

As Amended by Senate Committee

Session of 2017

SENATE BILL No. 154

By Committee on Public Health and Welfare

2-3

1 AN ACT concerning home health agencies; relating to licensure; services
2 provided; amending K.S.A. 65-5102, 65-5103, 65-5107 and 65-5115
3 and K.S.A. 2016 Supp. 39-1908, 65-5101, 65-5104, 65-5112, 65-5117
4 and 65-6805 and repealing the existing sections.

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

7 Section 1. K.S.A. 2016 Supp. 39-1908 is hereby amended to read as
8 follows: 39-1908. (a) The following parts of the health occupations
9 credentialing program of the department of health and environment under
10 the Kansas act on credentialing, K.S.A. 65-5001 through 65-5011, and
11 amendments thereto, shall be transferred to *the Kansas department for*
12 *aging and disability services* and shall be administered by the secretary for
13 aging and disability services:

14 (1) Licensure of adult care home administrators, as defined by
15 ~~subsection (e) of K.S.A. 65-3501, and amendments thereto;~~

16 (2) licensure of dietitians, as defined by ~~subsection (f) of K.S.A. 65-~~
17 ~~5902, and amendments thereto;~~

18 (3) certification of residential care facility operators, as defined by
19 ~~subsection (a)(21) of K.S.A. 39-923, and amendments thereto;~~

20 (4) certification of activity directors, as defined by ~~subsection (a) of~~
21 ~~K.A.R. 26-39-100(a) on the effective date of K.S.A. 2016 Supp. 39-1901~~
22 ~~through 39-1914, and amendments thereto;~~

23 (5) certification of social service designees, as defined by ~~subsection~~
24 ~~(ppp) of K.A.R. 26-39-100(ppp) on the effective date of K.S.A. 2016~~
25 ~~Supp. 39-1901 through 39-1914, and amendments thereto;~~

26 (6) certification of nurse aides, as defined by ~~subsection (pp) of~~
27 ~~K.A.R. 26-39-100(pp) on the effective date of K.S.A. 2016 Supp. 39-1901~~
28 ~~through 39-1914, and amendments thereto;~~

29 (7) certification of medication aides, as defined by ~~subsection (mm)~~
30 ~~of K.A.R. 26-39-100(mm) on the effective date of K.S.A. 2016 Supp. 39-~~
31 ~~1901 through 39-1914, and amendments thereto;~~

32 (8) certification of home health aides, as defined by ~~subsection (d) of~~
33 ~~K.S.A. 65-5101, and amendments thereto; and~~

34 (9) maintenance of the Kansas nurse aide registry under ~~subsection~~
35 ~~(e) of K.S.A. 39-936(c), and amendments thereto, and K.S.A. 39-1411,~~
36 ~~and amendments thereto.~~

1 (b) The criminal history record check program, as authorized by
2 individual credentialing statutes or rules and regulations, K.S.A. 39-969,
3 and amendments thereto, K.S.A. 39-970, and amendments thereto, and
4 ~~subsection (b) of K.S.A. 22-4707(b)~~, and amendments thereto, is hereby
5 transferred from the department of health and environment to the Kansas
6 department for aging and disability services and shall be a part thereof.

7 (c) The licensure of adult care home administrators, the licensure of
8 dietitians, the certification of residential care facility operators, the
9 certification of activity directors, the certification of social service
10 designees, the certification of nurse aides, the certification of medication
11 aides, the certification of home health aides, the board of adult care home
12 administrators, the maintenance of the Kansas nurse aide registry and the
13 criminal history record check program shall be administered by the
14 secretary for aging and disability services. Nothing in K.S.A. 2016 Supp.
15 39-1901 through 39-1914, and amendments thereto, shall change or
16 diminish the authority of the board of adult care home administrators
17 established by K.S.A. 65-3506, and amendments thereto.

18 (d) Except as otherwise provided by K.S.A. 2016 Supp. 39-1901
19 through 39-1914, and amendments thereto, all powers, duties and
20 functions of the secretary of health and environment pertaining to the
21 licensure of adult care home administrators, the licensure of dietitians, the
22 certification of residential care facility operators, the certification of
23 activity directors, the certification of social service designees, the
24 certification of nurse aides, the certification of medication aides, the
25 certification of home health aides, the board of adult care home
26 administrators, the Kansas nurse aide registry and the criminal record
27 check program transferred by K.S.A. 2016 Supp. 39-1901 through 39-
28 1914, and amendments thereto, are hereby transferred to and imposed
29 upon the secretary for aging and disability services.

30 (e) The Kansas department for aging and disability services shall be
31 the successor in every way to the powers, duties and functions of the
32 department of health and environment pertaining to those portions of the
33 health occupations credentialing program transferred by K.S.A. 2016
34 Supp. 39-1901 through 39-1914, and amendments thereto. Every act
35 performed in the exercise of such transferred powers, duties and functions
36 by or under the authority of the Kansas department for aging and disability
37 services shall be deemed to have the same force and effect as if performed
38 by the department of health and environment in which such powers, duties
39 and functions were vested prior to the effective date of K.S.A. 2016 Supp.
40 39-1901 through 39-1914, and amendments thereto.

41 Sec. 2. K.S.A. 2016 Supp. 65-5101 is hereby amended to read as
42 follows: 65-5101. As used in this act, unless the context otherwise
43 requires:

1 (a) "Attendant care services" means basic and ancillary services
2 provided under home and community based services waiver programs.

3 (b) "council" means the home health services advisory council
4 created by this act;

5 ~~(b)~~ (c) "home health agency" means a public or private agency or
6 organization or a subdivision or subunit of such agency or organization
7 that provides for a fee one or more home health services, **supportive care**
8 **services** or attendant care services provided under home and community
9 based services waiver programs at the residence of a patient but does not
10 include local health departments which are not federally certified home
11 health agencies, durable medical equipment companies which provide
12 home health services by use of specialized equipment, independent living
13 agencies, the Kansas department for aging and disability services and the
14 department of health and environment;

15 ~~(c)~~ (d) "home health services" means any of the following services
16 provided at the *current* residence of the patient on a full-time, part-time or
17 intermittent basis: Nursing, physical therapy, speech therapy, nutritional or
18 dietetic consulting, occupational therapy, respiratory therapy, home health
19 aid, ~~attendant care services~~ aide or medical social service;

20 ~~(d)~~ (e) "home health aide" means an employee of a home health
21 agency who is ~~not licensed or professionally registered to provide home~~
22 ~~health services but a certified nurse aide, is in good standing on the public~~
23 ~~nurse aide registry maintained by the Kansas department for aging and~~
24 ~~disability services and has completed a 20-hour home health aide course~~
25 ~~approved by the Kansas department for aging and disability services~~ who
26 assists, under *registered nurse* supervision, in the provision of home health
27 services and who provides ~~related~~ *assigned* health care to patients but shall
28 not include employees of a home health agency providing only **supportive**
29 **care services** or attendant care services;

30 ~~(e)~~ (f) "independent living agency" means a public or private agency
31 or organization or a subunit of such agency or organization whose primary
32 function is to provide at least four independent living services, including
33 independent living skills training, advocacy, peer counseling and
34 information and referral as defined by the rehabilitation act of 1973, title
35 VII, part B, and such agency shall be recognized by the secretary for aging
36 and disability services as an independent living agency. Such agencies
37 include independent living centers and programs which meet the following
38 quality assurances:

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

41 (2) receipt of grants from the state or the federal government and
42 currently meets standards for independent living under the rehabilitation
43 act of 1973, title VII, part B, sections (a) through (k), or comparable

1 standards established by the state; or

2 (3) compliance with requirements established by the federal
3 government under rehabilitation services administration standards for
4 centers for independent living;

5 ~~(f)~~ (g) "part-time or intermittent basis" means the providing of home
6 health services in an interrupted interval sequence on the average of not to
7 exceed three hours in any twenty-four-hour period;

8 ~~(g)~~ (h) "patient's residence" means the actual place of residence of the
9 person receiving home health services, including institutional residences as
10 well as individual dwelling units;

11 ~~(h)~~ (i) "secretary" means secretary of health and environment; ~~and~~

12 ~~(i)~~ (j) "subunit" or "subdivision" means any organizational unit of a
13 larger organization which can be clearly defined as a separate entity within
14 the larger structure, which can meet all of the requirements of this act
15 independent of the larger organization, which can be held accountable for
16 the care of patients it is serving and which provides to all patients care and
17 services meeting the standards and requirements of this act; ~~and~~

18 ~~(j)~~—"attendant care services" shall have the meaning ascribed to such
19 term under K.S.A. 65-6201, and amendments thereto;

20 (k) *"supportive care services" means services that do not require*
21 *supervision by a healthcare professional, such as a physician assistant*
22 *or registered nurse, to provide assistance with activities of daily living*
23 *that the consumer could perform if such consumer were physically*
24 *capable, including, but not limited to, bathing, dressing, eating,*
25 *medication reminders, transferring, walking, mobility, toileting, and*
26 *continence care, provided in the consumer's temporary or permanent*
27 *place of residence so that the consumer can remain safely and*
28 *comfortably in the consumer's temporary or permanent place of*
29 *residence. "Supportive care services" does not include any home health*
30 *services; and*

31 (l) *"supportive care worker" means an employee of a home health*
32 *agency who provides supportive care services.*

33 Sec. 3. K.S.A. 65-5102 is hereby amended to read as follows: 65-
34 5102. ~~No home health~~ Any agency, including medicare and medicaid
35 providers, ~~shall provide that provides~~ one or more of the home health
36 services, **supportive care services or attendant care services** specified in
37 subsection (e) of K.S.A. 65-5101, and amendments thereto, ~~other than~~
38 ~~attendant care services, or shall hold or that holds~~ itself out as providing
39 one or more of such ~~home health~~ services, ~~other than attendant care~~
40 ~~services,~~ or as a home health agency ~~unless it is~~ shall be licensed in
41 accordance with the provisions of this act. *Any agency found to be*
42 *providing services meeting the definition of a home health agency without*
43 *a license shall be notified of the agency's need to become licensed. The*

1 *agency shall be offered a 60-day temporary license to continue operating*
2 *during the pendency of an application for licensure. If the agency fails to*
3 *obtain licensure within 30 calendar days, the secretary for aging and*
4 *disability services shall assess a fine on the agency in accordance with*
5 *this act. The secretary shall not grant a temporary license to any*
6 *unlicensed agency that is providing services in a way that presents*
7 *imminent harm to the public.*

8 Sec. 4. K.S.A. 65-5103 is hereby amended to read as follows: 65-
9 5103. (a) Persons desiring to receive a license to operate a home health
10 agency shall file a written application with the secretary on a form
11 prescribed by the secretary.

12 (b) The application shall be accompanied by a license fee fixed by
13 rules and regulations of the secretary ~~which that~~ establish a ~~sliding scale~~
14 ~~for such~~ fee based upon the actual or estimated number of home health
15 ~~visits to be performed by unduplicated patients admitted to~~ a home health
16 agency during ~~a calendar~~ the prior licensure year. The initial license fee
17 may be greater than subsequent annual fees as established by the secretary
18 by rules and regulations.

19 Sec. 5. K.S.A. 2016 Supp. 65-5104 is hereby amended to read as
20 follows: 65-5104. (a) The secretary shall review the applications and shall
21 issue a license to applicants who have complied with the requirements of
22 this act and have received approval of the secretary after a survey
23 inspection.

24 (b) A license shall remain in effect unless suspended or revoked,
25 when the following conditions have been met:

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

29 (2) the home health agency is in compliance with the requirements
30 established under the provisions of this act as evidenced by an on-site
31 survey conducted at least once every 36 months subsequent to any
32 previous survey inspection; and

33 (3) the annual report is accompanied by a statement of any changes in
34 the information previously filed with the secretary under K.S.A. 65-5103,
35 and amendments thereto.

36 (c) If the annual report is not filed and the annual fee is not paid
37 *within 30 calendar days of the renewal expiration date*, such license is
38 automatically canceled. The annual fee shall be fixed by rules and
39 regulations of the secretary. The license fee for renewal of a license in
40 effect immediately prior to the effective date of this act shall constitute the
41 annual fee until an annual fee is established by the secretary under this
42 subsection.

43 (d) Each license shall be issued only for the home health agency

1 listed in the application and annual report. Licenses shall be posted in a
2 conspicuous place in the main offices of the licensed home health agency.

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

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

32 Sec. 6. K.S.A. 65-5107 is hereby amended to read as follows: 65-
33 5107. Any person may make a complaint against a home health agency
34 licensed under the provisions of this act by ~~filing~~ *making a complaint in*
35 ~~writing with the secretary~~ *through the complaint hotline maintained by the*
36 *Kansas department for aging and disability services* stating the details and
37 facts supporting the complaint. If the secretary determines after an
38 investigation that the charges are sufficient to warrant a hearing to
39 determine whether the license of the home health agency should be
40 suspended or revoked, the secretary shall fix a time and place for a hearing
41 and require the home health agency to appear and defend against the
42 complaint in accordance with the provisions of the Kansas administrative
43 procedure act. A copy of the complaint shall be given to the home health

1 agency at the time it is notified of the hearing. The notice of the hearing
2 shall be given at least 20 days prior to the date of the hearing.

3 Sec. 7. K.S.A. 2016 Supp. 65-5112 is hereby amended to read as
4 follows: 65-5112. The provisions of this act shall not apply to:

5 (a) Individuals who personally provide one or more home health *or*
6 *attendant care* services if such persons are not under the direct control and
7 doing work for ~~and~~ *or* employed by ~~a home health agency~~ *any business*
8 *entity, except as provided in subsection (f)*;

9 (b) ~~individuals performing attendant care services directed by or on~~
10 ~~behalf of an individual in need of in-home care as the terms "attendant care~~
11 ~~services" and "individual in need of in-home care" are defined under~~
12 ~~K.S.A. 65-6201, and amendments thereto, if the individuals performing~~
13 ~~such services are not under the direct control and doing work for and~~
14 ~~employed by a home health agency; or~~

15 (e) ~~any person or organization conducting a home health agency by~~
16 ~~and for the adherents of any recognized church or religious denomination~~
17 ~~or sect for the purpose of providing services for the care or treatment of~~
18 ~~the sick or infirm who depend upon prayer or spiritual means for healing~~
19 ~~in the practice of the religion of such church, religious denomination or~~
20 ~~sect;~~

21 (d) (c) ~~a hospice which is certified to participate in the medicare~~
22 ~~program under 42 code of federal regulations, chapter IV, section 418.1 et~~
23 ~~seq., and amendments thereto, and which provides services only to hospice~~
24 ~~patients; or~~

25 (e) (d) ~~a program for all-inclusive care for the elderly (PACE) which~~
26 ~~is certified to participate in the medicare or medicaid program under 42~~
27 ~~code of federal regulations, chapter IV, subchapter E, section 460.2 et seq.,~~
28 ~~and amendments thereto, and which provides services only to PACE~~
29 ~~participants; or~~

30 (e) ~~an outpatient physical therapy agency that is certified to~~
31 ~~participate in the medicare program and that provides services only to~~
32 ~~outpatient physical therapy patients; or~~

33 (f) ~~individuals who personally provide one or more home health or~~
34 ~~attendant care services if such individuals are employed in accordance~~
35 ~~with K.S.A. 39-7,100(b)(2) and 65-1124(l), and amendments thereto.~~

36 Sec. 8. K.S.A. 65-5115 is hereby amended to read as follows: 65-
37 5115. (a) The secretary may require, as a condition to continued
38 employment by a home health agency that home health aides, ~~after~~ *within*
39 90 days of employment, successfully complete an approved course of
40 instruction and take and satisfactorily pass an examination prescribed by
41 the secretary. ~~The secretary may not require as a condition to employment~~
42 ~~or continued employment by a home health agency that persons providing~~
43 ~~only attendant care services as an employee of a home health agency~~

1 ~~complete any course of instruction or pass any examination.~~

2 (b) A course of instruction for home health aides may be prepared
3 and administered by any home health agency or by any other qualified
4 person. A course of instruction prepared and administered by a home
5 health agency may be conducted on the premises of the home health
6 agency which prepared and which will administer the course of
7 instruction. The secretary shall not require home health aides to enroll in
8 any particular approved course of instruction, but the secretary shall
9 prepare guidelines for the preparation and administration of courses of
10 instruction and shall approve or disapprove courses of instruction.

11 ~~(c) Prior to July 1, 1991, the secretary may require that home health~~
12 ~~aides complete the course of instruction and pass the examination~~
13 ~~established pursuant to subsection (c)(3) of K.S.A. 39-936 and~~
14 ~~amendments thereto before enrolling in an approved course of instruction~~
15 ~~authorized by this section. On and after July 1, 1991, The secretary may~~
16 not require that home health aides complete the course of instruction and
17 pass the examination established pursuant to ~~subsection (c)(3) of K.S.A.~~
18 39-936(c)(3), and amendments thereto, before enrolling in an approved
19 course of instruction authorized by this section. Home health aides may
20 enroll in any approved course of instruction.

21 (d) The examination required under this section shall be prescribed by
22 the secretary and shall be reasonably related to the duties performed by
23 home health aides. The same examination shall be given by the secretary
24 to all home health aides.

25 (e) The secretary shall fix, charge and collect an examination fee to
26 cover all or any part of the cost of the examination required under
27 subsection (a). The examination fee shall be fixed by rules and regulations
28 of the secretary. The examination fee shall be deposited in the state
29 treasury and credited to the state general fund.

30 Sec. 9. K.S.A. 2016 Supp. 65-5117 is hereby amended to read as
31 follows: 65-5117. (a) (1) No person shall knowingly operate a home health
32 agency if, for the home health agency, there works any person who has
33 been convicted of or has been adjudicated a juvenile offender because of
34 having committed an act which if done by an adult would constitute the
35 commission of capital murder, pursuant to K.S.A. 21-3439, prior to its
36 repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto, first
37 degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A.
38 2016 Supp. 21-5402, and amendments thereto, second degree murder,
39 pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2016 Supp.
40 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to
41 K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and
42 amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior
43 to its repeal, or K.S.A. 2016 Supp. 21-5407, and amendments thereto,

1 mistreatment of a dependent adult or mistreatment of an elder person,
2 pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2016 Supp. 21-
3 5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-
4 3446, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(a), and
5 amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-
6 3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and
7 amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal,
8 or K.S.A. 2016 Supp. 21-5503, and amendments thereto, indecent liberties
9 with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A.
10 2016 Supp. 21-5506(a), and amendments thereto, aggravated indecent
11 liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or
12 K.S.A. 2016 Supp. 21-5506(b), and amendments thereto, aggravated
13 criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A.
14 2016 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a
15 child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp.
16 21-5508(a), and amendments thereto, aggravated indecent solicitation of a
17 child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp.
18 21-5508(b), and amendments thereto, sexual exploitation of a child,
19 pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-
20 5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-
21 3517, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(a), and
22 amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-
23 3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and
24 amendments thereto, commercial sexual exploitation of a child, pursuant
25 to K.S.A. 2016 Supp. 21-6422, and amendments thereto, an attempt to
26 commit any of the crimes listed in this ~~subsection (a)(1)~~ *paragraph*,
27 pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-
28 5301, and amendments thereto, a conspiracy to commit any of the crimes
29 listed in this ~~subsection (a)(1)~~ *paragraph*, pursuant to K.S.A. 21-3302,
30 prior to its repeal, or K.S.A. 2016 Supp. 21-5302, and amendments
31 thereto, or criminal solicitation of any of the crimes listed in this
32 ~~subsection (a)(1)~~ *paragraph*, pursuant to K.S.A. 21-3303, prior to its
33 repeal, or K.S.A. 2016 Supp. 21-5303, and amendments thereto, or similar
34 statutes of other states or the federal government. The provisions of
35 subsection (a)(2)(C) shall not apply to any person who is employed by a
36 home health agency on July 1, 2010, and while continuously employed by
37 the same home health agency.

38 (2) A person operating a home health agency may employ an
39 applicant who has been convicted of any of the following if five or more
40 years have elapsed since the applicant satisfied the sentence imposed or
41 was discharged from probation, a community correctional services
42 program, parole, postrelease supervision, conditional release or a
43 suspended sentence; or if five or more years have elapsed since the

1 applicant has been finally discharged from the custody of the
2 commissioner of juvenile justice or from probation or has been adjudicated
3 a juvenile offender, whichever time is longer: A felony conviction for a
4 crime which is described in: (A) Article 34 of chapter 21 of the Kansas
5 Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the
6 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-
7 6326 or 21-6418, and amendments thereto, except those crimes listed in
8 subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes
9 Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the
10 Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-
11 6421, and amendments thereto, except those crimes listed in subsection (a)
12 (1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2016 Supp. 21-5606,
13 and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A.
14 2016 Supp. 21-5801, and amendments thereto; (D) an attempt to commit
15 any of the crimes listed in this ~~subsection (a)(2)~~ *paragraph* pursuant to
16 K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and
17 amendments thereto; (E) a conspiracy to commit any of the crimes listed
18 in ~~subsection (a)(2)~~ *this paragraph* pursuant to K.S.A. 21-3302, prior to its
19 repeal, or K.S.A. 2016 Supp. 21-5302, and amendments thereto; (F)
20 criminal solicitation of any of the crimes listed in ~~subsection (a)(2)~~ *this*
21 *paragraph* pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2016
22 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other
23 states or the federal government.

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

29 (c) The secretary of health and environment shall have access to any
30 criminal history record information in the possession of the Kansas bureau
31 of investigation regarding any criminal history information, convictions
32 under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or
33 K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
34 thereto, adjudications of a juvenile offender which if committed by an
35 adult would have been a felony conviction, and adjudications of a juvenile
36 offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-
37 3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and
38 21-5801, and amendments thereto, concerning persons working for a home
39 health agency. The secretary shall have access to these records for the
40 purpose of determining whether or not the home health agency meets the
41 requirements of this section. The Kansas bureau of investigation may
42 charge to the department of health and environment a reasonable fee for
43 providing criminal history record information under this subsection.

1 (d) For the purpose of complying with this section, the operator of a
2 home health agency shall request from the *Kansas department of health*
3 ~~and environment for aging and disability services~~ information regarding
4 any criminal history information, convictions under K.S.A. 21-3437, 21-
5 3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417, 21-
6 5505(a) and 21-5801, and amendments thereto, adjudications of a juvenile
7 offender which if committed by an adult would have been a felony
8 conviction, and adjudications of a juvenile offender for an offense
9 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,
10 or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
11 thereto, and which relates to a person who works for the home health
12 agency or is being considered for employment by the home health agency,
13 for the purpose of determining whether such person is subject to the
14 provisions of this section. For the purpose of complying with this section,
15 information relating to convictions and adjudications by the federal
16 government or to convictions and adjudications in states other than Kansas
17 shall not be required until such time as the secretary ~~of health and~~
18 ~~environment for aging and disability services~~ determines the search for
19 such information could reasonably be performed and the information
20 obtained within a two-week period. For the purpose of complying with this
21 section, the operator of a home health agency shall receive from any
22 employment agency which provides employees to work for the home
23 health agency written certification that such employees are not prohibited
24 from working for the home health agency under this section. For the
25 purpose of complying with this section, a person who operates a home
26 health agency may hire an applicant for employment on a conditional basis
27 pending the results from the *Kansas department of health and environment*
28 *for aging and disability services* of a request for information under this
29 subsection. No home health agency, the operator or employees of a home
30 health agency or an employment agency, or the operator or employees of
31 an employment agency, which provides employees to work for the home
32 health agency shall be liable for civil damages resulting from any decision
33 to employ, to refuse to employ or to discharge from employment any
34 person based on such home health agency's compliance with the
35 provisions of this section if such home health agency or employment
36 agency acts in good faith to comply with this section.

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

41 (f) (1) The secretary ~~of health and environment for aging and~~
42 *disability services* shall provide each operator requesting information
43 under this section with the criminal history record information concerning

1 any criminal history information and convictions under K.S.A. 21-3437,
2 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417,
3 21-5505(a) and 21-5801, and amendments thereto, in writing and within
4 three working days of receipt of such information from the Kansas bureau
5 of investigation. The criminal history record information shall be provided
6 regardless of whether the information discloses that the subject of the
7 request has been convicted of an offense enumerated in subsection (a).

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

21 (3) Whenever the criminal history record information reveals that the
22 subject of the request has no criminal history on record, the secretary *for*
23 *aging and disability services* shall provide notice to each operator
24 requesting information under this section, in writing and within three
25 working days after receipt of such information from the Kansas bureau of
26 investigation.

27 (4) ~~The secretary of health and environment~~ *for aging and disability*
28 *services* shall not provide each operator requesting information under this
29 section with the juvenile criminal history record information which relates
30 to a person subject to a background check as is provided by K.S.A. 2016
31 Supp. 38-2326, and amendments thereto, except for adjudications of a
32 juvenile offender for an offense described in K.S.A. 21-3701, prior to its
33 repeal, or K.S.A. 2016 Supp. 21-5801, and amendments thereto. The
34 secretary shall notify the operator that requested the information, in
35 writing and within three working days of receipt of such information from
36 the Kansas bureau of investigation, whether juvenile criminal history
37 record information received pursuant to this section reveals that the
38 operator would or would not be prohibited by this section from employing
39 the subject of the request for information and whether such information
40 contains adjudications of a juvenile offender for an offense described in
41 K.S.A. 21-3701, prior to its repeal, or K.S.A. 2016 Supp. 21-5801, and
42 amendments thereto.

43 (5) An operator who receives criminal history record information

1 under this subsection (f) shall keep such information confidential, except
2 that the operator may disclose such information to the person who is the
3 subject of the request for information. A violation of this paragraph ~~(5)~~
4 shall be an unclassified misdemeanor punishable by a fine of \$100.

5 (g) No person who works for a home health agency and who is
6 currently licensed or registered by an agency of this state to provide
7 professional services in this state and who provides such services as part of
8 the work which such person performs for the home health agency shall be
9 subject to the provisions of this section.

10 (h) A person who volunteers to assist a home health agency shall not
11 be subject to the provisions of this section because of such volunteer
12 activity.

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

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

19 (k) The operator of a home health agency shall not be required under
20 this section to conduct a background check on an applicant for
21 employment with the home health agency if the applicant has been the
22 subject of a background check under this act within one year prior to the
23 application for employment with the home health agency. The operator of
24 a home health agency where the applicant was the subject of such
25 background check may release a copy of such background check to the
26 operator of a home health agency where the applicant is currently
27 applying.

28 (l) For purposes of this section, the Kansas bureau of investigation
29 shall only report felony convictions, convictions under K.S.A. 21-3437,
30 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2016 Supp. 21-5417,
31 21-5505(a) and 21-5801, and amendments thereto, adjudications of a
32 juvenile offender which if committed by an adult would have been a
33 felony conviction, and adjudications of a juvenile offender for an offense
34 described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal,
35 or K.S.A. 2016 Supp. 21-5417, 21-5505(a) and 21-5801, and amendments
36 thereto, to the secretary of health and environment *for aging and disability*
37 *services* when a background check is requested.

38 (m) This section shall be part of and supplemental to the provisions
39 of article 51 of chapter 65 of the Kansas Statutes Annotated, and
40 amendments thereto.

41 Sec. 10. K.S.A. 2016 Supp. 65-6805 is hereby amended to read as
42 follows: 65-6805. Each medical care facility as defined by ~~subsection (h)~~
43 ~~of~~ K.S.A. 65-425, and amendments thereto; health care provider as defined

1 in K.S.A. 40-3401, and amendments thereto; providers of health care as
2 defined in ~~subsection (f) of K.S.A. 65-5001~~, and amendments thereto;
3 health care personnel as defined in ~~subsection (e) of K.S.A. 65-5001~~, and
4 amendments thereto; home health agency as defined by ~~subsection (b) of~~
5 K.S.A. 65-5101, and amendments thereto; psychiatric hospitals licensed
6 under K.S.A. 75-3307b, and amendments thereto; state institutions for
7 people with intellectual disability; community facilities for people with
8 intellectual disability as defined under K.S.A. 65-4412, and amendments
9 thereto; community mental health center as defined under K.S.A. 65-4432,
10 and amendments thereto; adult care homes as defined by K.S.A. 39-923,
11 and amendments thereto; laboratories described in K.S.A. 65-1,107, and
12 amendments thereto; pharmacies; board of nursing; Kansas dental board;
13 board of examiners in optometry; state board of pharmacy; state board of
14 healing arts and third-party payors, including, but not limited to, licensed
15 insurers, medical and hospital service corporations, health maintenance
16 organizations, fiscal intermediaries for government-funded programs and
17 self-funded employee health plans, shall file health care data with the
18 department of health and environment as prescribed by the secretary of
19 health and environment. The provisions of this section shall not apply to
20 any individual, facility or other entity under this section which uses
21 spiritual means through prayer alone in accordance with the tenets and
22 practices of a recognized church or religious denomination for the
23 treatment or cure of disease.

24 Sec. 11. K.S.A. 65-5102, 65-5103, 65-5107 and 65-5115 and K.S.A.
25 2016 Supp. 39-1908, 65-5101, 65-5104, 65-5112, 65-5117 and 65-6805
26 are hereby repealed.

27 Sec. 12. This act shall take effect and be in force from and after its
28 publication in the statute book.