such**
24 **provider's license.**

25 (i) This section shall be a part of and supplemental to the
26 developmental disabilities reform act.

27 Sec. 2. This act shall take effect and be in force from and after its
28 publication in the statute book.