

HOUSE BILL No. 2751

By Committee on Health and Human Services

Requested by Representative Haswood on behalf of the Kansas Department for
Aging and Disability Services

2-7

1 AN ACT concerning the Kansas department for aging and disability
2 services; relating to licensure of providers of disability services;
3 authorizing the department to condition or restrict a license therefor;
4 granting the secretary authority to grant regulation waivers unrelated to
5 health and safety; authorizing correction orders and civil fines to be
6 appealed to the secretary; amending K.S.A. 39-2004, 39-2013 and 39-
7 2016 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 39-2004 is hereby amended to read as follows: 39-
11 2004. (a) The secretary may adopt rules and regulations necessary to carry
12 out the provisions of this act. Such rules and regulations may prescribe
13 minimum standards and requirements relating to: The location, building,
14 size of centers, facilities and hospitals; environmental standards; capacity;
15 the individuals allowed; the types of services offered; the records to be
16 kept; medication management; policies and procedures specific to centers,
17 facilities, hospitals and providers; the kind and frequency of reports and
18 inventories to be made; and may generally establish such requirements as
19 may be deemed necessary to protect the health, safety, hygiene, welfare
20 and comfort of the individuals.

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

27 (c) *Notwithstanding any other provision of law to the contrary, the*
28 *secretary may waive a requirement of the rules and regulations adopted*
29 *under this act if the secretary finds that the waiver of the regulatory*
30 *requirement is in the public interest and will not detrimentally affect the*
31 *life, safety, health or welfare of any person receiving care or treatment in a*
32 *center, facility or hospital licensed under this act or an individual*
33 *receiving services from a provider licensed under this act.*

34 Sec. 2. K.S.A. 39-2013 is hereby amended to read as follows: 39-

1 2013. (a) Whenever the licensing agency finds a ~~substantial~~ failure to
2 comply with the requirements, standards or rules and regulations
3 ~~established~~ *adopted* under this act, ~~it shall~~ *the licensing agency may* make
4 an order denying, *conditioning, restricting,* suspending or revoking the
5 license after *issuing a* notice and an opportunity for a hearing in
6 accordance with the provisions of the Kansas administrative procedure act,
7 K.S.A. 77-501 et seq., and amendments thereto. Any applicant ~~or~~, licensee
8 *or person as defined in K.S.A. 39-2014, and amendments thereto,* may
9 appeal such order in accordance with the provisions of the Kansas judicial
10 review act, K.S.A. 77-601 et seq., and amendments thereto.

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

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

25 ~~(2)(d)~~ Any licensee issued a notice of intent to take action by the
26 licensing agency under this section may enter into a settlement agreement,
27 as approved by the licensing agency, with the licensing agency at any time
28 upon submission of a written waiver of any right conferred upon such
29 licensee under the Kansas administrative procedure act, K.S.A. 77-501 et
30 seq., and amendments thereto, and the Kansas judicial review act, K.S.A.
31 77-601 et seq., and amendments thereto.

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

38 Sec. 3. K.S.A. 39-2016 is hereby amended to read as follows: 39-
39 2016. (a) A correction order may be issued by the secretary or the
40 secretary's designee to a licensee whenever the state fire marshal or the
41 marshal's representative or a duly authorized representative of the
42 secretary inspects or investigates a center, facility, hospital or provider and
43 determines that the center, facility, hospital or provider is not in

1 compliance with the provisions of this act or article 59 of chapter 75 of the
2 Kansas Statutes Annotated, and amendments thereto, or rules and
3 regulations ~~promulgated thereunder~~ *adopted by the secretary pursuant to*
4 *such authority* and such non-compliance is likely to adversely affect the
5 health, safety, nutrition or sanitation of the individuals or the public. The
6 correction order shall be served upon the licensee either personally or by
7 certified mail, return receipt requested. The correction order shall be in
8 writing, shall state the specific deficiency, cite the specific statutory
9 provision or rule and regulation alleged to have been violated and shall
10 specify the time allowed for correction.

11 (b) If upon re-inspection by the state fire marshal or the marshal's
12 representative or a duly authorized representative of the secretary, it is
13 found that the licensee has not corrected the deficiency or deficiencies
14 specified in the correction order, the secretary may assess a civil penalty in
15 an amount not to exceed \$500 per day, per deficiency, against the licensee
16 for each ~~subsequent day~~ ~~subsequent to the day~~ following the time allowed
17 for correction of the deficiency as specified in the correction order, the
18 maximum assessment shall not exceed \$2,500. A written notice of
19 assessment shall be served upon the licensee either personally or by
20 certified mail, return receipt requested. *Such notice of assessment shall*
21 *advise the licensee of the opportunity to be heard in accordance with the*
22 *Kansas administrative procedure act and to appeal such order in*
23 *accordance with the provisions of the Kansas judicial review act.*

24 (c) Before the assessment of a civil penalty, the secretary shall
25 consider the following factors in determining the amount of the civil
26 penalty to be assessed:

27 (1) The severity of the violation;

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

30 (3) the history of compliance of the licensee of the center, facility,
31 hospital or provider with the rules and regulations. If the secretary finds
32 that some or all deficiencies cited in the correction order have also been
33 cited against the center, facility, hospital or provider as a result of any
34 inspection or investigation which occurred within 18 months prior to the
35 inspection or investigation which resulted in such correction order, the
36 secretary may double the civil penalty assessed against the licensee, the
37 maximum not to exceed \$5,000.

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

1 of assessment shall be enforced in the same manner as a judgment of the
2 district court.

3 (e) *Any licensee against whom a civil penalty has been assessed, may*
4 *appeal such assessment to the secretary within 10 days after receiving a*
5 *written notice of assessment by filing a written notice of appeal with the*
6 *office of administrative hearings specifying why such civil penalty should*
7 *not be assessed. Such appeal shall not operate to stay the payment of the*
8 *civil penalty. Upon receipt of the notice of appeal, the office of*
9 *administrative hearings shall conduct a hearing in accordance with the*
10 *provisions of the Kansas administrative procedure act. If the initial order*
11 *issued by the office of administrative hearings finds in favor of the*
12 *appellant and the secretary affirms the initial order, any civil penalties*
13 *collected shall be refunded to the appellant licensee. Either party may*
14 *appeal the final order in accordance with the Kansas judicial review act.*

15 (f) All civil penalties collected pursuant to the provisions of this act
16 shall be deposited with the state treasurer in accordance with K.S.A. 75-
17 4215, and amendments thereto. Upon receipt the state treasurer shall
18 deposit the entire amount in the state general fund.

19 Sec. 4. K.S.A. 39-2004, 39-2013 and 39-2016 are hereby repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.