

# Table of Contents

## Licensing Law

<u>Statute No.</u>	<u>Section</u>	<u>Page No.</u>
65-5101	Definitions .....	1
65-5 102	Home health agency required to be licensed.....	2
65-5 103	Application for license; annual fee.....	2
65-5 104	Issuance of license; grounds for suspension or revocation; annual report and annual fee; posting; not transferable or assignable; temporary operating permit; statistical reports; reciprocal agreements with bordering states .....	2
65-5 105	Survey inspections.....	4
65-5106	Same; written report; list of deficiencies; exit interview; copies of report .....	4
65-5 107	Complaint against home health agency; investigation and hearing; notice.....	4
65-5108	Refusal to issue, suspension or revocation of license; grounds; hearing .....	4
65-5 109	Rules and regulation; application .....	5
65-5110	Home health services advisory council; creation; management function appointment of members; terms; meeting; compensation .....	5
65-5111	Injunction to restrain violation .....	5
65-5112	Act not applicable to certain individuals or organizations .....	5
65-5113	Disposition of moneys.....	6
65-5114	Violation of act; misdemeanor .....	6
65-5115	Home health aides; requirements for employment; instruction and examination; examination fee, disposition.....	6
65-5116	Unlicensed employees prohibited for prefilling insulin syringes; penalty .....	7
65-5117	Criminal Background Check for certain employees .....	7

# Table of Contents

## Home Health Agency Licensure – Home Health Aide

<b>Regulation No.</b>	<b>Section</b>	<b>Page No.</b>
28-51-100	Definitions.....	11
28-51-101	Licensing Procedure.....	14
28-51-102	License Fee.....	15
28-51-103	Organization and Administration.....	16
28-51-104	Home Health Services.....	18
28-51-105	Nursing Services .....	19
28-51-106	Therapy Services .....	20
28-51-107	Social Services .....	21
28-51-108	Home Health Aide Services .....	22
28-51-109	Nutritional and Dietary Consultation .....	23
28-51-110	Clinical Records .....	24
28-51-111	Patients’ Bill of Rights .....	25
28-51-112	Home Health Aide Training Program .....	27
28-51-113	Amended Permanent Regulation.....	28
28-51-114	Home Health Aide Course Instructors .....	30
28-51-115	Allied Health Training Endorsement for Home Health Aides .....	32
28-51-116	State Home Health Aide Test Eligibility .....	33

## LICENSING LAW

## K.S.A. 65-5101 through 65-5117

**65-5101. Definitions.** As used in this act, unless the context otherwise requires:

(a) "Council" means the home health services advisory council created by this act;

(b) "home health agency" means a public or private agency or organization or a subdivision or subunit of such agency or organization that provides for a fee one or more home health services at the residence of a patient but does not include local health departments which are not federally certified home health agencies, durable medical equipment companies which provide home health services by use of specialized equipment, independent living agencies, the department of social and rehabilitation services and the department of health and environment;

(c) "home health services" means any of the following services provided at the residence of the patient on a full-time, part-time or intermittent basis: Nursing, physical therapy, speech therapy, nutritional or dietetic consulting, occupational therapy, respiratory therapy, home health aid, attendant care services or medical social service;

(d) "home health aide" means an employee of a home health agency who is not licensed or professionally registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients but shall not include employees of a home health agency providing only attendant care services;

(e) "independent living agency" means a public or private agency or organization or a subunit of such agency or organization whose primary function is to provide at least four independent living services, including independent living skills training, advocacy, peer counseling and information and referral as defined by the rehabilitation act of 1973, title VII, part B, and such agency shall be recognized by the secretary of social and rehabilitation services as an independent living agency. Such agencies include independent living centers and programs which meet the following quality assurances:

(1) Accreditation by a nationally recognized accrediting body such as the commission on accreditation of rehabilitation facilities; or

(2) receipt of grants from the state or the federal government and currently meets standards for independent living under the rehabilitation act of 1973, title VII, part B, sections (a) through (k), or comparable standards established by the state; or

(3) compliance with requirements established by the federal government under rehabilitation services administration standards for centers for independent living;

- (f) "part-time or intermittent basis" means the providing of home health services in an interrupted interval sequence on the average of not to exceed three hours in any twenty-four-hour period;
- (g) "patient's residence" means the actual place of residence of the person receiving home health services, including institutional residences as well as individual dwelling units;
- (h) "secretary" means secretary of health and environment;
- (i) "subunit" or "subdivision" means any organizational unit of a larger organization which can be clearly defined as a separate entity within the larger structure, which can meet all of the requirements of this act independent of the larger organization, which can be held accountable for the care of patients it is serving and which provides to all patients care and services meeting the standards and requirements of this act; and
- (j) "attendant care services" shall have the meaning ascribed to such term under K.S.A. 65-6201 and amendments thereto.

History: L. 1984, ch. 335, §§ 1; L. 1985, ch. 222, §§ 1; L. 1990, ch. 233, §§ 1; April 26.

**65-5102. Home health agencies required to be licensed. No home health agency, including medicare and medicaid providers, shall provide one or more of the home health services specified in subsection (c) of K.S.A. 65-5101 and amendments thereto, other than attendant care services, or shall hold itself out as providing one or more of such home health services, other than attendant care services, or as a home health agency unless it is licensed in accordance with the provisions of this act.**

History: L. 1984, ch. 335, §§ 2; L. 1990, ch. 233, §§ 2; April 26.

**65-5103. Application for license; annual fee. (a) Persons desiring to receive a license to operate a home health agency shall file a written application with the secretary on a form prescribed by the secretary.**

**(b) The application shall be accompanied by a license fee fixed by rules and regulations of the secretary which establish a sliding scale for such fee based upon the actual or estimated number of home health visits to be performed by a home health agency during a calendar year. The initial license fee may be greater than subsequent annual fees as established by the secretary by rules and regulations.**

History: L. 1984, ch. 335, §§ 3; L. 1992, ch. 71, §§ 1; July 1.

**65-5104. Issuance of license; grounds for suspension or revocation; annual report and annual fee; posting; not transferable or assignable; temporary operating permit; statistical reports; reciprocal agreements with bordering states. (a) The secretary shall review the applications and shall issue a license to applicants who have complied with the**

requirements of this act and have received approval of the secretary after a survey inspection.

**(b) A license shall remain in effect unless suspended or revoked, when the following conditions have been met:**

**(1) An annual report is filed upon such uniform dates and containing such information in such form as the secretary prescribes and is accompanied by the payment of an annual fee;**

**(2) the home health agency is in compliance with the requirements established under the provisions of this act as evidenced by an on-site survey conducted at least within a fifteen-month period subsequent to any previous survey inspection; and**

**(3) the annual report is accompanied by a statement of any changes in the information previously filed with the secretary under K.S.A. 65-5103 and amendments thereto.**

**(c) If the annual report is not filed and the annual fee is not paid, such license is automatically cancelled. The annual fee shall be fixed by rules and regulations of the secretary. The license fee for renewal of a license in effect immediately prior to the effective date of this act shall constitute the annual fee until an annual fee is established by the secretary under this subsection.**

**(d) Each license shall be issued only for the home health agency listed in the application and annual report. Licenses shall be posted in a conspicuous place in the main offices of the licensed home health agency.**

**(e) A license shall not be transferable or assignable. When a home health agency is sold or ownership or management is transferred, or the corporate legal organization status is substantially changed, the license of the agency shall be voided and a new license obtained. Application for a new license shall be made to the secretary in writing, at least 90 days prior to the effective date of the sale, transfer or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by the license fee. The secretary may issue a temporary operating permit for the continuation of the operation of the home health agency for a period of not more than 90 days pending the survey inspection and the final disposition of the application. The secretary shall require all licensed home health agencies to submit statistical reports. The content, format and frequency of such reports shall be determined by the secretary.**

**(f) Notwithstanding the foregoing provisions of this section, the secretary may enter into reciprocal agreements with states bordering Kansas whereby licenses may be granted, without an on-site survey and upon the filing of the prescribed application and payment of the prescribed fee, to home health agencies duly licensed in a bordering state, so long as the secretary finds that the requirements for licensure of the state from which the applicant applies are substantially the same as those in Kansas and the applicant is recommended favorably in writing by the licensing agency of the bordering state in which the applicant is licensed. If a bordering state does not license home health agencies or does not have licensing requirements substantially the same as those in Kansas, home health agencies located in that state which do business in Kansas shall meet all requirements of this act and shall operate in Kansas from offices located in Kansas.**

**History:** L. 1984, ch. 335, §§ 4; L. 1985, ch. 222, §§ 2; L. 1992, ch. 71, §§ 2; July 1.

**65-5105. Survey inspections.** (a) In addition to the survey inspection required for licensing or for a license to remain in effect, the secretary may make other survey inspections during normal business hours.

(b) Each home health agency shall allow the secretary or the authorized representatives of the secretary to enter upon the premises of the home health agency during normal business hours for the purpose of conducting the survey inspection. Failure to allow such entry upon its premises shall constitute grounds for denial, suspension or revocation of a license.

**History:** L. 1984, ch. 335, §§ 5; L. 1992, ch. 71, §§ 3; July 1.

**65-5106. Same; written report; list of deficiencies; exit interview; copies of report.** After completion of each survey inspection, a written report of the findings with respect to compliance or noncompliance with the provisions of this act and the standards established hereunder as well as a list of deficiencies found shall be prepared. The list of deficiencies shall specifically state the statute or rule and regulation which the home health agency is alleged to have violated. A copy of the survey inspection report shall be furnished to the applicant, except that a copy of the preliminary survey inspection report signed jointly by a representative of the home health agency and the inspector shall be left with the applicant when an inspection is completed. This preliminary survey inspection report shall constitute the final record of deficiencies assessed against the home health agency 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 survey inspection report. Upon request, every home health agency shall provide to any person a copy of the most recent survey inspection report and related documents, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

**History:** L. 1984, ch. 335, §§ 6; July 1.

**65-5107. Complaint against home health agency; investigation and hearing; notice.** Any person may make a complaint against a home health agency licensed under the provisions of this act by filing a complaint in writing with the secretary stating the details and facts supporting the complaint. If the secretary determines after an investigation that the charges are sufficient to warrant a hearing to determine whether the license of the home health agency should be suspended or revoked, the secretary shall fix a time and place for a hearing and require the home health agency to appear and defend against the complaint in accordance with the provisions of the Kansas administrative procedure act. A copy of the complaint shall be given to the home health agency at the time it is notified of the hearing. The notice of the hearing shall be given at least 20 days prior to the date of the hearing.

**History:** L. 1984, ch. 335, §§ 7; L. 1988, ch. 356, §§ 217; July 1, 1989.

**65-5108. Refusal to issue, suspension or revocation of license; grounds; hearing.** (a) The secretary shall refuse to issue or shall suspend or shall revoke the license of any home health agency for failure to substantially comply with any provision of this act or with any

rule and regulation or standard of the secretary adopted under the provisions of this act or for obtaining the license by means of fraud, misrepresentation or concealment of material facts.

(b) Any home health agency which has been refused a license or which has had its license revoked or suspended by the secretary may request a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1984, ch. 335, §§ 8; L. 1988, ch. 356, §§ 218; July 1, 1989.

**65-5109. Rules and regulations; application.** (a) The secretary may adopt reasonable rules and regulations necessary to carry out the provisions of this act. The rules and regulations shall be initially adopted within one year of the effective date of this act.

(b) The rules and regulations adopted by the secretary under the provisions of this act shall apply to all health services covered by this act which are rendered to any patient being served by a home health agency regardless of source of payment for the service, patient's condition or place of residence.

History: L. 1984, ch. 335, §§ 9; L. 1985, ch. 222, §§ 3; July 1, 1985.

**65-5110.** History: L. 1984, ch. 335, §§ 10; expired, July 1, 1985.

**65-5111. Injunction to restrain violations.** The secretary may file an action in the district court for the county in which any home health agency alleged to be violating the provisions of this act resides or may be found for an injunction to restrain the home health agency from continuing the violation.

History: L. 1984, ch. 335, §§ 11; July 1, 1985.

**65-5112. Act not applicable to certain individuals or organizations.** The provisions of this act shall not apply to:

(a) Individuals who personally provide one or more home health services if such persons are not under the direct control and doing work for and employed by a home health agency;

(b) individuals performing attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 65-6201, if the individuals performing such services are not under the direct control and doing work for and employed by a home health agency; or

(c) any person or organization conducting a home health agency by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church, religious denomination or sect; or

(d) a hospice which is 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 provides services only to hospice patients.

History: L. 1984, ch. 335, §§ 12; L. 1989, ch. 191, §§ 4; L. 1994, ch. 6, §§ 4; March 3, 1994.

**65-5113. Disposition of moneys.** All moneys received by the secretary under this act shall be deposited in the state treasury and credited to the state general fund.

**History:** L. 1984, ch. 335, §§ 13; July 1.

**65-5114. Violation of act; misdemeanor.** Any person who violates any of the provisions of this act is guilty of a class B misdemeanor.

**History:** L. 1984, ch. 335, §§ 14; July 1.

**65-5115. Home health aides; requirements for employment; instruction and examination; examination fee, disposition.** (a) The secretary may require, as a condition to continued employment by a home health agency that home health aides, after 90 days of employment, successfully complete an approved course of instruction and take and satisfactorily pass an examination prescribed by the secretary. The secretary may not require as a condition to employment or continued employment by a home health agency that persons providing only attendant care services as an employee of a home health agency complete any course of instruction or pass any examination.

(b) A course of instruction for home health aides may be prepared and administered by any home health agency or by any other qualified person. A course of instruction prepared and administered by a home health agency may be conducted on the premises of the home health agency which prepared and which will administer the course of instruction. The secretary shall not require home health aides to enroll in any particular approved course of instruction, but the secretary shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction.

(c) Prior to July 1, 1991, the secretary may require that home health aides complete the course of instruction and pass the examination established pursuant to subsection (c)(3) of K.S.A. 39-936 and amendments thereto before enrolling in an approved course of instruction authorized by this section. On and after July 1, 1991, the secretary may not require that home health aides complete the course of instruction and pass the examination established pursuant to subsection (c)(3) of K.S.A. 39-936 and amendments thereto before enrolling in an approved course of instruction authorized by this section. Home health aides may enroll in any approved course of instruction.

(d) The examination required under this section shall be prescribed by the secretary and shall be reasonably related to the duties performed by home health aides. The same examination shall be given by the secretary to all home health aides.

(e) The secretary shall fix, charge and collect an examination fee to cover all or any part of the cost of the examination required under subsection (a). The examination fee shall be fixed by rules and regulations of the secretary. The examination fee shall be deposited in the state treasury and credited to the state general fund.

**History:** L. 1984, ch. 335, §§ 15; L. 1985, ch. 222, §§ 4; L. 1990, ch. 233, §§ 3; April 26.



**65-5116. Unlicensed employees prohibited from prefiling insulin syringes; penalty. (a) As used in this section "home health agency" means a home health agency licensed in accordance with the provisions of K.S.A. 65-5101 through 65-5115 and K.S.A. 75-5614.**

**(b) No unlicensed person employed by a home health agency, in the course of employment with a home health agency, shall prefill insulin syringes for any patient served by the home health agency.**

**(c) Any person who violates the provisions of subsection (b) shall be guilty of a class C misdemeanor.**

**History: L. 1984, ch. 305, §§ 1; July 1.**

**65-5117. Operation of home health agency 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; report of convictions and adjudications by the Kansas bureau of investigation. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, 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. 21-3506 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, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.**

**(2) A person operating a home health agency 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) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 2003 Supp. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(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 regarding felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency 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 a home health agency shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of 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, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with

**this section, a person who operates a home health agency 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 home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health 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 home health agency's compliance with the provisions of this section if such home health agency 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 under this section.**

**(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).**

**(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.**

**(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.**

**(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-1618 and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the**

operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

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

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such home health agency.

(j) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency 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 home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(k) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

History: L. 1997, ch. 161, §§ 2; L. 1998, ch. 144, §§ 2; L. 2001, ch. 197, §§ 2; L. 2002, ch. 114, §§ 75; L. 2003, ch. 98, §§ 2; July 1.

**DEFINITIONS**

**28-51-100. Definitions.** (a) “Administrator” means either a person who has training and experience in health services administration and at least one year of supervisory or administrative experience in health care, or a qualified health professional.

(b) “Admission note” means a dated notation that is written by a professional member of the health team after the initial assessment of a patient and that documents the relevant diagnoses; the patient’s health history; environmental, safety, and social factors of the patient’s home; the patient’s nutritional requirements, medications, and treatments; and the patient’s physical and mental levels of functioning.

(c) “Branch office” means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office shall be part of the home health agency and shall be located close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the conditions of licensure as a home health agency. Each branch office shall be within 100 miles of the parent agency.

(d) “Bylaws” means a set of rules adopted by a home health agency for governing the agency’s operation.

(e) “Clinical record” means a legal document containing facts that meet the following criteria:

- (1) Provide a basis for planning and implementing the patient’s care program;
- (2) indicate the patient’s status and response to treatment;
- (3) serve as a record of communication for the professional groups responsible for the patient’s care; and
- (4) serve as a repository of data that can be used to review and evaluate the care provided.

(f) “Dietitian” means a person who is licensed by the Kansas department of health and environment as a dietitian.

(g) “Direct supervision” means that the supervisor is on the facility premises and is accessible for one-on-one consultation, instruction, and assistance, as needed.

(h) “Discharge summary report” means a concise statement, signed by a qualified health professional, reflecting the care, treatment, and response of the patient in accordance with the patient’s plan of care and the final disposition at the time of discharge.

- (i) “Home health aide” means an individual who has a home health aide certificate issued by the licensing agency as specified in K.A.R. 28-51-113.
- (j) “Home health aide trainee” means an individual who meets either of the following:
- (1) The individual has completed a 90-hour nurse aide course prescribed in K.A.R. 28-39-165.
  - (2) The individual’s training has been endorsed as specified in K.A.R. 28-51-115.
- (k) “Licensed nursing experience” means experience as a registered nurse or licensed practical nurse.
- (l) “Licensing agency” means the Kansas department of health and environment.
- (m) “Occupational therapist” means a person who is licensed with the Kansas state board of healing arts as an occupational therapist.
- (n) “Occupational therapy assistant” means a person who is licensed with the Kansas state board of healing arts as an occupational therapy assistant.
- (o) “Parent home health agency” means a home health agency that develops and maintains administrative control of subunits or branch offices, or both.
- (p) “Physical therapist” means a person who is licensed with the Kansas state board of healing arts as a physical therapist.
- (q) “Physical therapist assistant” means a person who is certified by the Kansas state board of healing arts as a physical therapist assistant.
- (r) “Physician” means a person licensed in Kansas or an adjoining state to practice medicine and surgery.
- (s) “Plan of care” means a plan based on the patient’s diagnosis and the assessment of the patient’s immediate and long-range needs and resources. The plan of care is established in consultation with the home health services team. If the plan of care includes procedures and services that, according to professional practice acts, require a physician’s authorization, the plan of care shall be signed by a physician and shall be renewed every 62 days.
- (t) “Progress note” means a dated, written notation by a member of the home health services team summarizing the facts about the patient’s care and response during a given period of time.
- (u) “Qualified health professional” means a physician, a registered nurse, a physical therapist, an occupational therapist, a respiratory therapist, a speech therapist, a dietitian, or a social worker.
- (v) “Registered nurse” means a person who is licensed by the Kansas state board of nursing as a registered professional nurse.

(w) “Respiratory therapist” means a person who is licensed by the Kansas state board of healing arts as a respiratory therapist.

(x) “Simulated laboratory” means an enclosed area that is in a school, adult care home, or other facility and that is similar to a home setting. In a simulated laboratory, trainees practice and demonstrate basic home health aide skills while an instructor observes and evaluates the trainees.

(y) “Social worker” means a person who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(z) “Speech therapist” means a person who is licensed by the Kansas department of health and environment as a speech-language pathologist.

(aa) “Summary report” means a concise statement, signed by a qualified health professional, that reflects the care and treatment given and the response by the patient.

(bb) “Supervision” means the authoritative procedural guidance that is given by a qualified health professional. This term shall include initial direction and periodic inspection of the act of accomplishing the function or activity. (Authorized by and implementing K.S.A. 65-5 109; effective, T-86-23, July 1, 1985; amended May 1, 1987; amended Feb. 28, 1994; amended Dec. 29, 2003; amended Oct. 27, 2006.)

**LICENSING PROCEDURE**

**28-51-101. Licensing procedure.** (a) License application. Each application for an initial home health agency license shall be filed on forms provided by the licensing agency before the agency begins treating patients. A license shall remain in effect unless suspended or revoked by the licensing agency.

(b) Annual report and fees. Each licensed agency shall file an annual report and annual fee upon uniform dates and forms provided by the licensing agency.

(c) Change of administrator. Each licensee shall notify the licensing agency, in writing, within five days following the effective date of a change of administrator. The notification shall include the name, address, and qualifications of the new administrator.

(d) New services. Each licensee shall notify the licensing agency whenever it begins offering a new service covered under these regulations.

(e) Change of address or name. Each licensee shall notify the licensing agency, in writing, within five days following the change of address or name of the home health agency. The home health agency shall forward the previously issued license certificate to the licensing agency with a request for an amended license certificate reflecting the new address.

(f) Change of ownership. Each home health agency involved in a change of ownership shall comply with the provisions of K.S.A. 65-5104(e).

(g) Plan of correction. A license shall be granted if:

(1) The applicant is found to be in substantial compliance with these regulations; and

(2) the applicant submits an acceptable plan for correcting any deficiencies cited.

(h) Annual statistical report. Each home health agency shall submit an annual statistical report. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103, 65-5104, and 65-5106; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)



**LICENSE FEE**

**28-51-102. License fee.** (a) Each initial license application for an agency shall be accompanied by a fee in the amount of \$100.00.

(b) The annual report for each licensed agency shall be accompanied by a fee determined in accordance with the following schedule. The visits shall be all those performed by the during the calendar year prior to submittal of the annual report.

<u>Visits</u>	<u>Fee</u>
0-500	\$ 25.00
501-1,000	60.00
1,001-2,000	120.00
2,001-3,000	170.00
3,001-4,000	220.00
4,001-5,000	280.00
5,001-6,000	330.00
6,001-7,000	380.00
7,001-8,000	440.00
8,001-10,000	490.00
10,001-20,000	550.00
Over 20,000	580.00

(c) If an agency performs services on an hourly basis, four hours of service shall be considered the equivalent of one visit. All home visits made by county or regional public health department personnel that are public health services, as determined by the secretary of health and environment, shall not be required to be included in the number of visits used to determine the annual fee. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**ORGANIZATION AND ADMINISTRATION**

**28-51-103. Organization and administration.** (a) Governing body. Each home health agency shall have a governing body or a clearly defined body having legal authority to operate the agency. The governing body shall:

- (1) Have bylaws or their equivalent which shall be renewed annually;
- (2) employ a qualified administrator as defined in K.A.R. 28-51-100(a);
- (3) adopt, revise, and approve procedures for the operation and administration of the agency as needed;
- (4) provide the name and address of each officer, director, and owner of the agency to the licensing agency;
- (5) disclose corporate ownership interests of 10 percent or more to the licensing agency; and
- (6) disclose past home health agency ownership or management, including the name of the agency, its location, and current status, to the licensing agency.

(b) Administrator. The administrator shall be responsible for the management of the agency to the extent authority is delegated by the governing body. A qualified person shall be designated to act in the absence of the administrator. The administrator shall have at least the following responsibilities:

- (1) Organize and direct the agency's ongoing functions;
- (2) act as a liaison between the governing body and staff;
- (3) employ qualified personnel in accordance with job descriptions;
- (4) provide written personnel policies and job descriptions that are made available to all employees;
- (5) maintain appropriate personnel records, administrative records, and all policies and procedures of the agency;
- (6) provide orientation for new staff, regularly scheduled in-service education programs, and opportunities for continuing education of the staff;
- (7) ensure the completion, maintenance, and submission of such reports and records as required by the secretary of health and environment; and
- (8) ensure that each patient admitted to the home health agency receives, in writing, the patient's

bill of rights listed at K.A.R. 28-51-111.

(c) Personnel records. Current personnel records shall be maintained for each employee. The personnel records for an employee shall include:

(1) The title of that employee's position and a description of the duties and functions assigned to that position;

(2) the qualifications for the position;

(3) evidence of licensure or certification if required;

(4) performance evaluations made within six months of employment and annually thereafter;

(5) documentation of reference checks and a personal interview prior to employment; and

(6) evidence of good general health and a negative tuberculin skin test or chest X-ray upon employment. Subsequent periodic health assessments or physical examinations shall be given in accordance with agency policies.

(d) Personnel under hourly or per visit contracts. There shall be a written contract between the agency and personnel under hourly or per visit arrangements. The contract shall include the following provisions:

(1) A statement that patients are accepted for care only by the primary home health agency;

(2) a description of the services to be provided;

(3) a statement that each employee shall conform to all applicable agency policies, including those related to qualifications;

(4) a statement that the employee shall be responsible for participating in the development of plans of care;

(5) a description of the manner in which services will be controlled, coordinated, and evaluated by the primary agency;

(6) the procedures for submitting clinical and progress notes, scheduling patient care, and conducting periodic patient evaluations; and

(7) the procedures for determining charges and reimbursement.

(e) Abuse, neglect, or exploitation. Each employee of the agency shall be responsible for reporting in accordance with agency policies and K.S.A. 39-1430 et. seq., and amendments thereto, any evidence of abuse, neglect, or exploitation of any patient served by the agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**HOME HEALTH SERVICES**

**28-51-104. Home health services.** (a) General provisions. Each home health agency shall accept a patient only when the agency reasonably expects that the patient's medical, rehabilitation, and social needs can be met adequately by the agency in the patient's place of residence.

(b) Provision of services.

(1) Patient care shall follow a written plan, which is periodically reviewed by the supervising nurses or other appropriate health professionals.

(2) All personnel providing services to the same patient shall maintain a liaison with the supervising professional to assure that their efforts effectively complement one another and support the objectives as outlined in the plan of care.

(3) For each patient receiving professional services, including the services of a registered nurse, physical therapy, occupational therapy, speech therapy, and dietary consultation, a written summary report shall be sent to the attending physician every 62 days. Services under arrangement with another agency shall be subject to a written contract conforming to these requirements.

(4) A registered nurse shall be available or on call to the staff during all hours that nursing or home health aide services are provided.

(c) Supervision of home health aide services.

(1) A physician, a registered nurse, or an appropriate qualified health professional shall visit each patient's home every two weeks to supervise home health aide services when skilled nursing or other therapy services, or both are also being furnished to a patient.

(2) This visit may be made less often if only home health aide services are being furnished to a patient and this is documented in the clinical record. A supervisory visit shall then be made at least every 60 days. (Authorized by K. S.A. 65-5109; implementing K. S.A. 65-5104; effective, T- 86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**NURSING SERVICES**

**28-51-105. Nursing services.** (a) Nursing services shall be provided under the supervision of a registered nurse and in accordance with a plan of care.

(b) A registered nurse shall make an initial evaluation visit to each patient, shall regularly reevaluate the patient's nursing needs, and shall initiate the patient's plan of care and make any necessary revisions. (Authorized by K.S.A. 1984 Supp. 65-5 109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5 104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**THERAPY SERVICES**

**28-51-106. Therapy services.** (a) Therapy services offered directly or under arrangement shall be provided by the following:

- (1) A physical therapist;
- (2) A physical therapist assistant functioning under the supervision of a physical therapist;
- (3) An occupational therapist;
- (4) An occupational therapist assistant functioning under the supervision of an occupational therapist;
- (5) A speech therapist; or
- (6) A respiratory therapist.

(b) The therapist shall make an evaluation visit to each patient requiring services, shall regularly reevaluate the patient's therapy needs, and shall initiate the patient's therapy plan of care and make any necessary revisions. (Authorized by K.S.A.1984 Supp. 65-5 109, as amended by 1985 H.B.2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**SOCIAL SERVICES**

**28-51-107. Social services.** (a) Services shall be given by a social worker according to the patient's plan of care.

(b) The social worker shall participate in the development of the patient's plan of care.  
(Authorized by K.S.A. 1984 Supp. 65-5 109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**HOME HEALTH AIDE SERVICES**

**28-51-108. Home health aide services.** (a) Each home health aide shall be supervised by a registered nurse and shall be given written instructions for patient care prepared by a qualified health professional. (Authorized by K.S.A.65-5109; implementing K.S.A. 65-5101; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended March 12, 1990; amended Feb. 28, 1994; amended Dec.29, 2003.)



**NUTRITIONAL AND DIETARY CONSULTATION**

**28-51-109. Nutritional and dietary consultation.** (a) Nutritional and dietary consultation services offered directly or under arrangement shall be given in accordance with the written plan of care.

(b) If nutritional services are provided, a dietitian shall evaluate the nutritional needs of each patient requiring such services and shall participate in developing the plan of care for that patient. (Authorized by K.S.A. 1984 Supp. 65-5 109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5 104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**CLINICAL RECORDS**

**28-51-110. Clinical records.** (a) General provisions. A clinical record containing pertinent past and current findings shall be maintained in accordance with accepted professional standards for each patient receiving home health services.

(b) Content of record. Each patient's clinical record shall contain at least the following:

- (1) The patient's plan of care;
- (2) the name of the patient's physician;
- (3) drug, dietary, treatment, and activity orders;
- (4) signed and dated admission and clinical notes that are written the day the service is rendered and incorporated at least weekly;
- (5) copies of summary reports sent to the physician;
- (6) copies of progress notes; and
- (7) the discharge summary.

(c) Retention. Clinical records shall be retained in a retrievable form for at least five years after the date of the last discharge of the patient. If the home health agency discontinues operation, provision shall be made for retention of records.

(d) Safeguard against loss or unauthorized use. Written policies and procedures shall be developed regarding use and removal of records and the conditions for release of information. The patient's or guardian's written consent shall be required for release of information not required by law. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**PATIENTS' BILL OF RIGHTS**

**28-51-111. Patients' bill of rights.** The governing body shall establish a bill of rights that will be equally applicable to all patients. At a minimum, the following provisions shall be included in the patients' bill of rights.

(a) Each patient shall have the right to choose care providers and the right to communicate with those providers.

(b) Each patient shall have the right to participate in planning of the patient's care and the right to appropriate instruction and education regarding the plan.

(c) Each patient shall have a right to request information about the patient's diagnosis, prognosis, and treatment, including alternatives to care and risks involved, in terms that the patient and the patient's family can readily understand so that they can give their informed consent.

(d) Each patient shall have the right to refuse home health care and to be informed of possible health consequences of this action.

(e) Each patient shall have the right to care that is given without discrimination as to race, color, creed, sex, or national origin.

(f) Each patient shall be admitted for service only if the agency has the ability to provide safe, professional care at the level of intensity needed.

(g) Each patient shall have the right to reasonable continuity of care.

(h) Each patient shall have the right to be advised in advance of the disciplines that will furnish care and the frequency of visits proposed to be furnished.

(i) Each patient shall have the right to be advised in advance of any change in the plan of care before the change is made.

(j) Each patient shall have the right to confidentiality of all records, communications, and personal information.

(k) Each patient shall have the right to review all health records pertaining to them unless it is medically contraindicated in the clinical record by the physician.

(l) Each patient denied service for any reason shall have the right to be referred elsewhere.

(m) Each patient shall have the right to voice grievances and suggest changes in services or staff without fear of reprisal or discrimination.

(n) Each patient shall have the right to be fully informed of agency policies and charges for services, including eligibility for, and the extent of payment from third-party reimbursement sources, prior to receiving care. Each patient shall be informed of the extent to which payment may be required from the patient.

(o) Each patient shall have the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(p) Each patient shall have the right to have his or her property treated with respect.

(q) Each patient shall have the right to be advised in writing of the availability of the licensing agency's toll-free complaint telephone number. (Authorized by K.S.A. 65-5 109; implementing K.S.A. 65-5 104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**HOME HEALTH AIDE TRAINING PROGRAM**

**28-51-112. Home health aide training program.** (a) Each individual employed or contracted by a home health agency who is not licensed or registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients shall meet the training requirements in K.A.R. 28-51-113 through K.A.R. 28-51-116.

(b) This regulation shall not apply to any individual providing only attendant care services as defined in K.S.A. 65-6201, and amendments thereto. (Authorized by K.S.A. 65-5 109; implementing K. S.A. 65-5115; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994; amended Oct. 27, 2006.)

**Amended Permanent Regulation**

**28-51-113. Home health aide training program.** (a) Each home health aide candidate shall be a Kansas-certified nurse aide in good standing on the public nurse aide registry and complete a 20-hour home health aide course approved by the licensing agency.

(b) Upon completing a home health aide course as specified in subsection (a) of this regulation, each home health aide shall be required to pass a state test as specified in K.A.R. 28-51-116.

(c) Each person who completes the requirements specified in subsections (a) and (b) of this regulation shall be issued a home health aide certificate by the licensing agency and shall be listed on the public nurse aide registry.

(d) Each home health aide trainee shall be allowed to provide home health aide services to clients of the home health agency under the supervision of a registered nurse.

(2) Each home health aide trainee who completes an approved 20-hour course shall be issued a home health aide certificate by the licensing agency, upon completion of the requirements specified in subsections (a) and (b) of this regulation, within 90 days from the beginning date of the initial course in order to continue employment providing home health aide services. Home health aide trainee status shall be for one 90-day period only.

(3) Any Kansas certified nurse aide who is eligible for employment and who is enrolled in a 20-hour home health aide course may work for a home health agency as a home health aide trainee. The home health agency's registered nurse shall retain in the trainee's personnel file a department-approved form attesting that the trainee has met the minimum competencies for a home health aide trainee.

(e) Each 20-hour home health aide course shall be administered according to the following criteria:

(1) Any person issued a nurse aide certificate by the licensing agency or enrolled in a 90-hour nurse aide course as specified in K.A.R. 28-39-165 may enroll in a 20-hour home health aide course after being prescreened and tested for reading comprehension at an eighth-grade level.

(2) Each 20-hour course shall be sponsored by one of the following:

(A) A home health agency;

(B) a postsecondary school under the jurisdiction of the state board of regents; or

(C) a postsecondary school accredited by the north central association of colleges and schools.

(3)A home health agency shall not sponsor or provide clinical instruction for a 20-hour home health aide course if that home health agency meets any of the conditions listed in 42 C.F.R. 484.3 6(a)(2)(i), as in effect on October 1, 2001, which is hereby adopted by reference.

(4)Each 20-hour course shall be prepared and administered in accordance with the guidelines established by the licensing agency in the “Kansas certified home health aide guidelines (20 hours),” dated July 1, 2005, and the “Kansas home health aide sponsor and instructor manual,”excluding the appendices, dated July 1, 2005, which are hereby adopted by reference.

(f) No correspondence course shall be accepted as a 20-hour home health aide course.

(g)Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsection (e) of this regulation. (Authorized by K. S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**HOME HEALTH AIDE COURSE INSTRUCTOR**

**28-51-114. Home health aide course instructors.** (a) Each instructor for the 20-hour course shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the licensing agency at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, including at least 1,750 hours of experience in the provision of home health care services.

(b) Each instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(1) Each student in a 20-hour home health aide course shall be prescreened and tested for reading comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(2) A completed course approval application form shall be submitted to the licensing agency at least three weeks before offering the course. Approval of the course shall be obtained from the licensing agency at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require prior approval by the licensing agency.

(3) All course objectives shall be accomplished.

(4) Health care professionals with appropriate skills and knowledge may be selected to conduct any part of the training. Each health care professional shall have at least one year of experience in the subject area in which the individual is providing training.

(5) Each person providing a portion of the training shall do so under the direct supervision of the instructor.

(6) If clinical instruction is included in the course, each student shall be under the direct supervision of the instructor.

(7) During the clinical instruction, the instructor shall perform no other duties than the provision of direct supervision to the students.

(8) The 20-hour home health aide course shall be prepared and administered in accordance with the guidelines in the "Kansas certified home health aide guidelines (20 hours)" and the "Kansas home health aide sponsor and instructor manual," as adopted in K.A.R. 28-51-113.



(c) Any instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**ALLIED HEALTH TRAINING ENDORSEMENT FOR HOME HEALTH AIDE**

**28-51-115. Allied health training endorsement for home health aide.** (a) Each person who meets one of the following conditions shall be deemed to have met the requirements of K.A.R. 28-51-113(a) and shall be eligible to take the state test as specified in K.A.R. 28-51-116:

(1) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license.

(2) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(3) The person has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for endorsement. Training shall have included a basic skills component comprised of personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and supervised clinical experience in geriatrics.

(b) Each person qualified under subsection (a) of this regulation shall receive written notice from the licensing agency that the person is eligible to take the state test. Upon receiving written approval from the licensing agency, that person may be employed by a home health agency as a home health aide trainee to provide patient care on behalf of the home health agency. Each person employed as a home health aide trainee shall be certified as a home health aide by the licensing agency, upon successful completion of the requirements specified in K.A.R. 28-51-113(a) or subsection (a) of this regulation, within one 90-day period starting from the date of approval, in order to continue employment providing home health aide services on behalf of the home health agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**STATE HOME HEALTH AIDE TEST ELIGIBILITY**

**28-51-116. State home health aide test eligibility.** (a) Each person shall have a maximum of three attempts per year from the beginning date of the course to pass the state written test after successfully completing an approved 20-hour course pursuant to K.A.R. 28-51-113.

(1) If the person does not pass the state test within one year from the starting date of taking an approved 20-hour course, the person shall retake the entire course to be eligible to retake the state test.

(2) If a person whose training has been endorsed as specified in K.A.R. 28-51-115 does not pass the state test on the first attempt, the person shall complete an approved 20-hour course as specified in K.A.R. 28-51-113 before retaking the state test.

(3) The state test shall be comprised of 30 multiple-choice questions for persons who have successfully completed an approved 20-hour course or have successfully completed training that has been endorsed as specified in K.A.R. 28-51-115. A score of 22 or higher shall constitute a passing score.

(b) Each home health aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable test application fee shall be required each time the test is scheduled to be taken. Each person who fails to take the state test and who has made payment for the test shall submit another fee before being scheduled for another opportunity to take the test.

(c) Each course instructor shall collect the application fee for each home health aide trainee eligible to take the state test and shall submit the fees, class roster, and application forms to the licensing agency or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test.

(1) A request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) No test shall be given orally or by a sign language interpreter since reading and writing instructions or directions is an essential job task of a home health aide.

(3) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the licensing agency or its designated agent at least three weeks before the desired test date.

Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(f) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to one additional hour may be offered to persons with limited English proficiency. (Authorized by K.S.A. 65-5 109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)