

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2751

By Committee on Health and Human Services

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

2-7

1 AN ACT concerning the Kansas department for aging and disability
2 services; relating to licensure of providers of disability services;
3 authorizing the department to condition or restrict a license therefor;
4 granting the secretary authority to grant regulation waivers unrelated to
5 health and safety; **adding a definition of day service provider;**
6 authorizing correction orders and civil fines to be appealed to the
7 secretary; amending K.S.A. 39-2004, **39-2009**, 39-2013 and 39-2016
8 and repealing the existing sections.
9

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

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

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

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

1
2 **Sec. 2. K.S.A. 39-2009 is hereby amended to read as follows: 39-**
3 **2009. (a) As used in this section:**

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

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

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

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

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

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

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

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

43 **(b) (1) No licensee shall knowingly operate a center, facility,**

1 hospital or be a provider of services if any person who works in the
2 center, facility, hospital or for a provider of services has adverse
3 findings on any state or national registry, as defined in rules and
4 regulations adopted by the secretary for aging and disability services,
5 or has been convicted of or has been adjudicated a juvenile offender
6 because of having ~~committing~~ committed an act ~~that~~ which, if ~~done~~
7 committed by an adult, would constitute the commission of capital
8 murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-
9 5401, and amendments thereto, first degree murder, pursuant to
10 K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and
11 amendments thereto, second degree murder, pursuant to K.S.A. 21-
12 3402(a), prior to its repeal, or K.S.A. 21-5403(a), and amendments
13 thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to
14 its repeal, or K.S.A. 21-5404, and amendments thereto, assisting
15 suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-
16 5407, and amendments thereto, mistreatment of a dependent adult or
17 mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to
18 its repeal, or K.S.A. 21-5417, and amendments thereto, human
19 trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A.
20 21-5426(a), and amendments thereto, aggravated human trafficking,
21 pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 21-5426(b),
22 and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to
23 its repeal, or K.S.A. 21-5503, and amendments thereto, indecent
24 liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal,
25 or K.S.A. 21-5506(a), and amendments thereto, aggravated indecent
26 liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal,
27 or K.S.A. 21-5506(b), and amendments thereto, aggravated criminal
28 sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-
29 5504(b), and amendments thereto, indecent solicitation of a child,
30 pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a),
31 and amendments thereto, aggravated indecent solicitation of a child,
32 pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 21-5508(b),
33 and amendments thereto, sexual exploitation of a child, pursuant to
34 K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and
35 amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior
36 to its repeal, or K.S.A. 21-5505(a), and amendments thereto,
37 aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its
38 repeal, or K.S.A. 21-5505(b), and amendments thereto, commercial
39 sexual exploitation of a child, pursuant to K.S.A. 21-6422, and
40 amendments thereto, an attempt to commit any of the crimes listed in
41 this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or
42 K.S.A. 21-5301, and amendments thereto, a conspiracy to commit any
43 of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302,

1 prior to its repeal, or K.S.A. 21-5302, and amendments thereto, or
2 criminal solicitation of any of the crimes listed in this paragraph,
3 pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 21-5303, and
4 amendments thereto, or similar statutes of other states or the federal
5 government.

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

34 (B) An individual who has been disqualified for employment due
35 to conviction or adjudication of an offense listed in this paragraph~~(2)~~
36 may apply to the secretary for aging and disability services for a
37 waiver of such disqualification if five years have elapsed since
38 completion of the sentence for such conviction. The secretary shall
39 adopt rules and regulations establishing the waiver process and the
40 criteria to be utilized by the secretary in evaluating any such waiver
41 request.

42 (3) (A) A licensee operating a center, facility, hospital or as a
43 provider of services may employ an applicant who has been convicted

1 of any of the following if six or more years have elapsed since
2 completion of the sentence imposed or the applicant was discharged
3 from probation, a community correctional services program, parole,
4 postrelease supervision, conditional release or a suspended sentence; if
5 six or more years have elapsed since the applicant has been finally
6 discharged from the custody of the commissioner of juvenile justice or
7 from probation or has been adjudicated a juvenile offender, whichever
8 time is longer; or if the applicant has been granted a waiver of such
9 six-year disqualification:

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

23 (ii) any felony conviction of: Unlawful manufacture of a
24 controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to
25 its repeal, or K.S.A. 21-5703, and amendments thereto; unlawful
26 cultivation or distribution of a controlled substance pursuant to
27 K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 21-5705, and
28 amendments thereto; unlawful manufacture, distribution, cultivation
29 or possession of a controlled substance using a communication facility
30 pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A.
31 21-5707, and amendments thereto; unlawful obtainment or sale of a
32 prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior
33 to its repeal, or K.S.A. 21-5708, and amendments thereto; unlawful
34 distribution of drug precursors or drug paraphernalia pursuant to
35 K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 21-5710, and
36 amendments thereto; unlawful distribution or possession of a
37 simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-
38 36a13, prior to its repeal, or K.S.A. 21-5713, and amendments thereto;
39 forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 21-
40 5823, and amendments thereto; criminal use of a financial card
41 pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 21-5828, and
42 amendments thereto; any violation of the Kansas medicaid fraud
43 control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or

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

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

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

32 (d) (1) The Kansas bureau of investigation shall release all
33 records of adult and juvenile convictions and adjudications and adult
34 and juvenile convictions and adjudications of any other state or
35 country concerning persons working in a center, facility, hospital or
36 for a provider of services to the secretary for aging and disability
37 services. The Kansas bureau of investigation may charge to the
38 Kansas department for aging and disability services a reasonable fee
39 for providing criminal history record information under this
40 subsection.

41 (2) The department shall require an applicant to be fingerprinted
42 and to submit to a state and national criminal history record check.
43 The fingerprints shall be used to identify the individual and to

1 determine whether the individual has a record of criminal history in
2 this state or other jurisdiction. The department is authorized to
3 submit the fingerprints to the Kansas bureau of investigation and the
4 federal bureau of investigation for a state and national criminal
5 history record check. The department may use the information
6 obtained from fingerprinting and the criminal history record check
7 for purposes of verifying the identification of the person and for
8 making an official determination of the qualifications and fitness of
9 the person to work in the center, facility, hospital or for a provider of
10 services.

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

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

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

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

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

31 (7) The department shall adopt rules and regulations specifying
32 the criteria and procedure for issuing a waiver of the employment
33 prohibition. The secretary shall consider the following criteria when
34 rendering a decision on such a waiver request: Passage of time;
35 extenuating circumstances; demonstration of rehabilitation; and
36 relevancy of the criminal history record information to the position
37 for which the applicant is applying. Any employment prohibition
38 issued shall remain in effect unless or until a waiver is granted.

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

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

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

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

39 Sec. ~~2~~ 3. K.S.A. 39-2013 is hereby amended to read as follows: 39-
40 2013. (a) Whenever the licensing agency finds a ~~substantial~~ failure to
41 comply with the requirements, standards or rules and regulations
42 established ~~adopted~~ under this act, ~~it shall~~ *the licensing agency may* make
43 an order denying, *conditioning, restricting,* suspending or revoking the

1 license after *issuing a* notice and an opportunity for a hearing in
2 accordance with the provisions of the Kansas administrative procedure act,
3 K.S.A. 77-501 et seq., and amendments thereto. Any applicant ~~or~~, licensee
4 *or person as defined in K.S.A. 39-2014, and amendments thereto*, may
5 appeal such order in accordance with the provisions of the Kansas judicial
6 review act, K.S.A. 77-601 et seq., and amendments thereto.

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

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

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

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

34 Sec. ~~3~~. 4. K.S.A. 39-2016 is hereby amended to read as follows: 39-
35 2016. (a) A correction order may be issued by the secretary or the
36 secretary's designee to a licensee whenever the state fire marshal or the
37 marshal's representative or a duly authorized representative of the
38 secretary inspects or investigates a center, facility, hospital or provider and
39 determines that the center, facility, hospital or provider is not in
40 compliance with the provisions of this act or article 59 of chapter 75 of the
41 Kansas Statutes Annotated, and amendments thereto, or rules and
42 regulations ~~promulgated thereunder~~ *adopted by the secretary pursuant to*
43 *such authority* and such non-compliance is likely to adversely affect the

1 health, safety, nutrition or sanitation of the individuals or the public. The
2 correction order shall be served upon the licensee either personally or by
3 certified mail, return receipt requested. The correction order shall be in
4 writing, shall state the specific deficiency, cite the specific statutory
5 provision or rule and regulation alleged to have been violated and shall
6 specify the time allowed for correction.

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

20 (c) Before the assessment of a civil penalty, the secretary shall
21 consider the following factors in determining the amount of the civil
22 penalty to be assessed:

23 (1) The severity of the violation;

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

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

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

42 (e) *Any licensee against whom a civil penalty has been assessed, may*
43 *appeal such assessment to the secretary within 10 days after receiving a*

1 *written notice of assessment by filing a written notice of appeal with the*
2 *office of administrative hearings specifying why such civil penalty should*
3 *not be assessed. Such appeal shall not operate to stay the payment of the*
4 *civil penalty. Upon receipt of the notice of appeal, the office of*
5 *administrative hearings shall conduct a hearing in accordance with the*
6 *provisions of the Kansas administrative procedure act. If the initial order*
7 *issued by the office of administrative hearings finds in favor of the*
8 *appellant and the secretary affirms the initial order, any civil penalties*
9 *collected shall be refunded to the appellant licensee. Either party may*
10 *appeal the final order in accordance with the Kansas judicial review act.*

11 *(f) All civil penalties collected pursuant to the provisions of this act*
12 *shall be deposited with the state treasurer in accordance with K.S.A. 75-*
13 *4215, and amendments thereto. Upon receipt the state treasurer shall*
14 *deposit the entire amount in the state general fund.*

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

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