

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; **adding a definition of day service provider**;
6 authorizing correction orders and civil fines to be appealed to the
7 secretary; amending K.S.A. 39-2004, **39-2009**, 39-2013 and 39-2016
8 and repealing the existing sections.
9

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

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

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

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

1 center, facility or hospital licensed under this act or an individual
2 receiving services from a provider licensed under this act.

3 Sec. 2. K.S.A. 39-2009 is hereby amended to read as follows: 39-
4 2009. (a) As used in this section:

5 (1) "Applicant" means an individual who applies for employment
6 with a center, facility, hospital or a provider of services or applies to
7 work for an employment agency or as an independent contractor that
8 provides staff to a center, facility, hospital or a provider of services.

9 (2) "Completion of the sentence" means the last day of the entire
10 term of incarceration imposed by a sentence, including any term that
11 is deferred, suspended or subject to parole, probation, diversion,
12 community corrections, fines, fees, restitution or any other imposed
13 sentencing requirements.

14 (3) "Department" means the Kansas department for aging and
15 disability services.

16 (4) "Direct access" means work that involves an actual or
17 reasonable expectation of one-on-one interaction with a consumer or a
18 consumer's property, personally identifiable information, medical
19 records, treatment information or financial information.

20 (5) "Direct supervision" means that a supervisor is physically
21 present within an immediate distance to a supervisee and is available
22 to provide constant direction, feedback and assistance to a client and
23 the supervisee.

24 (6) "Employment agency" means an organization or entity that
25 has a contracted relationship with a center, hospital, facility or
26 provider of services to provide staff with direct access to consumers.

27 (7) "Independent contractor" means an organization, entity,
28 agency or individual that provides contracted workers or services to a
29 center, facility, hospital or provider of services.

30 (8) "Day service provider" means a provider of day **support** services
31 for development in self-help, **social**, recreational skills and work skills ~~to~~
32 ~~individuals on the home and community-based services intellectual and~~
33 ~~developmental disability program waiver licensed by the department or a~~
34 ~~separate and distinct division of an organization, that provides day~~
35 ~~services for development in self-help, recreational skills and work skills to~~
36 ~~individuals on the home and community-based services intellectual and~~
37 ~~developmental disability program waiver licensed by the department.~~
38 "Day services provider" also means the provision of pre-vocational
39 services that are aimed at preparing a home and community-based
40 services intellectual and developmental disability waiver participant for
41 paid or unpaid employment but are not job-task oriented, including
42 teaching concepts related to compliance, attendance, task completion,
43 problem solving and safety, as provided in 42 C.F.R. § 440.180 for adults

1 *with intellectual or developmental disabilities that is licensed by the*
2 *department or a separate and distinct dedicated division of a provider of*
3 *day support services for development in self-help, social, recreational*
4 *skills and work skills for adults with intellectual or developmental*
5 *disabilities licensed by the department.*

6 **(b) (1) No licensee shall knowingly operate a center, facility,**
7 **hospital or be a provider of services if any person who works in the**
8 **center, facility, hospital or for a provider of services has adverse**
9 **findings on any state or national registry, as defined in rules and**
10 **regulations adopted by the secretary for aging and disability services,**
11 **or has been convicted of or has been adjudicated a juvenile offender**
12 **because of having ~~committing~~ committed an act ~~that~~ which, if ~~done~~**
13 **committed by an adult, would constitute the commission of capital**
14 **murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-**
15 **5401, and amendments thereto, first degree murder, pursuant to**
16 **K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and**
17 **amendments thereto, second degree murder, pursuant to K.S.A. 21-**
18 **3402(a), prior to its repeal, or K.S.A. 21-5403(a), and amendments**
19 **thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to**
20 **its repeal, or K.S.A. 21-5404, and amendments thereto, assisting**
21 **suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-**
22 **5407, and amendments thereto, mistreatment of a dependent adult or**
23 **mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to**
24 **its repeal, or K.S.A. 21-5417, and amendments thereto, human**
25 **trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A.**
26 **21-5426(a), and amendments thereto, aggravated human trafficking,**
27 **pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 21-5426(b),**
28 **and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to**
29 **its repeal, or K.S.A. 21-5503, and amendments thereto, indecent**
30 **liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal,**
31 **or K.S.A. 21-5506(a), and amendments thereto, aggravated indecent**
32 **liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal,**
33 **or K.S.A. 21-5506(b), and amendments thereto, aggravated criminal**
34 **sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-**
35 **5504(b), and amendments thereto, indecent solicitation of a child,**
36 **pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a),**
37 **and amendments thereto, aggravated indecent solicitation of a child,**
38 **pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 21-5508(b),**
39 **and amendments thereto, sexual exploitation of a child, pursuant to**
40 **K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and**
41 **amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior**
42 **to its repeal, or K.S.A. 21-5505(a), and amendments thereto,**
43 **aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its**

1 repeal, or K.S.A. 21-5505(b), and amendments thereto, commercial
2 sexual exploitation of a child, pursuant to K.S.A. 21-6422, and
3 amendments thereto, an attempt to commit any of the crimes listed in
4 this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or
5 K.S.A. 21-5301, and amendments thereto, a conspiracy to commit any
6 of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302,
7 prior to its repeal, or K.S.A. 21-5302, and amendments thereto, or
8 criminal solicitation of any of the crimes listed in this paragraph,
9 pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 21-5303, and
10 amendments thereto, or similar statutes of other states or the federal
11 government.

12 (2) (A) A licensee operating a center, facility or hospital or as a
13 provider of services may employ an applicant who has been convicted
14 of any of the following if six or more years have elapsed since
15 completion of the sentence imposed or the applicant was discharged
16 from probation, a community correctional services program, parole,
17 postrelease supervision, conditional release or a suspended sentence; if
18 six or more years have elapsed since a community correctional
19 services program, parole, postrelease supervision, conditional release
20 or a suspended sentence; or if the applicant has been granted a waiver
21 of such six-year disqualification: A felony conviction for a crime that is
22 described in: ~~(A)~~(i) Article 34 of chapter 21 of the Kansas Statutes
23 Annotated, prior to their repeal, or article 54 of chapter 21 of the
24 Kansas Statutes Annotated, and amendments thereto, except those
25 crimes listed in paragraph (1); ~~(B)~~(ii) article 35 or 36 of chapter 21 of
26 the Kansas Statutes Annotated, and amendments thereto, prior to
27 their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes
28 Annotated or K.S.A. 21-6420, and amendments thereto, except those
29 crimes listed in paragraph (1); ~~(C)~~(iii) K.S.A. 21-3701, prior to its
30 repeal, or K.S.A. 21-5801, and amendments thereto; ~~(D)~~(iv) an attempt
31 to commit any of the crimes listed in this paragraph pursuant to
32 K.S.A. 21-3301, prior to its repeal, or K.S.A. 21-5301, and
33 amendments thereto; ~~(E)~~(v) a conspiracy to commit any of the crimes
34 listed in this paragraph pursuant to K.S.A. 21-3302, prior to its repeal,
35 or K.S.A. 21-5302, and amendments thereto; ~~(F)~~(vi) criminal
36 solicitation of any of the crimes listed in this paragraph pursuant to
37 K.S.A. 21-3303, prior to its repeal, or K.S.A. 21-5303, and
38 amendments thereto; or ~~(G)~~(vii) similar statutes of other states or the
39 federal government.

40 (B) An individual who has been disqualified for employment due
41 to conviction or adjudication of an offense listed in this paragraph~~(2)~~
42 may apply to the secretary for aging and disability services for a
43 waiver of such disqualification if five years have elapsed since

1 completion of the sentence for such conviction. The secretary shall
2 adopt rules and regulations establishing the waiver process and the
3 criteria to be utilized by the secretary in evaluating any such waiver
4 request.

5 (3) (A) A licensee operating a center, facility, hospital or as a
6 provider of services may employ an applicant who has been convicted
7 of any of the following if six or more years have elapsed since
8 completion of the sentence imposed or the applicant was discharged
9 from probation, a community correctional services program, parole,
10 postrelease supervision, conditional release or a suspended sentence; if
11 six or more years have elapsed since the applicant has been finally
12 discharged from the custody of the commissioner of juvenile justice or
13 from probation or has been adjudicated a juvenile offender, whichever
14 time is longer; or if the applicant has been granted a waiver of such
15 six-year disqualification:

16 (i) Interference with custody of a committed person pursuant to
17 K.S.A. 21-3423, prior to its repeal, or K.S.A. 21-5410, and
18 amendments thereto; mistreatment of a confined person pursuant to
19 K.S.A. 21-3425, prior to its repeal, or K.S.A. 21-5416, and
20 amendments thereto; unlawful administration of a substance pursuant
21 to K.S.A. 21-3445, prior to its repeal, or K.S.A. 21-5425, and
22 amendments thereto; violation of a protective order pursuant to
23 K.S.A. 21-3843, prior to its repeal, or K.S.A. 21-5924; promoting
24 obscenity or promoting obscenity to minors pursuant to K.S.A. 21-
25 4301 or 21-4301a, prior to their repeal, or K.S.A. 21-6401, and
26 amendments thereto; or cruelty to animals pursuant to K.S.A. 21-
27 3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 21-6412, and
28 amendments thereto; or

29 (ii) any felony conviction of: Unlawful manufacture of a
30 controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to
31 its repeal, or K.S.A. 21-5703, and amendments thereto; unlawful
32 cultivation or distribution of a controlled substance pursuant to
33 K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 21-5705, and
34 amendments thereto; unlawful manufacture, distribution, cultivation
35 or possession of a controlled substance using a communication facility
36 pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A.
37 21-5707, and amendments thereto; unlawful obtainment or sale of a
38 prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior
39 to its repeal, or K.S.A. 21-5708, and amendments thereto; unlawful
40 distribution of drug precursors or drug paraphernalia pursuant to
41 K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 21-5710, and
42 amendments thereto; unlawful distribution or possession of a
43 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-

1 36a13, prior to its repeal, or K.S.A. 21-5713, and amendments thereto;
2 forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 21-
3 5823, and amendments thereto; criminal use of a financial card
4 pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 21-5828, and
5 amendments thereto; any violation of the Kansas medicaid fraud
6 control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or
7 K.S.A. 21-5925 et seq., and amendments thereto; making a false claim,
8 statement or representation to the medicaid program pursuant to
9 K.S.A. 21-3846, prior to its repeal, or K.S.A. 21-5927, and
10 amendments thereto; unlawful acts relating to the medicaid program
11 pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 21-5928, and
12 amendments thereto; obstruction of a medicaid fraud investigation
13 pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A. 21-5929, and
14 amendments thereto; identity theft or identity fraud pursuant to
15 K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A. 21-6107, and
16 amendments thereto; or social welfare fraud pursuant to K.S.A. 39-
17 720, and amendments thereto. The provisions of this paragraph shall
18 not apply to any person who is employed by a center, facility, hospital
19 or provider of services on or before July 1, 2018, and is continuously
20 employed by the same center, facility, hospital or provider of services
21 or to any person during or upon successful completion of a diversion
22 agreement.

23 (B) An individual who has been disqualified for employment due
24 to conviction or adjudication of an offense listed in this paragraph ~~(3)~~
25 may apply to the secretary for aging and disability services for a
26 waiver of such disqualification if five years have elapsed since
27 completion of the sentence for such conviction. The secretary shall
28 adopt rules and regulations establishing the waiver process and
29 criteria to be considered by the secretary in evaluating any such
30 waiver request.

31 (c) No licensee shall operate a center, facility, hospital or be a
32 provider of services if such person has been found to be an adult with
33 an impairment in need of a guardian or a conservator, or both, as
34 provided in the act for obtaining a guardian or conservator, or both.
35 The provisions of this subsection shall not apply to an individual who,
36 as a minor, was found to be in need of a guardian or conservator for
37 reasons other than impairment.

38 (d) (1) The Kansas bureau of investigation shall release all
39 records of adult and juvenile convictions and adjudications and adult
40 and juvenile convictions and adjudications of any other state or
41 country concerning persons working in a center, facility, hospital or
42 for a provider of services to the secretary for aging and disability
43 services. The Kansas bureau of investigation may charge to the

1 Kansas department for aging and disability services a reasonable fee
2 for providing criminal history record information under this
3 subsection.

4 (2) The department shall require an applicant to be fingerprinted
5 and to submit to a state and national criminal history record check.
6 The fingerprints shall be used to identify the individual and to
7 determine whether the individual has a record of criminal history in
8 this state or other jurisdiction. The department is authorized to
9 submit the fingerprints to the Kansas bureau of investigation and the
10 federal bureau of investigation for a state and national criminal
11 history record check. The department may use the information
12 obtained from fingerprinting and the criminal history record check
13 for purposes of verifying the identification of the person and for
14 making an official determination of the qualifications and fitness of
15 the person to work in the center, facility, hospital or for a provider of
16 services.

17 (3) An applicant for employment in ~~an~~ a center, facility, hospital
18 or for a provider of services shall have 20 calendar days after receipt
19 of authorization to submit the applicant's fingerprints through an
20 authorized collection site in order to be eligible for provisional
21 employment or the applicant's application shall be deemed
22 withdrawn.

23 (4) (A) The current or prospective employer of an applicant shall
24 pay a fee not to exceed \$19 of the total cost for criminal history record
25 information to the department for each applicant submitted.

26 (B) The prospective employer, employee or independent
27 contractor shall pay the fingerprint collection fee at the time of
28 fingerprinting to the authorized collection site.

29 (5) If an applicant disputes the contents of a criminal history
30 record check, then the applicant may file an appeal with the Kansas
31 bureau of investigation.

32 (6) Individuals who have been disqualified for employment by
33 reason of their criminal history records and who have met the
34 requirements of this subsection may apply for a waiver with the
35 department within 30 days of the receipt of the notice of employment
36 prohibition.

37 (7) The department shall adopt rules and regulations specifying
38 the criteria and procedure for issuing a waiver of the employment
39 prohibition. The secretary shall consider the following criteria when
40 rendering a decision on such a waiver request: Passage of time;
41 extenuating circumstances; demonstration of rehabilitation; and
42 relevancy of the criminal history record information to the position
43 for which the applicant is applying. Any employment prohibition

1 issued shall remain in effect unless or until a waiver is granted.

2 ~~(d)~~(e) The secretary shall provide each licensee requesting
3 information under this section with a pass or fail determination after
4 review of any criminal history record information in writing and
5 within three working days of receipt of such information from the
6 Kansas bureau of investigation or the federal bureau of investigation.

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

13 ~~(f)~~(g) For the purpose of complying with this section, the licensee
14 operating a center, facility, hospital or a provider of services shall
15 request from the Kansas department for aging and disability services
16 an eligibility determination regarding adult and juvenile convictions
17 and adjudications. For the purpose of complying with this section, the
18 licensee operating a center, facility, hospital or a provider of services
19 shall receive from any employment agency or independent contractor
20 that provides employees to work in the center, facility, hospital or for
21 the provider of services written certification that such employees are
22 not prohibited from working in the center, facility, hospital or for the
23 provider of services under this section. For the purpose of complying
24 with this section, a licensee may hire an applicant for provisional
25 employment on a one-time basis of 60 calendar days pending the
26 results from the Kansas department for aging and disability services
27 of an eligibility determination under this subsection. A provisional
28 employee may only be supervised by an employee who has completed
29 all training required by federal regulations, department rules and
30 regulations and the center's, facility's, hospital's or provider of
31 services' policies and procedures. No licensee, its contractors or
32 employees, shall be liable for civil damages to any person refused
33 employment or discharged from employment by reason of such
34 licensee's compliance with the provisions of this section if such licensee
35 acts in good faith to comply with this section.

36 ~~(g)~~(h) The licensee operating a center, facility, hospital or a
37 provider of services shall not require an applicant under this section to
38 be fingerprinted, if the applicant has been the subject of a criminal
39 history record check under this act within one year prior to the
40 application for employment with the licensee operating a center,
41 facility, hospital or a provider of services and has maintained a record
42 of continuous employment, with no lapse of employment of over 90
43 days in any center, facility, hospital or a provider of services covered

1 **by this act.**

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

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

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

27 ~~(2)~~(d) Any licensee issued a notice of intent to take action by the
28 licensing agency under this section may enter into a settlement agreement,
29 as approved by the licensing agency, with the licensing agency at any time
30 upon submission of a written waiver of any right conferred upon such
31 licensee under the Kansas administrative procedure act, K.S.A. 77-501 et
32 seq., and amendments thereto, and the Kansas judicial review act, K.S.A.
33 77-601 et seq., and amendments thereto.

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

40 ~~Sec.-3.~~ **4.** K.S.A. 39-2016 is hereby amended to read as follows: 39-
41 2016. (a) A correction order may be issued by the secretary or the
42 secretary's designee to a licensee whenever the state fire marshal or the
43 marshal's representative or a duly authorized representative of the

1 secretary inspects or investigates a center, facility, hospital or provider and
2 determines that the center, facility, hospital or provider is not in
3 compliance with the provisions of this act or article 59 of chapter 75 of the
4 Kansas Statutes Annotated, and amendments thereto, or rules and
5 regulations ~~promulgated thereunder~~ *adopted by the secretary pursuant to*
6 *such authority* and such non-compliance is likely to adversely affect the
7 health, safety, nutrition or sanitation of the individuals or the public. The
8 correction order shall be served upon the licensee either personally or by
9 certified mail, return receipt requested. The correction order shall be in
10 writing, shall state the specific deficiency, cite the specific statutory
11 provision or rule and regulation alleged to have been violated and shall
12 specify the time allowed for correction.

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

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

29 (1) The severity of the violation;

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

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

40 (d) All civil penalties assessed shall be due and payable within 10
41 days after written notice of assessment is served on the licensee, unless a
42 longer period of time is granted by the secretary. If a civil penalty is not
43 paid within the applicable time period, the secretary may file a certified

1 copy of the notice of assessment with the clerk of the district court in the
2 county where the center, facility, hospital or provider is located. The notice
3 of assessment shall be enforced in the same manner as a judgment of the
4 district court.

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

17 (f) All civil penalties collected pursuant to the provisions of this act
18 shall be deposited with the state treasurer in accordance with K.S.A. 75-
19 4215, and amendments thereto. Upon receipt the state treasurer shall
20 deposit the entire amount in the state general fund.

21 ~~Sec. 4.~~ **5.** K.S.A. 39-2004, **39-2009**, 39-2013 and 39-2016 are hereby
22 repealed.

23 ~~Sec. 5.~~ **6.** This act shall take effect and be in force from and after its
24 publication in the statute book.