

## **KDADS Statutes Update; Prohibition on State Hospital Outsourcing or Privatization; CARE Program; SB 449**

**SB 449** continues the updating of statutes transferred to the Kansas Department for Aging and Disability Services (KDADS) under 2012 Executive Reorganization Order No. 41, in order to clarify and consolidate the existing authority of the Secretary for Aging and Disability Services (Secretary) with regard to the licensure process for residential care facilities, residential and day support facilities, private and public psychiatric hospitals, psychiatric residential treatment facilities (PRTFs), community mental health centers (CMHCs), and providers of other disability services licensed by the Secretary; provides for deemed status for licensure renewal of CMHCs; provides for background checks of service providers; and provides for an enforcement process with intermediate steps as an alternative to provider licensure revocation. The bill also prohibits the outsourcing or privatization of any operations or facilities of Larned State Hospital or Osawatimie State Hospital without specific authorization by the Legislature. Further, the bill clarifies law regarding the Client Assessment, Referral and Evaluation (CARE) Program operated under KDADS.

**KDADS statutes update.** The bill provides for the development, establishment, and enforcement of standards for the care, treatment, health, safety, welfare, and comfort of individuals residing in or receiving treatment or services by a person or entity licensed under the bill. The bill also provides for the development, establishment, and enforcement of standards for the construction, maintenance, or operation of facilities, hospitals, centers, and providers of services that promote safe and adequate accommodation, care, and treatment of individuals residing in or receiving treatment in the listed settings. Further, the bill defines specific terms and grants the Secretary rule and regulation authority.

### ***Definitions***

The bill defines terms including these:

- “Center” means a CMHC;
- “Facility” means any place other than a CMHC or hospital that meets the requirements established in regulations created and adopted by the Secretary, where individuals reside and receive treatment or services provided by a person or entity licensed under the bill;
- “Hospital” means a psychiatric hospital;
- “Individual” means a person who receives behavioral health, intellectual disabilities, developmental disabilities, or other disability services as set forth in the bill;
- “Licensing agency” means the Secretary;

- “Other disabilities” means any condition for which individuals receive home and community based waiver services;
- “Provider” means a person, partnership, or corporation employing or contracting with appropriately credentialed persons that provides behavioral health (excluding substance use disorder services for the purposes of this bill), intellectual disability, developmental disability, or other disability services according to the requirements in the rules and regulations created and adopted by the Secretary; and
- “Services” means behavioral health, intellectual disability, developmental disability, and other disability services, including residential supports, day supports, care coordination, case management, workshops, sheltered domiciles, education, therapeutic services, assessments and evaluations, diagnostic care, medicinal support, and rehabilitative services.

The bill also defines CMHC, department, licensee, psychiatric hospital, PRTF, residential care facility, and Secretary.

### ***Duties of the Secretary***

The following are among the duties of the Secretary outlined in the bill:

- Enforce laws relating to the hospitalization of mentally ill individuals in a psychiatric hospital and the diagnosis, care, training, or treatment of individuals receiving services through CMHCs, PRTFs for individuals with mental illness, residential care facilities or other facilities or services for individuals with mental illness, intellectual disabilities, developmental disabilities, or other disabilities;
- 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 deny, suspend, or revoke a license granted for causes shown;
- 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 KDADS 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 is authorized to develop rules and regulations to allow the facilities to assist an individual with the taking of medications when the medication is in a labeled container dispensed by a pharmacist; and
- Do other acts and things necessary to execute the authority expressly granted to the Secretary.

Additionally, the bill outlines other duties prescribed to the Secretary.

### ***Injunctive Relief***

In addition to the existence or pursuit of other remedies, the Secretary, as the licensing agency, is authorized pursuant to the Kansas Judicial Review Act (KJRA) to maintain an action 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, PRTF, provider of services, CMHC, or any other facility providing services to individuals without a license.

### ***Reports and Information***

Superintendents, executives, or other administrative officers of all psychiatric hospitals, CMHCs, or facilities serving individuals with intellectual disabilities or developmental disabilities, and facilities serving other disabilities receiving assistance through KDADS are required to furnish reports and information to the Secretary.

### ***Rule and Regulation Authority***

The Secretary is authorized to adopt rules and regulations necessary to carry out the provisions of the bill. The bill provides a list of the types of minimum standards and requirements the Secretary is authorized to prescribe by rules and regulations. The bill clarifies the authority granted to the Secretary under the bill 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 intended 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* (the Kansas Act on Aging).

### ***Compliance with State Law, Ordinances, and Rules and Regulations***

The bill requires strict compliance with all pertinent state laws and lawfully adopted ordinances and rules and regulations in the operation of any center, facility, hospital, or provision of services in the state. All centers, facilities, hospitals, and providers are required to comply with all lawfully established requirements and rules and regulations of the Secretary, the State Fire Marshal, and any other government agency pertinent and applicable to such centers, facilities, hospitals, and providers; their buildings, staff, facilities, maintenance, operation, and conduct; and the care and treatment of individuals.

### ***Licensure Requirement***

A center, facility, hospital, or provider is prohibited from operating or providing services in the state without a license issued by the Secretary pursuant to an application for licensure and compliance with the requirements, standards, rules, and regulations.

### ***Application for Licensure***

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

### ***Issuance of License, Inspections, Investigations, and Fees***

The bill provides for the issuance of a license by the Secretary with the approval of the State Fire Marshal, upon receipt of an initial or renewal application if the applicant is fit and qualified and if the center, facility, hospital, or provider meets the requirements under the bill and the adopted rules and regulations. The Secretary, the State Fire Marshal, and the county, city-county, or multi-county health departments or their designated representatives are required to make any necessary inspections and investigations to determine the conditions existing in each case. A written report of such inspections, investigations, and recommendations by the State Fire Marshal and the county, city-county, or multi-county health departments or their designated representatives must be filed with the Secretary and a copy of the report provided to the applicant.

The fees for the initial and renewal application are fixed by the Secretary by rules and regulations. The non-refundable licensure fees are paid to the Secretary at the time of initial application and annually thereafter. The fees in effect immediately prior to the effective date of the bill remain in effect on and after the effective date of the bill until the Secretary establishes a different fee by rules and regulations.

Licenses are issued only for the premises or providers named in the application, or both, and are not transferable or assignable. The license must be posted in a conspicuous place in the center, facility, hospital, or provider's principal location. A license is to be denied or revoked for the failure to file the annual report and pay the renewal of licensure fee. The license must 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 Secretary.

A license remains in effect until the date of expiration specified by the Secretary, unless suspended or revoked. Renewal applications must contain the information in such form as required by the Secretary and be accompanied by the payment of any required annual fee. A license is issued and effective until the date of expiration upon review and approval by the Secretary and the State Fire Marshal or their duly authorized agents.

### ***CMHC Deemed Status for Licensure Renewal***

The bill grants programs and treatments provided by a CMHC previously licensed by the Secretary and accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accrediting body approved by the Secretary, a license renewal based on such accreditation, referred to as "deemed status."

Additionally, the bill requires KDADS to inspect an accredited CMHC to determine compliance with state licensing standards and rules and regulations not covered by the accrediting entity's standards, or in response to a complaint made against the accredited CMHC.

### ***Restrictions on the Operation and Provision of Services***

A licensee is prohibited from knowingly operating a center, facility, or hospital or being a provider of services if any person who works in these settings or for a provider of services has been convicted of crimes specified in the bill or has had action taken against them, including:

- A felony conviction for crimes against persons;
- A felony conviction for crimes involving controlled substances;
- A conviction for any act involving crimes against persons, sex crimes, crimes affecting family relationships and children, unlawful disclosure of tax information, unlawful interference with a firefighter or an emergency medical services attendant, permitting a dangerous animal to be at large, selling or promoting the sale of sexual relations, buying sexual relations, and certain anticipatory crimes involving attempt or conspiracy to commit such acts;
- A conviction for promoting obscenity or promoting obscenity to minors;
- 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, or is any act described above;
- 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 (DCF), and:
  - Failed to successfully complete a corrective action plan deemed appropriate and approved by DCF; or
  - The record has not been expunged by DCF;
- Had a child removed from the home based on a court order finding 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;
- Had parental rights terminated; or
- Signed a diversion agreement or an immediate intervention agreement involving a charge of child abuse or a sexual offense.

The bill also prohibits a person who has been found to be an adult with an impairment in need of a guardian or conservator, or both, from operating a center, facility, or hospital or being a provider of services.

### *Criminal History Record Check*

The Secretary is required to notify the licensee, within ten business days, when the result of a national criminal history record check or other appropriate review reveals unfitness for licensure as described above. The bill protects a licensee, its contractors, or its employees from civil liability for a refusal to employ or discharge from employment when acting in good faith to comply with disqualifying factors contained in the bill.

A licensee or member of the staff who received information regarding the fitness or unfitness of any person is required to keep such information confidential, but is allowed to disclose the information to the person who is the subject of the request. A violation of this section is an unclassified misdemeanor punishable by a fine of \$100.

The Secretary is authorized to require an individual seeking licensure or applying to work in a facility to be fingerprinted and submit to a state and national criminal history record check. The Secretary is authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for a state and national criminal history record check. The Secretary has access to any criminal history record information in the possession of the KBI regarding any criminal history information, including adjudications of a juvenile offender, which, if committed by an adult, would have been a felony conviction. The bill authorizes the KBI to charge KDADS a reasonable fee for providing criminal history record information. The Secretary charges each person or licensee for each person about whom an information request has been submitted.

The licensee operating a center, facility, or hospital or a provider of services is required to request from KDADS information regarding any criminal history information relating to a person who works in the center, facility, or hospital or for a service provider or who is being considered for employment or volunteer work. The licensee is required to report the dates of employment and separation of all persons working for the licensee. Any employment agency that provides employees to work in a center, facility, hospital, or a provider of services is required to request and receive an eligibility determination from KDADS. The licensee is required to obtain written documentation that such employees are eligible to work. The licensee is allowed to hire an applicant for employment on a conditional basis pending the results of an eligibility determination from KDADS. As required by the federal Patient Protection and Affordable Care Act, a person disqualified from employment due to a valid background check has the right to appeal in accordance with requirements, standards, and rules and regulations promulgated by the Secretary.

The provisions of this section do not apply to a person who works for a center, facility, or hospital; currently is licensed or registered by an agency of this state to provide professional services; and provides such services as part of the work such person performs at the center, facility, or hospital. However, a licensee may request criminal history record information from KDADS on these persons.

A licensee operating a center, facility, hospital, or a provider of services is prohibited from requiring an applicant under this section to be fingerprinted if the applicant has been the subject of a background check under the bill within one year prior to the application for employment with the licensee 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 the bill.

Persons in the custody of the Secretary of Corrections and who provide services under direct supervision in non-patient areas on the grounds or other areas designated by the Secretary of Corrections are not subject to the provision of this section while providing such services.

### ***Grandfathered Licenses***

Licenses issued for centers, facilities, hospitals, and providers prior to the effective date of the bill continue in force until the licensed date of expiration, unless suspended or revoked. Persons holding such licenses that are in force on the effective date of the bill are permitted not more than four months from the effective date of the bill to comply with the rules and regulations and standards promulgated under the bill where the rules and regulations differ in any substantial respect from those in force and effect immediately prior to the effective date of the bill.

### ***Inspections and Investigations***

Inspections and investigations are required, announced or unannounced, and reported in writing by the authorized agents and representatives of the Secretary and State Fire Marshal and of the county, city-county, and multi-county health departments as often and in the manner prescribed by rules and regulations promulgated under the bill. Upon presenting adequate identification to carry out the requirements of the bill, the representatives must be given access at any time to the premises of any center, facility, hospital, or provider, depending on the type of service provided by the provider and locations. Access to the premises of a facility that is a private residence is required to be given only for cause as prescribed by rules and regulations adopted under the provisions of the bill. Failure to provide the required access may constitute grounds for denial, suspension, or revocation of the license. The bill requires a copy of any inspection or investigation reports required by this section to be furnished to the applicant or licensee. The bill requires an exit interview with the licensee.

The Secretary is required to inspect any facility or provider of residential services which serves two or more residents who are not self-directing their services and is subject to licensure under the bill.

Licensees are required to post in a conspicuous place a notice indicating the most recent inspection report and related documents may be examined upon request, subject to a reasonable charge to cover copying costs. A licensee is required to provide the most recent inspection report and related documents upon request.

## ***Provisional Licenses***

The bill allows a provisional license to 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 bill. Such a provisional license is subject to approval by the State Fire Marshal. A provisional license is for a period of six months to allow for necessary corrections, but one additional successive six-month provisional license may be granted at the Secretary's discretion. A change of ownership during the provisional licensing does 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.

## ***Disciplinary Action***

If the Secretary finds a substantial failure to comply with the requirements, standards, or rules and regulations established under the bill, an order denying, suspending, or revoking the license is authorized after notice and an opportunity for a hearing under the Kansas Administrative Procedure Act (KAPA). Any licensee or applicant has the right to appeal such an order under the KJRA.

When the Secretary denies, suspends, or revokes a license, the applicant is not eligible to apply for a new license or reinstatement of a license for two years from the date of denial, suspension, or revocation. Any applicant issued an emergency order by the Secretary denying, suspending, or revoking a license may apply for a new license or reinstatement of a license at any time upon submission of a written waiver of any right conferred on the applicant or licensee under the KAPA and the KJRA to the Secretary in a settlement agreement or other manner approved by the Secretary. A licensee issued a notice of intent to take action by the Secretary is allowed to enter into a settlement agreement, as approved by the Secretary, with the Secretary at any time upon submission of a written waiver of any right conferred under the KAPA and the KJRA.

A CMHC accredited by the Commission on Accreditation of Rehabilitation Facilities or The Joint Commission, or another national accrediting body approved by the Secretary, is required to immediately notify KDADS if it loses accreditation by such accrediting entity.

## ***Grounds for Denial, Suspension, or Revocation of a License***

The bill defines "person" to mean:

- 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 percent or more in the center, facility, or hospital;
- 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



- If the center, facility, hospital, or provider is organized as a corporation, an officer or director of the corporation, or if the facility is organized as a partnership, a partner.

The Secretary is authorized to deny, suspend, or revoke the license of any person who meets any of the seven grounds outlined in the bill. The grounds include:

- Willful or repeated violations of any provision of law or rules and regulations adopted pursuant to the bill or the Kansas Act on Aging;
- Denial, suspension, revocation, or limitation of a license to operate a center, facility, or hospital; censure or other disciplinary action taken; or denial of an application for licensure by the proper licensing authority of another state, territory, District of Columbia, or other country, with a certified copy of the record being conclusive evidence of this action;
- Failure or refusal to comply with the Medicaid and Medicare requirements under specified sections of the Social Security Act, or Medicaid and Medicare regulations under specified sections of the Code of Federal Regulations, with a certified copy of the record being conclusive evidence of this action; or
- A felony conviction.

### ***Penalties***

A person operating a center, facility, hospital, or a provider of services in the state without a license under the bill is guilty of a class B misdemeanor. Violations of any other provision of the bill or rules and regulations promulgated under the bill also are class B misdemeanors.

Regardless of the existence or pursuit of other available remedies, the Secretary is authorized to maintain an action, under the KJRA, in the name of the state 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 the bill.

### ***Correction Orders***

The bill allows for the issuance of a correction order by the Secretary or a designee to a licensee when 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 there is noncompliance with the provisions of the bill or the Kansas Act on Aging or rules and regulations and the noncompliance is likely to adversely affect the health, safety, nutrition, or sanitation of the individuals or the public. The correction order is to be served on the licensee either personally or by certified mail, return receipt requested. The correction order must be in writing, state the specific deficiency, cite the statutory provision or rule and regulation alleged to have been violated, and specify the time allowed for correction.

If re-inspection by the State Fire Marshal, the Fire Marshal's representative, or a duly authorized representative of the Secretary finds the licensee has not corrected the deficiency or deficiencies specified in the correction order, the Secretary is authorized to assess a civil penalty not to exceed \$500 per day, per deficiency, against the licensee for each day after the day following the deadline for correction specified in the correction order, up to a maximum assessment of \$2,500. The licensee must be served with a written notice of assessment.

In determining the amount of the civil penalty to be assessed, the Secretary first is required to consider the following:

- The severity of the violation;
- The good faith effort exercised by the center, facility, hospital, or provider to correct the violation; and
- The history of compliance of the licensee with the rules and regulations. The Secretary is authorized to double the civil penalty assessed the licensee, up to a maximum of \$5,000, if some or all of the deficiencies cited in the correction order were cited in an inspection or investigation which occurred within 18 months prior to the inspection or investigation that resulted in the correction order.

Civil penalties assessed are due and payable within ten days of service of the written notice of assessment on the licensee, unless additional time is granted by the Secretary. If payment is not made within the applicable time period, the Secretary is authorized to file a certified copy of the notice of assessment in district court to enforce the notice in the same manner as a judgment of the district court. Civil penalties collected under provisions of the bill are to be deposited in the State General Fund.

### ***Severability Clause***

If a provision of the bill or its application is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provisions or application, such that the provisions of the bill are severable.

### ***Prohibition on State Hospital Outsourcing or Privatization***

The bill prohibits a state agency from entering into any agreement or taking any action to outsource or privatize any operations or facilities of Larned State Hospital or Osawatomie State Hospital without prior specific authorization by an act or an appropriation act of the Legislature.

A state agency is not prevented from renewing any agreement in existence prior to March 4, 2016, for services at Larned State Hospital or Osawatomie State Hospital if the new agreement is substantially the same as an existing agreement. Additionally, a state agency is not prevented from entering into an agreement with a different provider for services at Larned State Hospital or Osawatomie State Hospital if the agreement is substantially similar to an agreement for services in existence prior to March 4, 2016.

### ***CARE Program***

The bill clarifies law regarding the CARE program operated under KDADS to reflect the appropriate agency name and the current operation of the program. The bill clarifies references to the Kansas Department of Health and Environment and removes language requiring the Health Care Data Governing Board to adopt the CARE data entry form.