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**Kansas**

**Statutes**

**Annotated**

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# 39-923

## Chapter 39--MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE Article 9.--ADULT CARE HOMES

### 39-923. Definitions. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of aging.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) "Residential health care facility" means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than eight individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation

services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the staff and rules and regulations developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) "Licensing agency" means the secretary of aging.

(17) "Skilled nursing home" means a nursing facility.

(18) "Intermediate nursing care home" means a nursing facility.

(19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment by rules and regulations.

(22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.

(23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term "intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential health care facility.

(27) "Paid nutrition assistant" means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting nurse aide instructor qualifications as prescribed by 42 C.F.R. 483.152, 42 C.F.R. 483.160 and paragraph (h) of 42 C.F.R. 483.35, in effect on October 27, 2003, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

**History:** L. 1961, ch. 231, § 1; L. 1967, ch. 246, § 1; L. 1972, ch. 171, § 1; L. 1975, ch. 462, § 39; L. 1978, ch. 161, § 11; L. 1982, ch. 189, § 1; L. 1983, ch. 146, § 1; L. 1992, ch. 322, § 7; L. 1994, ch. 6, § 2; L. 1994, ch. 279, § 2; L. 1995, ch. 143, § 1; L. 1998, ch. 200, § 3; L. 2002, ch. 197, § 7; L. 2003, ch. 149, § 2; L. 2004, ch. 146, § 3; July 1.

**39-924. Purpose of act.** The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of aging and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes.

**History:** L. 1961, ch. 231, § 2; L. 1972, ch. 171, § 2; L. 1975, ch. 462, § 40; July 1; L. K.S.A. 2003 Supp. 39-924.

**39-925. Administration of act.** (a) The administration of the adult care home licensure act is hereby transferred from the secretary of health and environment to the secretary of aging, except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of aging as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire

and safety authorities and other agencies of government in this state. The secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.

(b) The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of aging shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.

(c) (1) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred adult care home survey, certification and licensing programs, and reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the effective date of this act or thereafter.

(2) No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(3) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

(4) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, K.S.A. 39-1401 *et seq.*, and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to adult care home certification, survey and licensing or reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

(5) All orders and directives under the adult care home licensure act by the secretary of health and environment in existence immediately prior to the effective date of the transfer of powers, duties and functions by this act, shall continue in force and effect and shall be deemed to be duly issued orders, and directives of the secretary of aging, until reissued, amended or nullified pursuant to law.

(d) (1) All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, except those specified in subsection (d)(2) of this section, shall continue to be effective and shall be deemed to be rules and regulations of the secretary of aging, until revised, amended, revoked or nullified by the secretary of aging, or otherwise, pursuant to law.

(2) The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.(e) All contracts shall be made in the name of "secretary of aging" and in that name the secretary of aging may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11<sup>th</sup> amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.

**History:** L. 1961, ch. 231, § 3; L. 1975, ch. 462, § 41; L. 1980, ch. 182, § 10; July 1; L. K.S.A. 2003 Supp. 39-925.

**39-926. License required to operate home; compliance with regulations.** It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of aging as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions.

**History:** L. 1961, ch. 231, § 4; L. 1972, ch. 171, § 3; L. 1975, ch. 462, § 42; L. 1978, ch. 162, § 11; July 1; L. K.S.A. 2003 Supp. 39-926.

**39-926a. Limitation on number of persons licensed to operate adult care home; application of section; section supplemental to adult care home licensure act.** (a) Except as otherwise provided in this section, no more than three different persons shall be licensed to operate any one adult care home under the adult care home licensure act, and no license to operate any one adult care home shall be issued under that act to more than three different persons. The provisions of this section shall not apply to any license to operate an adult care home which is in effect on the effective date of this act and which is issued to more than three different persons, or the renewal of any such license, unless subsequent to the effective date of this act three or fewer persons operate the adult care home or the license to operate the adult care home is denied or revoked.

(b) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1983, ch. 141, § 1; April 21.

**39-927. Application for license; contents; application for license to operate new intermediate nursing care home for the mentally retarded; limitations.** An application for a license to operate an adult care home shall be made in writing to the licensing agency upon forms provided by it and shall be in such form and shall contain such information as the licensing agency shall require, which may include affirmative evidence of the applicant's ability to comply with such reasonable standards and rules and regulations as are adopted under the provisions of this act. The application shall be signed by the person or persons seeking to operate an adult care home, as specified by the licensing agency, or by a duly authorized agent of any person so specified. Any nonprofit corporation operating an intermediate nursing care home for the mentally retarded which, on the effective date of this act, includes more than one residential building located on one site or on contiguous sites may apply for a license to operate a new intermediate nursing care home for the mentally retarded which includes more than one residential building located on one site or on contiguous sites and may apply for one license for each residential building located on the new site, except that total resident population at any such location shall not exceed 75 residents.

**History:** L. 1961, ch. 231, § 5; L. 1972, ch. 171, § 4; L. 1976, ch. 280, § 21; L. 1982, ch. 189, § 2; L. 1985, ch. 150, § 1; July 1.

**39-928. Issuance of license, when; inspections and investigations; reports; time license effective; nontransferable; display; contents of license.** Upon receipt of an application for license, the licensing agency with the approval of the state fire marshal shall issue a license if the applicant is fit and qualified and if the adult care home facilities meet the requirements established under this law. The licensing agency, the state fire marshal, and the county, city-county or multicounty health departments or their designated representatives shall make such inspections and investigations as are necessary to determine the conditions existing in each case and a written report of such inspections and investigations and the recommendations of the state fire marshal and the county, city-county or multicounty health department or their authorized agents shall be filed with the licensing agency. The licensing agency and the state fire marshal may designate and use county, city-county or multicounty health departments and local fire and safety authorities as their agents in making such inspections and investigations as are deemed necessary or advisable. Such local authorities are hereby authorized, empowered and directed to perform such duties as are designated. A copy of any inspection reports required by this section shall be furnished to the applicant.

A license, unless sooner suspended or revoked, shall remain in effect upon filing by the licensee, and approval by the licensing agency and the state fire marshal or their duly authorized agents, of an annual report

upon such uniform dates and containing such information in such form as the licensing agency prescribes and payment of an annual fee. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. It shall be posted in a conspicuous place in the adult care home. If the annual report is not so filed and annual fee is not paid, such license is automatically canceled. Any license granted under the provisions of this act shall state the type of facility for which license is granted, number of residents for which granted, the person or persons to whom granted, the date and such additional information and special limitations as are deemed advisable by the licensing agency.

**History:** L. 1961, ch. 231, § 6; L. 1972, ch. 171, § 5; L. 1980, ch. 182, § 11; L. 1989, ch. 126, § 1; July 1.

**39-929. Provisional license, approval; terms; extension.** A provisional license may be issued to any adult care home, the facilities of which are temporarily unable to conform to all the standards, requirements, rules and regulations established under the provisions of this act: *Provided, however,* that the issuance of such provisional license shall be approved by the state fire marshal. A provisional license may be issued to provide time to make necessary corrections for not more than six (6) months. One additional successive six-month provisional license may be granted at the discretion of the licensing agency. A change of ownership during the provisional licensing period will 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.

**History:** L. 1961, ch. 231, § 7; L. 1972, ch. 171, § 6; July 1.

**39-930. License fee; disposition.** The fee for license to operate an adult care home shall be a base amount plus an additional amount for each bed of such home which shall be paid to the secretary of aging before the license is issued. The fee shall be fixed by rules and regulations of the secretary of aging. The fee shall be deposited in the state treasury and credited to the state general fund unless the evaluation and inspection was made by a county, city-county or multicounty health department at the direction of the secretary of health and environment and the papers required are completed and filed with the secretary, then 40% of the fee collected shall be forwarded to such county, city-county or multicounty health department. If a facility has a change of administrator after the commencement of the licensing period, the fee shall be \$15 and shall be deposited in the state treasury and credited to the state general fund.

**History:** L. 1961, ch. 231, § 8; L. 1972, ch. 171, § 7; L. 1975, ch. 462, § 43; L. 1980, ch. 182, § 12; L. 1982, ch. 189, § 3; L. 1983, ch. 286, § 1; L. 1988, ch. 145, § 1; July 1; L. K.S.A. Supp. 39-930.

**39-931. Denial, suspension or revocation of license; notice; hearing; appeal.** Whenever the licensing agency finds a substantial failure to comply with the requirements, standards or rules and regulations established under this act or that a receiver has been appointed under K.S.A. 39-958 and amendments thereto, it shall make an order denying, suspending or revoking the license after notice and a hearing in accordance with the provisions of the Kansas administrative procedure act.

Any applicant or licensee who is aggrieved by the order may appeal such order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

**History:** L. 1961, ch. 231, § 9; L. 1975, ch. 462, § 44; L. 1978 ch. 162, § 12; L. 1982, ch. 258, § 1; L. 1983, ch. 147, § 1; L. 1984, ch. 313, § 65; July 1, 1985.

**39-931a. Same; grounds; person defined.** (a) As used in this section, the term "person" means any person who is an applicant for a license to operate an adult care home or who is the licensee of an adult care home and who has any direct or indirect ownership interest of 25% or more in an adult care home or who is 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 facility or any of the property or assets of such facility, or who, if the facility is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

(b) Pursuant to K.S.A. 39-931 and amendments thereto, the licensing agency may deny a license to any

person and may suspend or revoke the license of any person who:

(1) Has willfully or repeatedly violated any provision of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto;

(2) has been convicted of a felony;

(3) has failed to assure that nutrition, medication and treatment of residents, including the use of restraints, are in accordance with acceptable medical practices;

(4) has aided, abetted, sanctioned or condoned any violation of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated; or

(5) has willfully admitted a person to a nursing facility in violation of K.S.A. 39-968 and amendments thereto.

**History:** L. 1978, ch. 161, § 9; L. 1992, ch. 322, § 3; L. 1994, ch 147, § 2; July 1.

**39-932. Adoption and enforcement of rules, regulations and standards.** The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards as may be deemed practicable, reasonable and necessary with respect to all adult care homes, to be licensed hereunder and as may be designed to further the accomplishment of the purpose of this law in promoting safe, proper and adequate treatment and care of individuals in adult care homes in the interest of public health, safety and welfare. Such rules and regulations may prescribe minimum standards and requirements relating to the location, building, construction, size, equipment and facilities of adult care homes, the number and kind of residents allowed, the types of care offered, the records to be kept, the kind and frequency of reports and inventories to be made, and may generally establish such requirements as may be deemed necessary to protect the health, safety, hygiene, welfare and comfort of the residents.

Adult care homes which are in operation at the time of promulgation of any applicable rules and regulations or minimum standards under this act shall be given a reasonable time, under the particular circumstances not to exceed twelve (12) months from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. The licensing agency may further establish by regulation a system whereby it may, on the basis of the investigations and evaluations herein provided for, uniformly rate adult care homes in terms of the quality and quantity of services and facilities provided.

**History:** L. 1961, ch. 231, § 10; L. 1972, ch. 171, § 8; July 1.

**39-932a. Adult care homes in less than an entire building.** The licensing agency shall provide by rules and regulations for the licensing of adult care homes in any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, in addition to licensing of adult care homes in entire buildings. In the case of adult care homes in less than an entire building, the licensing agency shall prescribe acceptable use and occupancy of the balance of such building, and shall prohibit those uses and occupancies which are deemed to be contrary to the public interest.

**History:** L. 1967, ch. 246, § 2; April 21.

**39-933. Inspections and investigations; regulations for changes in facilities.** The licensing agency shall make or cause to be made by the county, city-county or multicounty health departments such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulation that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall submit plans and specifications therefore, before commencing such alterations, additions or new constructions, to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. Necessary conferences and consultations may be provided.

**History:** L. 1961, ch. 231, § 11; L. 1980, ch. 182, § 13; July 1.

**39-934. Certain information confidential.** Information received by the licensing agency through filed reports, inspections, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals.

**History:** L. 1961, ch. 231, § 12; L. 1972, ch. 171, § 9; L. 1975, ch. 238, § 1; July 1.

**39-935. Inspections; reporting; access to premises; exit interviews; unannounced inspections; inspection reports, posting and access.** Inspections shall be made and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multicounty health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any adult care home at any time upon presenting adequate identification to carry out the requirements of this section and the provisions and purposes of this act, and failure to provide such access shall constitute grounds for denial or revocation of license. A copy of any inspection reports required by this section shall be furnished to the applicant, except that a copy of the preliminary inspection report signed jointly by a representative of the adult care home and the inspector shall be left with the applicant when an inspection under this section is completed. This preliminary inspection report shall constitute the final record of deficiencies assessed against the adult care home during the inspection, all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary inspection report.

The authorized agents and representatives of the licensing agency shall conduct at least one unannounced inspection of each adult care home within 15 months of any previous inspection for the purpose of determining whether the adult care home is complying with applicable statutes and rules and regulations relating to the health and safety of the residents of the adult care home. The statewide average interval between inspections shall not exceed 12 months.

Every adult care home shall post in a conspicuous place a notice indicating that the most recent inspection report and related documents may be examined in the office of the administrator of the adult care home. Upon request, every adult care home shall provide to any person a copy of the most recent inspection report and related documents, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

**History:** L. 1961, ch. 231, § 13; L. 1972, ch. 171, § 10; L. 1977, ch. 152, § 1; L. 1978, ch. 162, § 13; L. 1980, ch. 182, § 14; L. 1989, ch. 126, § 2; July 1.

**39-936. Statement on admission; qualified personnel; education and training of unlicensed personnel; requirements of licensing agency; examination and fees; state registry established; refresher courses required; supplier of medication; limitations on involuntary transfer or discharge of resident; effect of reliance upon spiritual means or prayer for healing by resident.** (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident's file. No such statement shall be construed to relieve any adult care home of any requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the secretary of health and environment upon a finding by the licensing agency that an appropriate training

program for unlicensed employees is in place for such adult care home, employed on and after the effective date of this act who provide direct, individual care to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the secretary of health and environment or are not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person who has not completed 40 hours of training relating to resident care and treatment approved by the secretary of health and environment shall not provide direct, individual care to residents. The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with rules and regulations adopted by the secretary of health and environment. The 40 hours of training may be prepared and administered by an adult care home or by any other qualified person and may be conducted on the premises of the adult care home. The 40 hours of training required in this section shall be a part of any course of education and training required by the secretary of health and environment under subsection (c)(2).

(2) The licensing agency may require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the secretary of health and environment upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home. A course of instruction may be prepared and administered by any adult care home or by any other qualified person. A course of instruction prepared and administered by an adult care home may be conducted on the premises of the adult care home which prepared and which will administer the course of instruction. The licensing agency shall not require unlicensed employees of an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the secretary of health and environment shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction. Unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be prescribed by the secretary of health and environment, shall be reasonably related to the duties performed by unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents and shall be the same examination given by the secretary of health and environment to all unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications.

(3) The secretary of health and environment shall fix, charge and collect a fee to cover all or any part of the costs of the licensing agency under this subsection (c). The fee shall be fixed by rules and regulations of the secretary of health and environment. The fee shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(4) The secretary of health and environment shall establish a state registry containing information about unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications in compliance with the requirements pursuant to PL 100-203, Subtitle C, as amended November 5, 1990.

(5) No adult care home shall use an individual as an unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has inquired of the state registry as to information contained in the registry concerning the individual.

(6) Beginning July 1, 1993, the adult care home must require any unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications and who since passing the examination required under paragraph (2) of this subsection has had a continuous period of 24 consecutive months during none of which the unlicensed employee provided direct, individual care to

residents to complete an approved refresher course. The secretary of health and environment shall prepare guidelines for the preparation and administration of refresher courses and shall approve or disapprove courses.

(d) Any person who has been employed as an unlicensed employee of an adult care home in another state may be so employed in this state without an examination if the secretary of health and environment determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

(e) All medical care and treatment shall be given under the direction of a physician authorized to practice under the laws of this state and shall be provided promptly as needed.

(f) No adult care home shall require as a condition of admission to or as a condition to continued residence in the adult care home that a person change from a supplier of medication needs of their choice to a supplier of medication selected by the adult care home. Nothing in this subsection (f) shall be construed to abrogate or affect any agreements entered into prior to the effective date of this act between the adult care home and any person seeking admission to or resident of the adult care home.

(g) Except in emergencies as defined by rules and regulations of the licensing agency and except as otherwise authorized under federal law, no resident may be transferred from or discharged from an adult care home involuntarily unless the resident or legal guardian of the resident has been notified in writing at least 30 days in advance of a transfer or discharge of the resident.

(h) No resident who relies in good faith upon spiritual means or prayer for healing shall, if such residents objects thereto, be required to undergo medical care or treatment.

**History:** L. 1961, ch. 231, § 14; L. 1972, ch. 171, § 11; L. 1977, ch. 152, § 2; L. 1978, ch. 162, § 14; L. 1979, ch. 131, § 1; L. 1983, ch. 148, § 1; L. 1983, ch. 286, § 10; L. 1989, ch. 126, § 3; L. 1992, ch. 250, § 1; L. 1994, ch. 3, § 1; July 1; L. K.S.A. 2003 Supp. 39-936.

**39-937. Compliance with other laws and regulations.** All pertinent laws of this state and lawfully adopted ordinances and rules and regulations shall be strictly complied with in the operation of any adult care home in this state.

**History:** L. 1961, ch. 231, § 15; L. 1972, ch. 171, § 12, July 1.

**39-938. Compliance with requirements and rules and regulations of licensing and other agencies; exceptions.** Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of aging and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents. The administrative rules and regulations of the state board of cosmetology and of the Kansas board of barbering shall not apply to adult care homes.

**History:** L. 1961, ch. 231, § 16; L. 1972, ch. 171, § 13; L. 1975, ch. 462, § 45; L. 1990, ch. 225, § 23; July 1; L. K.S.A. 2003 Supp. 39-938.

**39-939. Unlawful acts.** It shall be unlawful in any adult care home to house, care for or permit: (a) Any resident to stay in any unapproved room, area, or detached building.

(b) Abuse, neglect, or cruel treatment of any resident.

(c) The admission to resident status of any person who is known to suffer from any disease or condition for which the home is not authorized to provide care under the provisions of this act or the terms and conditions of its license.

**History:** L. 1961, ch. 231, § 17; L. 1972, ch. 171, § 14; July 1.

**39-940. Forms for application, reports, records and inspection; records open to inspection; unlawful acts.** (a) The secretary of aging may prescribe and supply necessary forms for applications, reports, records and inspections for adult care homes. All prescribed records shall be open to inspection by the designated agents of the agencies administering this act.

(b) It shall be unlawful to:

(1) Make false entries in such records;

(2) omit any information required or make any false report concerning any adult care home; or  
(3) file or cause to be filed such false or incomplete records or reports with the department on aging or with any agency administering this act, knowing that such records or reports are false or incomplete.

**History:** L. 1961, ch. 231, § 18; L. 1972, ch. 171, § 15; L. 1975, ch. 462, § 46; L. 1981, ch. 187, § 1; July 1; L. K.S.A. 2003 Supp. 39-940.

**39-941. Adult care homes; license and regulation; certain organizations exempt.** Nothing in this act shall be construed to apply to any licensed general hospital or any nursing care facility operated by and in conjunction with a licensed hospital, or to an adult care home operated by a bona fide nonprofit religious order exclusively for the care of members of such order, and no rules, regulations, or standards shall be made or established under this act for any adult care home, conducted in accordance with the practice and principles of the body known as the Church of Christ Scientist, except as to the construction, sanitary and safe conditions of the premises, cleanliness of operation, and its physical equipment. Any organization exempted by this provision may apply for and receive a license, provided it meets the requirements of this act.

**History:** L. 1961, ch. 231, § 19; L. 1972, ch. 171, § 16; L. 1977, ch. 153, § 1; May 13.

**39-942. License in effect on effective date of act continued in effect; exceptions.** All licenses, issued under the provisions of chapter 39, article 9, of the Kansas Statutes Annotated, for adult care homes or homes for the aged in force upon the taking effect of this act shall continue in force until the date of expiration unless sooner suspended or revoked as provided in this act: *Provided*, That all persons with such licenses in force upon the effective date of this act shall be permitted no less than four (4) months from their effective date to comply with the rules, regulations and standards promulgated under the authority of this act wherein those rules, regulations and standards differ in any substantial respect from those in force and effect immediately prior to the effective date hereof under the provisions of chapter 39, article 9 of the Kansas Statutes Annotated.

**History:** L. 1961, ch. 231, § 20; L. 1972, ch. 171, § 17; July 1.

**39-943. Penalties.** Any person operating an adult care home in this state without a license under this law shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Any person who shall violate any other provision of this act or the requirements of any rules and regulations promulgated hereunder shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not more than \$100, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

**History:** L. 1961, ch. 231, § 21; L. 1972, ch. 171, § 18, L. 1982, ch. 189, § 4, Jan. 1, 1983.

**39-944. Injunctions and other process.** Notwithstanding the existence or pursuit of any other remedy, the secretary of aging, as the licensing agency, in the manner provided by the act for judicial review and civil enforcement of agency actions, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

**History:** L. 1961, ch. 231, § 22; L. 1972, ch. 171, § 19; L. 1975, ch. 462, § 47; L. 1982, ch. 189, § 5; L. 1984, ch. 313, sec. 66; July 1, 1985; L. K.S.A. 2003 Supp. 39-944.

**39-945. Correction orders; issuance; contents.** A correction order may be issued by the secretary of aging or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of aging inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either

personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

**History:** L. 1978, ch. 161, § 1; L. 1980, ch. 127, § 1; L. 1988, ch. 146, § 1, July 1; L. K.S.A. 2003 Supp. 39-945.

**39-946. Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement.** (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of aging, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of aging may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500.

A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary of aging shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary of aging finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 month prior to the inspection or investigation which resulted in such correction order, the secretary of aging may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of aging may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

**History:** L. 1978, ch. 161, § 2; L. 1980, ch. 127, § 2; L. 1988, ch. 146, § 2; July 1; L. K.S.A. 2003 Supp. 39-946.

**39-947. Appeals to secretary; hearing; disposition of civil penalties.** Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of aging written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of aging shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of aging sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary of aging. If the secretary of aging denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

**History:** L. 1978, ch. 161, § 3; L. 1980, ch. 127, § 3; L. 1984, ch. 313, § 67; July 1, 1985; L. K.S.A. 2003 Supp. 39-947.

**39-947a. Informal dispute resolution; written request; procedure.** (a) Upon receipt of a statement of deficiencies, an adult care home administrator may within 10 calendar days after receipt of a statement make a written request to the secretary of aging for informal dispute resolution by an independent review panel. The

administrator may make one request for informal dispute resolution per inspection to dispute any deficiencies with which such administrator disagrees. The informal dispute resolution may be based upon the statement of deficiencies and any other materials submitted; however, the department shall provide the administrator with a face to face informal dispute resolution meeting upon request by the administrator.

(b) A written request for informal dispute resolution shall:

(1) State the specific deficiencies being disputed;

(2) provide a detailed explanation of the basis for the dispute; and

(3) include any supporting documentation, including any information that was not available at the time of the inspection.

(c) Upon receipt of the written request provided for in subsection (a), the secretary of aging shall appoint a panel of three persons to compose the independent review panel. One member shall be an employee from the department on aging adult care home survey unit, provided that the individual did not participate in the survey in dispute. Two members shall be appointed from outside of the survey unit and may be employees of the department on aging, or a health care professional or consumer not employed by the department on aging.

(d) A request for informal dispute resolution shall not delay the timely correction of any deficiency. A facility may not seek a delay of any enforcement action against it on the grounds that the informal dispute resolution has not been completed before the effective date of the enforcement action. Any decision or proposed resolution of the independent review panel shall be advisory to the secretary of aging.

(e) Costs of the panel including traveling expenses and other expenses of the review shall be paid by the department of aging.

(f) The secretary of aging shall by rules and regulations implement the provisions of this section.

(g) This act shall be a part of and supplemental to the adult care home licensure act.

**History:** L. 2004, ch. 162, § 1; July 1.

**39-948. Appeals to district court; disposition of civil penalties.** (a) A licensee may appeal to the district court from a decision of the secretary of aging under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of aging shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

**History:** L. 1978, ch. 161, § 4; L. 1980, ch. 127, § 4; L. 1984, ch. 313, § 68; July 1, 1985; L. K.S.A. 2003 Supp. 39-948.

**39-949. Disposition of moneys.** All civil penalties collected pursuant to the provisions of this act shall be deposited in the state general fund.

**History:** L. 1978, ch. 161, § 5; July 1.

**39-950. Rules and regulations.** The secretary of aging may adopt rules and regulations necessary to carry out the provisions of this act.

**History:** L. 1978, ch. 161, § 6; July 1; L. K.S.A. 2003 Supp. 39-950.

**39-951. Authority granted under act additional and not limiting.** The authority granted to the secretary of aging under this act is in addition to other statutory authority the secretary of aging has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under article 9 of chapter 39 of the Kansas Statutes Annotated.

**History:** L. 1978, ch. 161, § 7; July; L. K.S.A. 2003 Supp. 39-951.

**39-952. Correction order not issued, when.** The secretary of aging or the secretary's designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts to practice a branch of the healing arts if such person licensed by the state board of healing arts is not an owner, operator or employee of the adult care home and if the person licensed to operate the adult care home shows that such person has exercised reasonable diligence in notifying the person licensed by the state board of healing arts to practice a branch of the healing arts of such person's duty to the residents of the adult care home.

**History:** L. 1978, ch. 161, § 8; July 1; L. K.S.A. 2003 Supp. 39-952.

**39-953. Citation of act.** K.S.A. 39-923 to 39-944, inclusive, and acts amendatory thereof or supplemental thereto, and K.S.A. 39-931a and 39-945 to 39-952, inclusive, and acts amendatory thereof or supplemental thereto, shall be known and may be cited as the adult care home licensure act.

**History:** L. 1978, ch. 161, § 10; July 1.

**39-953a. Order prohibiting new admissions to adult care home; when issued; proceedings; remedy not limiting.** (a) At any time the secretary of aging initiates any action concerning an adult care home in which it is alleged that there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home licensure act, that conditions exist in the adult care home which are life threatening or endangering to the residents of the adult care home, that the adult care home is insolvent, or that the adult care home has deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of the adult care home residents, the secretary of aging may issue an order, pursuant to the emergency proceedings provided for under the Kansas administrative procedure act, prohibiting any new admissions into the adult care home until further determination by the secretary of aging. This remedy granted to the secretary of aging is in addition to any other statutory authority the secretary of aging has relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under the adult care home licensure act.

(b) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1988, ch. 146, § 3; July 1; L. K.S.A. 2003 Supp. 39-953a.

**39-953b. Annual report of violations resulting in issuance of correction orders and civil penalties.**

(a) The secretary shall issue annually to each adult care home a report summarizing by category of licensure, violation and frequency of occurrence those violations which have resulted in the issuance of correction orders and civil penalties within the preceding twelve-month period.

(b) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1988, ch. 146, § 4; July 1.

**39-954. Application for receiver; order appointing; qualifications of persons designated and method of selection, rules and regulations.** (a) The secretary of aging, the owner of an adult care home, or the person licensed to operate an adult care home may file an application with the district court for an order appointing the secretary of aging or the designee of the secretary as receiver to operate an adult care home whenever: (1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; (2) the adult care home is insolvent; or (3) the secretary of aging has issued an order revoking the license of the adult care home.

(b) The secretary of aging may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

**History:** L. 1978, ch. 162, § 1; L. 1985, ch. 151, § 1; July 1; L. K.S.A. 2003 Supp. 39-954.

**39-955. Filing application for receivership; contents.** The application for receivership shall be filed in the district court in the county where the adult care home is located. The application shall be verified and set forth the specific reasons therefor.

**History:** L. 1978, ch. 162, § 2; July 1.

**39-956. Service of copies of application for receivership; posting in adult care home.** The applicant shall serve those persons set forth in K.S.A. 39-954 with copies of the application. Service of process shall be as provided for under the code of civil procedure. The applicant shall also send five (5) copies of the application for receivership to the adult care home. The adult care home shall post the copies of the application in conspicuous places within the adult care home.

**History:** L. 1978, ch. 162, § 3; July 1.

**39-957. Answer to application for receivership.** A party shall file an answer to the application within five (5) days after the service of the application upon such person.

**History:** L. 1978, ch. 162, § 4; July 1.

**39-958. Priority of application for receivership in district court; evidence; appointment of receiver; certain statutes inapplicable to license granted receiver; length of license.** (a) The application for receivership shall be given priority by the district court and shall be heard no later than the seventh day following the filing of the application. A continuance of no more than 10 days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of aging or the designee of the secretary as receiver to operate the home.

(b) Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

**History:** L. 1978, ch. 162, § 5; July 1; L. K.S.A. 2003 Supp. 39-958.

**39-959. Powers and duties of receiver.** A receiver appointed in accordance with the provisions of this act shall have the following powers and duties: (a) Conduct the day to day business operations of the adult care home;

(b) reimburse the owner or licensee, as appropriate, a fair monthly rental for the adult care home, taking into account all relevant factors, including the condition of such adult care home and set-offs arising from improvements made by the receiver;

(c) give fair compensation to the owner or licensee, as appropriate, for all property taken or used during the course of the receivership if such person has not previously received compensation for the property being taken or used;

(d) correct or eliminate any deficiency in the adult care home that concerns the health, safety, nutrition, or sanitation of the residents of the adult care home and is life threatening or endangering;

(e) enter into contracts as necessary to carry out his or her duties as receiver and incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids, if

otherwise required by law, where the total amount of such individual item does not exceed five hundred dollars (\$500);

(f) collect incoming payments from all sources and apply them to the costs incurred in the performance of his or her functions as receiver including the compensation of the receiver, if any;

(g) honor all existing leases, mortgages, chattel mortgages and security interests;

(h) operate the adult care home so as to provide safe and adequate health care for the residents of the adult care home;

(i) provide for the orderly transfer of all residents in the adult care home to other adult care homes or make other provisions for their continued safety and health care, as necessary;

(j) other powers and duties as authorized or imposed by the district court.

**History:** L. 1978, ch. 162, § 6; July 1.

**39-960. Expenditures from moneys appropriated for purposes of act; when authorized; repayment.**

The secretary of social and rehabilitation services, upon request of a receiver, may authorize expenditures from moneys appropriated for purposes set forth in this act if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions as receiver or for purposes of initial operating expenses of the receivership. Any payments made by the secretary of social and rehabilitation services pursuant to this section shall be owed by the owner or licensee and repaid to the secretary of social and rehabilitation services when the receivership is terminated pursuant to K.S.A. 39-963 and amendments thereto and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

**History:** L. 1978, ch. 162, § 7; L. 1984, ch. 158, § 1; July 1.

**39-961. Department on aging to assist receiver; expenses of department; repayment.** (a) The personnel and facilities of the department on aging shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of aging.

(b) The department on aging shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department on aging. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

**History:** L. 1978, ch. 162, § 8; L. 1984, ch. 158, § 2; July 1; L. K.S.A. 2003 Supp. 39-961.

**39-962. Supervision of district court; final accounting; removal.** The receiver shall be subject to the supervision of the district court. The receiver shall file a final accounting with the district court upon the termination of the receivership. The receiver shall be subject to removal by the district court for good cause.

**History:** L. 1978, ch. 162, § 9; July 1.

**39-963. Termination of receivership; circumstances; accounting and disposition of money; court orders for recovery of certain expenses and costs.** (a) The court shall terminate the receivership only under any of the following circumstances:

(1) Twenty-four months after the date on which the receivership was ordered;

(2) a new license, other than the license granted to the receiver under K.S.A. 39-958 and amendments thereto, has been granted to operate the adult care home; or

(3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.

(b) (1) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

(2) The court may make such additional orders as are appropriate to recover the expenses and costs to the department on aging and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

**History:** L. 1978, ch. 162, § 10; L. 1984, ch. 158, § 3; July 1; L. K.S.A. 2003 Supp. 39-963.

**39-964. Procedures for and review and enforcement of administrative actions.** (a) The provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions shall govern all administrative proceedings conducted pursuant to K.S.A. 39-945 through 39-963, and amendments thereto, except to the extent that the provisions of the above-named acts would conflict with the procedures set forth in the above-mentioned statutes.

(b) This section shall be a part of and supplemental to article 9 of chapter 39 of the Kansas Statutes Annotated.

**History:** L. 1984, ch. 313, § 69; July 1, 1985.

**39-965. Penalties for violations posing serious physical harm to resident.** (a) If the secretary of aging determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary of aging in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

(b) All civil penalties assessed shall be due and payable in accordance with subsection (c) of K.S.A. 39-946 and K.S.A. 39-947 and amendments thereto.

(c) The secretary of aging may adopt rules and regulations which shall include due process procedures for the issuance of civil penalties relating to nursing facilities.

(d) The authority to assess civil penalties granted to the secretary of aging under this section is in addition to any other statutory authority of the secretary relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under the adult care home licensure act.

(e) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1992, ch. 322, § 1; July 1; L. K.S.A. 2003 Supp. 39-965.

**39-967. Skilled nursing home or intermediate nursing care home means nursing facility.** Wherever the terms “skilled nursing home” or “intermediate nursing care home”, or words of like effect, are referred to or designated by a statute or rule and regulation, such reference or designation shall be deemed to mean “nursing facility.”

**History:** L. 1992, ch. 322, § 13; June 1.

**39-968. Client assessment, referral and evaluation program; definitions; implementation; data entry form; requirements; duties of secretary of aging; long-term care resource information; rules and regulations; voluntary oversight council; annual report.** (a) To achieve a quality of life for Kansans with long-term care needs in an environment of choice that maximizes independent living capabilities and recognizes diversity, this act establishes a program which is intended to encourage a wide array of quality, cost-effective and affordable long-term care choices. This program shall be known as client assessment, referral and evaluation (CARE). The purpose of CARE is for data collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) “Assessment services” means evaluation of an individual’s health and functional status to determine

the need for long-term care services and to identify appropriate service options which meet these needs utilizing the client assessment, referral and evaluation (CARE) form.

(2) "Health care data governing board" means the board created under K.S.A. 65-6803 and amendments thereto.

(3) "Medical care facility" shall have the meaning ascribed to such term under K.S.A. 65-425 and amendments thereto.

(4) "Nursing facility" shall have the meaning ascribed to such term under K.S.A. 39-923 and amendments thereto.

(5) "Secretary" means the secretary of aging

(c) There is hereby established the client assessment, referral and evaluation (CARE) program. The CARE program shall be administered by the secretary of aging and shall be implemented on a phased-in basis in accordance with the provisions of this section.

(d) Prior to January 1, 1995, the health care data governing board shall adopt by rules and regulations a client assessment, referral and evaluation (CARE) data entry form. The purpose of this form is for data collection and referral services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The client assessment, referral and evaluation (CARE) data entry form shall include, but not limited to, the preadmission screening and annual resident review (PASARR) questions. Prior to the adoption of the client assessment, referral and evaluation (CARE) data entry form by the health care data governing board, the secretary of aging shall approve the form. The client assessment, referral and evaluation (CARE) data entry form shall be used by all persons providing assessment services.

(e) (1) Prior to January 1, 1995, each individual prior to admission to a nursing facility as a resident of the facility shall receive assessment and referral services to be provided by the secretary of social and rehabilitation services except that such services shall be provided by a medical care facility to a patient of the medical care facility who is considering becoming a resident of a nursing facility upon discharge from the medical care facility.

(2) On and after January 1, 1995, each individual prior to admission to a nursing facility as a resident of the facility shall receive assessment services to be provided by the secretary of aging, with the assistance of area agencies on aging, except (A) such assessment services shall be provided by a medical care facility to a patient of the medical care facility who is considering becoming a resident of a nursing facility upon discharge from the medical care facility and (B) as authorized by rules and regulations adopted by the secretary of aging pursuant to subsection (i).

(3) The provisions of this subsection (e) shall not apply to any individual exempted from preadmission screening and annual resident review under 42 code of federal regulations 483.106.

(f) The secretary of aging shall cooperate with the area agencies on aging providing assessment services under this section.

(g) The secretary of aging shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources including all area offices of the department of social and rehabilitation services and local health departments. This information shall include, but not limited to, resources available to assist persons to choose alternatives to institutional care.

(h) Nursing facilities and medical care facilities shall make available information references in subsection (g) to each person seeking admission or upon discharge as appropriate. Any person licensed to practice the healing arts as defined in K.S.A. 65-2802 and amendments thereto shall make the same resource information available to any person identified as seeking or needing long term care. Each senior center and each area agency on aging shall make available such information.

(i) The secretary shall adopt rules and regulations to govern such matters as the secretary deems necessary for the administration of this act.

(j) (1) There is hereby established an eleven-member voluntary oversight council which shall meet monthly prior to July 1, 1995, for the purpose of assisting the secretary of aging in restructuring the

assessment and referral program in a manner consistent with this act and shall meet quarterly thereafter for the purpose of monitoring and advising the secretary regarding the CARE program. The council shall be advisory only, except that the secretary of aging shall file with the council each six months the secretary's response to council comments or recommendations.

(2) The secretary of aging shall appoint two representatives of hospitals, two representatives of nursing facilities, two consumers and two representatives of providers of home and community based services. The secretary of health and environment and the secretary of social and rehabilitation services, or their designee, shall be members of the council in addition to the eight appointed members. The secretary of aging shall serve as chair person of the council. The appointive members of the council shall serve at the pleasure of their appointing authority. Members of the voluntary oversight council shall not be paid compensation, subsistence allowance, mileage or other expenses as otherwise may be authorized by law for attending meetings, or subcommittee meetings, of the council.

(k) The secretary of aging shall report to the governor and to the legislature on or before December 31, 1995, and each year thereafter on or before such date, an analysis of the information collected under this section. In addition, the secretary of aging shall provide data from the CARE data forms to the health care data governing board. Such data shall be provided in such a manner so as not to identify individuals.

**History:** L. 1994, ch. 147, § 1; July 1.

**39-969. Criminal history record information; operators.** (a) The secretary of health and environment shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

(b) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1995, ch. 143, § 8; July 1; L. K.S.A. 2003 Supp. 39-969.

**39-970. Operation of adult care home precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; licensed or registered professional service providers, volunteers and certain employees exempt; certain persons in custody of secretary of corrections exempt.** (a) (1) On or after July 1, 1998, no person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 1821-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K. S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, or similar statutes of other states or the federal government.

(2) On and after July 1, 1998, a person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in:

(A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1);

(B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto;

(C) a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any act listed in this subsection or subsection (a)(1); or

(D) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information obtained by the secretary of health and environment which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government

or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(g) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(h) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(i) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(j) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in non-patient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(k) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1997, ch. 161 § 1; L. 1998, ch. 144, § 1; July 1.

## **Article 14.—REPORTING ABUSE, NEGLECT OR EXPLOITATION OF CERTAIN PERSONS**

**39-1401. Abuse, neglect or exploitation of residents; definitions.** As used in this act:

(a) "Resident" means:

- (1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or
- (2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

or

(3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923 and amendments thereto.

(c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(f) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

(1) Infliction of physical or mental injury;

(2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;

(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;

(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the resident or another resident;

(5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;

(6) fiduciary abuse; or

(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(g) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(h) "Caretaker" means a person or institution who has assumed the responsibility for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

(i) "Exploitation" means misappropriation of resident property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of

undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(j) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq. and amendments thereto but shall not include, for purposes of this act, a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(k) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or appropriates the resident's money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

(m) "State institution for the mentally retarded" means Kansas neurological institute and Parsons state hospital and training center.

(n) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.

(o) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes and investigate criminal acts, whether that duty extends to all crimes or is limited to specific crimes.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

**History:** L. 1980, ch. 124, § 1; L. 1983, ch. 149, § 1; L. 1989, ch. 128, § 1; L. 1990, ch. 153, § 1; L. 1998, ch. 200, § 4; July 1.

**39-1402. Abuse, neglect or exploitation of residents; reporting abuse, neglect or exploitation or need of protective services; persons required to report; contents of report; posting notice of requirements of act; penalty for failure to report.** (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

**History:** L. 1980, ch. 124, § 2; L. 1983, ch. 149, § 2; L. 1985, ch. 152, § 1; L. 1986, ch. 299, § 6; L. 1990, ch. 153, § 2; L. 1998, ch. 200, § 5; July 1; L. K.S.A. 2003 Supp. 39-1402.

**39-1403. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report.** (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or any other report of abuse, neglect or exploitation of an adult who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil or criminal liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

**History:** L. 1980, ch. 124, § 3; L. 1983, ch. 149, § 3; L. 1990, ch. 153, § 3; Oct. 1.

**39-1404. Same; duties of department of social and rehabilitation services and department of health and environment; personal visit; investigation and evaluation; information provided to certain persons.** (a) The department of health and environment or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

(1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;

(2) make a personal visit with the involved resident:

(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;

(B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or

(C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any,

are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

(4) prepare, upon a completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation; recommended action; a determination of whether protective services are needed; and any follow up.

(b) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken if required upon completion of the investigation or sooner if such measures do not jeopardize the investigation.

(c) The department on aging may inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto within 30 days of confirmed findings of resident abuse, neglect or exploitation.

**History:** L. 1980, ch. 124, § 4; L. 1983, ch. 149, § 4; L. 1990, ch. 153, § 4; L. 1997, ch. 161, § 5; L. 1998, ch. 200, § 6; July 1; L. K.S.A. 2003 Supp. 39-1404.

**39-1405. Same; protective services; injunction.** (a) The secretary of aging shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary may obtain consent from such resident's legal representative. If a resident or such resident's legal representative, or both, fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker or legal representative, or both, of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker or legal representative, or both, refuses to allow the provision of such services. If the judge, by clear and convincing evidence, finds that the resident is in need of protective services and has been prevented by the caretaker or legal representative, or both, from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.

**History:** L. 1980, ch. 124, § 5; L. 1990, ch. 153, § 5; Oct. 1; L. K.S.A. 2003 Supp. 39-1405.

**39-1406. Same; persons authorized access to relevant records; authority to take actions to assist residents.** Any person, department or agency authorized to carry out the duties enumerated in this act, including investigating law enforcement agencies and the long-term care ombudsman shall have access to all relevant records. The authority of the secretary of social and rehabilitation services, the secretary of health and environment, and the secretary of aging under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

**History:** L. 1980, ch. 124, § 6; L. 1990, ch. 153, § 6; Oct. 1; L. K.S.A. 2003 Supp. 39-1406.

**39-1407. Consent of resident to protective services; court authorization.** If a resident does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the secretary of social and rehabilitation services has the reason to believe that such resident lacks capacity to consent, the secretary may seek court authorization to provide necessary services, as provided in K.S.A. 39-1408.

**History:** L. 1980, ch. 124, § 7; July 1.

**39-1408. Same; petition for appointment of guardian or conservator; appointment of attorney to represent resident, when.** (a) If the secretary of social and rehabilitation services finds that a resident is being or has been abused, neglected or exploited or is in a condition which is the result of such abuse, neglect or exploitation and lacks capacity to consent to reasonable and necessary protective services, the secretary may petition the district court for appointment of guardian or conservator, or both, for the resident pursuant to the provisions of the act for obtaining a guardian or conservator, or both, in order to obtain such consent.

(b) In any proceeding in district court pursuant to provisions of this act, the district court shall appoint an attorney to represent the resident if the resident is without other legal representation.

**History:** L. 1980, ch. 124, § 8; L. 1990, ch. 153, § 7; Oct. 1.

**39-1409. Same; assistance of appropriate public or private agencies, groups or individuals.** In performing the duties set forth in this act, the secretary of social and rehabilitation services, the secretary of health and environment, the secretary of aging or an appropriate law enforcement agency may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agency, group or individual who is appropriate and who may be available to assist such department or agency in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation, except that any internal investigation conducted by any caretaker under investigation shall be limited to the least serious category of report as specified by the secretary of health and environment, the secretary of aging or the secretary of social and rehabilitation services, as applicable.

**History:** L. 1980, ch. 124, § 9; L. 1990, ch. 153, § 8; L. 1998, ch. 200, § 7; July 1.

**39-1410. Review subsequent to authorization of protective services; continuation of protective services; reevaluations.** Subsequent to the authorization for the provision of necessary protective services, the secretary of social and rehabilitation services shall initiate a review of each case within forty-five (45) days, to determine whether continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments, and shall comply with the consent provisions of this act. Reevaluations of such case shall be made not less than every six months thereafter.

**History:** L. 1980, ch. 124, § 10; July 1.

**39-1411. Duties of secretary of aging; register; findings forwarded to certain state regulatory authorities, consideration thereof; certain information confidential and not subject to open records act;**

**disclosure of certain individuals prohibited.** (a) The secretary of aging shall maintain a register of the reports received and investigated by the department on aging under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department on aging with respect to such reports. The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments thereto, and the findings, evaluations and actions recommended by the department of health and environment with respect to such reports. The findings, evaluations and actions shall be subject to the Kansas administrative procedure act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment or the department on aging as specified by the secretary of health and environment or secretary of aging and to such other persons as may be required by federal law and designated by the secretary of health and environment or the secretary of aging by rules and regulations. Information from the register shall be provided as specified in K.S.A. 65-6205 and amendments thereto.

(b) The secretary of aging shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority, after notice to the alleged perpetrator and a hearing on such matter if requested by the alleged perpetrator, may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority. The secretary of aging may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any adult care home or medical care facility under the jurisdiction of the secretary of aging. The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of health and environment.

(c) If the investigation of the department of health and environment or the department on aging indicates reason to believe that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment or the secretary of aging to the secretary of social and rehabilitation services.

(d) Except as otherwise provided in this section, the report received by the department of health and environment or the department on aging and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment or the department on aging or any person mentioned in such report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

**History:** L. 1990, ch. 153, § 9; L. 1991, ch. 121, § 1; L. 1997, ch. 161, § 6; L. 2000, ch. 146, § 1; July 1; L. K.S.A. 2003 Supp. 39-1411.

**39-1412** (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A. 39-1401 through 39-1411, and amendments thereto, are hereby transferred from the secretary of health and environment to the secretary of aging, as provided by this act.

(b) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such program. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(c) No suit, action or other proceeding, judicial or administrative, pertaining to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(d) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-1401 *et seq.*, and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

**History:** L. K.S.A. 2003 Supp. 39-1412.