

[As Amended by Senate

Committee of the Whole]

As Amended by Senate

Committee

Session of 2005

SENATE BILL No.

116

By Committee on Public

Health and Welfare

1-26

AN ACT *relating to*
certain facilities;
concerning social
and
rehabilitation
services;
providing
injunctive
authority against
unlicensed
facilities;

~~*[authorizing the state
protection and advocacy
system access*~~

~~*to certain facilities,
individuals receiving
care from such facilities*~~

~~*and records of such
individuals;*~~ amending
K.S.A. 75-3307b
*and K.S.A. 2004 Supp.
65-5603* and
repealing the
existing section
sections .

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

Section 1. K.S.A.
75-3307b is
hereby amended to
read as follows:

75-

3307b. (a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for ~~the mentally ill, mentally retarded or other~~ ~~handicapped~~

~~persons~~ ***with mental illness, developmental disabilities or other persons***

with disabilities is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

- (1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities ~~for the mentally ill, mentally retarded or other developmentally dis~~

SB 116-Am. by SCW

2

~~abled persons~~
***with mental illness,
developmental disabilities or
other***

***persons with
disabilities*** receiving
assistance through
the department
of social and
rehabilitation
services which
receive or have

received after
June 30, 1967,
any state or federal
funds, or facilities
where ~~mentally ill,~~
~~mentally~~
~~retarded or other~~
~~developmentally~~
~~disabled~~ persons **with**
mental

illness or
developmental disabilities
reside who require
supervision

or require
limited assistance
with the taking of
medication, and the
withdrawal
of licenses
granted for causes
shown. The secretary
may adopt

rules and
regulations that
allow the facility
to assist a resident
with the

taking of
medication when the
medication is in a
labeled container
dispensed

by a
pharmacist. No
license for a
residential facility
for eight or

more persons
may be issued under
this paragraph
unless the secretary
of

health and
environment has
approved the
facility as meeting
the licensing

standards for
a lodging
establishment under
the food service and
lodging

act. No
license for a
residential facility
for the elderly or

for a residential
facility for
persons with
disabilities not
related to mental
illness or ~~mental~~
~~retardation~~

developmental disability,
or both, or related
conditions

shall be
issued under this
paragraph;

(6) reports
and information to
be furnished to the
secretary by the

superintendents or
other executive
officers of all
psychiatric
hospitals,

community
mental health
centers or
facilities for the
mentally retarded

persons with
developmental disabilities
and facilities
serving other
~~handicapped~~
persons **with disabilities**
receiving assistance
through the
department of
social and
rehabilitation
services.

[] (b) An
entity holding a
license as a
community mental
health center
under
paragraph (4) of
subsection (a) on
the day immediately
preceding

the effective
date of this act,
but which does not
meet the definition
of a

community
mental health center

set forth in this act, shall continue to be

licensed as a community mental health center as long as the entity remains

affiliated with a licensed community mental health center and continues

to meet the licensing standards established by the secretary.

(c) Notwithstanding the existence or pursuit of any other remedy, the secretary of social and rehabilitation services, 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 against any person or facility to restrain or prevent

the operation of a psychiatric hospital, community mental health

center or facility for ~~the mentally ill, mentally retarded or other handicapped~~

~~persons~~ **persons with mental illness, developmental disabilities or other persons with disabilities** operating without a license.

~~_____~~ **[] (d) The state**

~~protection and advocacy
system shall have reasonable
unaccompanied
access to public and private
facilities and
programs in the
state which render care,
treatment or services for~~

SB 116-Am. by SCW

3

~~individuals with
disabilities, and to those
individuals with
disabilities
who receive care,
treatment or services
from those facilities
and programs, and to
the records of
individuals with
disabilities
who receive services
from those facilities and
programs.~~

*Sec. 2. K.S.A. 2004
Supp. 65-5603 is hereby
amended to read
as follows: 65-5603. (a)
The privilege established
by K.S.A. 65-5602
and amendments thereto
shall not extend to:*
*(1) Any communication
relevant to an issue in
proceedings to
involuntarily commit to
treatment a patient for
mental illness,
alcoholism
or drug dependency if
the treatment personnel
in the
course of diagnosis or
treatment has
determined that the
patient is
in need of
hospitalization;*
*(2) an order for
examination of the
mental, alcoholic, drug
dependency
or emotional condition
of the patient which is
entered by*

a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides

that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical

harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;
(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and

SB 116-Am. by SCW

4

amendments thereto;
(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to ~~Kansas advocacy and protective services,~~

~~inc. the state protection and advocacy system~~

which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and

shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care between the state psychiatric hospitals and the community mental health centers; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), "proposed patient"

and "patient" shall have the meanings respectively ascribed thereto in K.S.A. 2004 Supp. 59-2946 and amendments thereto;

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study; or

(15) any information concerning a patient or former patient who is a juvenile offender in the custody

*of the juvenile justice
authority
when the commissioner
of juvenile justice, or the
commis*

SB 116—Am. by SCW

5

*sioner's designee,
requests such
information.
(b) The treatment
personnel shall not
disclose any information
subject to subsection
(a)(3) unless a judge has
entered an order
finding that the patient
has made such patient's
condition an issue
of the patient's claim or
defense. The order shall
indicate the parties
to whom otherwise
confidential information
must be disclosed.*

Sec. 2 3. K.S.A.
75-3307b is **and**
K.S.A. 2004 Supp. 65-
5603 are
hereby repealed.
Sec. 3 4. This
act shall take
effect and be in
force from and
after its
publication in
the statute book.