

2018 Kansas Statutes

39-970. Adult care home; definitions; operation; precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; disqualification for employment; waiver and criteria; rules and regulations; certain persons in custody of secretary of corrections exempt; report of convictions and adjudications by the Kansas bureau of investigation; submission of fingerprints, cost. (a) As used in this section:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home or adult day care facility that is required to be licensed to operate by the secretary for aging and disability services.

(2) "Applicant" means an individual who applies for employment with an adult care home or applies to work for an employment agency or as an independent contractor who provides staff to an adult care home.

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

(4) "Department" means the Kansas department for aging and disability services.

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

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

(7) "Employment agency" means an organization or entity that has a contracted relationship with an adult care home to provide staff with direct access to consumers.

(8) "Independent contractor" means an organization, entity, agency or individual that provides contracted workers or services to an adult care home.

(9) "Secretary" means the secretary for aging and disability services.

(b) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has adverse findings on any state or national registry, as defined in rules and regulations adopted by the secretary for aging and disability services, or has been convicted of or has been adjudicated a juvenile offender because of having committed an act that if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to K.S.A. 21-3402(a), prior to its repeal, or K.S.A. 2018 Supp. 21-5403(a), and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2018 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and amendments thereto, aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2018 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2018 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2018 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2018 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (b)(2)(C) shall not apply to any person who is employed by an adult care home on or before July 1, 2010, and while continuously employed by the same adult care home or to any person during or upon successful completion of a diversion agreement.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six 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; or if the applicant has been granted a waiver of such six-year disqualification: A felony conviction for a crime that is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, except those crimes listed in subsection (b)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-6420, and amendments thereto, except those crimes listed in subsection (b) (1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2018 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2018 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2018 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2018 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in this paragraph, pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2018 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government. An individual who has been disqualified for employment due to conviction or adjudication of an offense listed in

this paragraph (2) may apply to the secretary for aging and disability services for a waiver of such disqualification if five years have elapsed since completion of the sentence for such conviction. The secretary shall adopt rules and regulations establishing the waiver process and criteria to be considered by the secretary in evaluating any such waiver request.

(3) A person operating an adult care home may employ an applicant who has been convicted of any of the following if six or more years have elapsed since completion of the sentence imposed or the applicant was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; if six 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; or if the applicant has been granted a waiver of such six-year disqualification:

(i) Interference with custody of a committed person pursuant to K.S.A. 21-3423, prior to its repeal, or K.S.A. 2018 Supp. 21-5410, and amendments thereto; mistreatment of a confined person pursuant to K.S.A. 21-3425, prior to its repeal, or K.S.A. 2018 Supp. 21-5416, and amendments thereto; unlawful administration of a substance pursuant to K.S.A. 21-3445, prior to its repeal, or K.S.A. 2018 Supp. 21-5425, and amendments thereto; violation of a protective order pursuant to K.S.A. 21-3843, prior to its repeal, or K.S.A. 2018 Supp. 21-5924, and amendments thereto; promoting obscenity or promoting obscenity to minors pursuant to K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2018 Supp. 21-6401, and amendments thereto; or cruelty to animals pursuant to K.S.A. 21-3727, 21-4310 or 21-4311, prior to their repeal, or K.S.A. 2018 Supp. 21-6412, and amendments thereto; or

(ii) any felony conviction of: Unlawful manufacture of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a03, prior to its repeal, or K.S.A. 2018 Supp. 21-5703, and amendments thereto; unlawful cultivation or distribution of a controlled substance pursuant to K.S.A. 2010 Supp. 21-36a05, prior to its repeal, or K.S.A. 2018 Supp. 21-5705, and amendments thereto; unlawful manufacture, distribution, cultivation or possession of a controlled substance using a communication facility pursuant to K.S.A. 2010 Supp. 21-36a07, prior to its repeal, or K.S.A. 2018 Supp. 21-5707, and amendments thereto; unlawful obtainment or sale of a prescription-only drug pursuant to K.S.A. 2010 Supp. 21-36a08, prior to its repeal, or K.S.A. 2018 Supp. 21-5708, and amendments thereto; unlawful distribution of drug precursors or drug paraphernalia pursuant to K.S.A. 2010 Supp. 21-36a10, prior to its repeal, or K.S.A. 2018 Supp. 21-5710, and amendments thereto; unlawful distribution or possession of a simulated controlled substance pursuant to K.S.A. 2010 Supp. 21-36a13, prior to its repeal, or K.S.A. 2018 Supp. 21-5713, and amendments thereto; forgery pursuant to K.S.A. 21-3710, prior to its repeal, or K.S.A. 2018 Supp. 21-5823, and amendments thereto; criminal use of a financial card pursuant to K.S.A. 21-3729, prior to its repeal, or K.S.A. 2018 Supp. 21-5828, and amendments thereto; any violation of the Kansas medicaid fraud control act pursuant to K.S.A. 21-3844 et seq., prior to their repeal, or K.S.A. 2018 Supp. 21-5925 et seq., and amendments thereto; making a false claim, statement or representation to the medicaid program pursuant to K.S.A. 21-3846, prior to its repeal, or K.S.A. 2018 Supp. 21-5927, and amendments thereto; unlawful acts relating to the medicaid program pursuant to K.S.A. 21-3847, prior to its repeal, or K.S.A. 2018 Supp. 21-5928, and amendments thereto; obstruction of a medicaid fraud investigation pursuant to K.S.A. 21-3856, prior to its repeal, or K.S.A. 2018 Supp. 21-5929, and amendments thereto; identity theft or identity fraud pursuant to K.S.A. 2010 Supp. 21-4018, prior to its repeal, or K.S.A. 2018 Supp. 21-6107, and amendments thereto; or social welfare fraud pursuant to K.S.A. 39-720, and amendments thereto.

The provisions of this paragraph (3) shall not apply to any person who is employed by an adult care home on or before July 1, 2018, and is continuously employed by the same adult care home or to any person during or upon successful completion of a diversion agreement.

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

(c) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in the act for obtaining a guardian or a conservator, or both. The provisions of this subsection shall not apply to an individual who, as a minor, was found to be in need of a guardian or conservator for reasons other than impairment.

(d) (1) The Kansas bureau of investigation shall release all records of adult and juvenile convictions and adjudications and adult and juvenile convictions and adjudications of any other state or country concerning persons working in an adult care home to the secretary for aging and disability services. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(2) The department shall require an applicant to be fingerprinted and to submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether the individual has a record of criminal history in this state or other jurisdiction. The department is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department may use the information obtained from fingerprinting and the criminal history record check for purposes of verifying the identification of the person and for making an official determination of the qualifications and fitness of the person to work in the adult care home.

(3) An applicant for employment in an adult care home shall have 20 calendar days after receipt of authorization to submit the applicant's fingerprints through an authorized collection site in order to be eligible for provisional employment or the applicant's application shall be deemed withdrawn.

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

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

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

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

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

(e) For the purpose of complying with this section, the operator of an adult care home shall request from the

Kansas department for aging and disability services an eligibility determination regarding adult and juvenile convictions and adjudications. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency or independent contractor that 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, a person who operates an adult care home may hire an applicant for provisional employment on a one-time basis of 60 calendar days pending the results from the Kansas department for aging and disability services of a request for information under this subsection. A provisional employee may only be supervised by an employee that has completed all training required by federal regulations, rules and regulations of the department and the adult care home's policies and procedures. No adult care home, the operator or employees of an adult care home or an employment agency or an independent contractor 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.

(f) The secretary for aging and disability services shall provide each operator requesting information under this section with a pass or fail determination after review of any criminal history record information in writing and within three working days of receipt of such information from the Kansas bureau of investigation or the federal bureau of investigation.

(g) A person who volunteers in an adult care home shall not be subject to the provisions of this section unless the volunteer performs equivalent functions to those performed by direct access employees.

(h) No person who has been continuously employed by the same adult care home since July 1, 1992, 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 criminal history record check on an applicant for employment with the adult care home if the applicant has been the subject of a criminal history record check under this act within one year prior to the application for employment with the adult care home.

(j) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient 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) (1) All fees charged by the secretary for criminal history record checks conducted pursuant to this section shall be established by rules and regulations of the secretary.

(2) All moneys collected and remitted to the Kansas department for aging and disability services for fees charged for criminal history record checks conducted pursuant to this section shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the state licensure fee fund created by K.S.A. 39-930, and amendments thereto.

(l) The Kansas department for aging and disability services may implement the amendments made to this section by this act in phases for different categories of employers. The department shall adopt rules and regulations establishing dates and procedures for the implementation of the criminal history record checks required by this section, and such dates may be staggered to facilitate implementation of the criminal history record checks required by this section.

(m) Upon authorization by the secretary for aging and disability services, other state agencies may access an internet-based application portal that is operated and maintained by the Kansas department for aging and disability services for purposes of processing criminal history record information requests in accordance with this section. Agencies may not share criminal history record information or the resulting pass or fail determinations with any other agency. The secretary for aging and disability services may charge an authorized agency the amount of \$1 per request made pursuant to this subsection.

(n) 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; L. 2001, ch. 197, § 1; L. 2002, ch. 114, § 55; L. 2003, ch. 98, § 1; L. 2006, ch. 169, § 112; L. 2010, ch. 16, § 1; L. 2011, ch. 30, § 175; L. 2014, ch. 115, § 151; L. 2015, ch. 94, § 16; L. 2018, ch. 86, § 2; July 1.