

HOUSE BILL No. 2575

AN ACT relating to social welfare; concerning developmental disabilities; establishing the state council on developmental disabilities; membership; powers and duties; relating to federal financial participation for community developmental disability services; adult care homes; definitions; amending K.S.A. 39-923, 74-5501, 74-5503 and 74-5504 and K.S.A. 2001 Supp. 39-1811, 74-5502 and 74-5505 and repealing the existing sections; also repealing K.S.A. 74-5506.

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

Section 1. K.S.A. 2001 Supp. 39-1811 is hereby amended to read as follows: 39-1811. (a) In carrying out the provisions of subsection (b)(2) of K.S.A. 39-1804, and amendments thereto, the secretary shall ensure annually that all available state funds appropriated for community developmental disability services are used as match or certified match to secure federal financial participation to the maximum extent feasible.

(b) In addition, the secretary shall ensure that funding provided to any community developmental disability organization or any affiliate thereof by any taxing subdivision of the state is utilized as certified match for federal financial participation to the maximum extent feasible. Any public funding identified under this section shall be retained at the local level and the authority for the use of such revenues shall be subject to the statutory authority under which such funds are collected and expended and to any agreements entered into by the local authority with the community service provider or community developmental disability organization to which such funds have been granted, appropriated or otherwise transferred. No community developmental disability organization or affiliate shall use any funding received pursuant to this section to supplant funds previously received from any taxing subdivision of the state. In the event that such funding provided by any taxing subdivision of the state becomes unavailable for any reason, the state shall have no obligation, except as otherwise provided by law, to provide funding in the amount no longer available in order to retain the same level of federal financial participation.

(c) All actions of the secretary to maximize the availability of federal financial participation shall be in accordance with applicable federal statutes and regulations.

(d) Except as otherwise provided in this section, revenue derived from the maximization of federal financial participation shall be used exclusively (1) to increase the ~~regular, nonspecialized tier~~ reimbursement rate above the state fiscal year 2001 levels for the home and community based services developmental disabilities waiver for day, residential, and individual and family supports, provided on or after July 1, 2001, based on an apportionment agreed to by the secretary and the community developmental disability organizations; or (2) for other medicaid reimbursable services for persons with developmental disabilities based upon an agreement entered into by the secretary and community developmental disability organizations by written contract. The secretary shall not be required to utilize more than \$15,000,000 in funding provided to community developmental disability organizations and their affiliates by any taxing subdivision of the state as match for additional federal financial participation in any state fiscal year.

(e) The secretary shall require that the council of community members in each service area convene representatives of the community developmental disability organization, community service providers, families, consumers and other community stakeholders to develop and implement community capacity building plans annually, to improve the quality and efficiency of service delivery. Each such local plan shall: (1) Identify strengths within the local service area, including natural and community supports; (2) identify barriers to meeting the independence, productivity, integration and inclusion goals of the developmental disabilities reform act; and (3) identify key goals that will be addressed in the service area to develop and maintain such community capacity.

(f) The secretary shall report ~~regularly to the SRS oversight committee during the interim period prior to the 2002 regular session of the legislature and shall report~~ to the legislature on or before the 15th day of each regular session on the results of plans to maximize federal financial participation and on the results of community capacity building plans developed and implemented within each service area.

(g) This section shall be construed to be part of and supplemental to the developmental disabilities reform act.

Sec. 2. K.S.A. 74-5501 is hereby amended to read as follows: 74-5501. (a) There is hereby established the state ~~planning~~ council on developmental disabilities ~~services~~ which shall consist of not ~~more~~ ~~less~~ than ~~fifteen (15)~~ 18 members. The membership of the council shall at all times include representatives of the ~~principal state agencies, higher education training facilities~~ *state entities that administer funds provided under federal laws related to individuals with disabilities, including the rehabilitation act of 1973 (29 U.S.C. 701 et seq.), the individuals with disabilities education act (20 U.S.C. 1400 et seq.), the older americans act of 1965 (42 U.S.C. 3001 et seq.), and titles V (42 U.S.C. 701 et seq.) and XIX of the social security act (42 U.S.C. 1396 et seq.), and centers in the state, the state protection and advocacy system, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services to persons with developmental disabilities.* The council shall be appointed by the governor who shall make appropriate provisions for the rotation of membership on the council and shall on July 1 of each year designate one member to be chairperson for the following year.

(b) At least ~~one-half (1/2)~~ 60% of the membership of the state ~~planning~~ council shall consist of persons who are:

(1) Persons with developmental disabilities or parents or guardians of such persons; or

(2) Immediate relatives or guardians of persons with mentally impairing developmental disabilities and who are not (A) employees of a state agency which receives funds or provides services under the federal rehabilitation act, *or* (B) managing employees (as defined in 42 U.S.C. 1320a-5 in effect on the effective date of this act) of any other entity which receives funds or provides services under the federal rehabilitation act of 1973 (29 U.S.C. 701 et seq.), as amended, ~~or (C) persons with an ownership or control interest (within the meaning of 42 U.S.C. 1320a-3 in effect on the effective date of this act) with respect to such an entity.~~

(c) Of the members of the state ~~planning~~ council described in subsection (b):

(1) At least one-third ~~(1/3)~~ shall be persons with developmental disabilities; and

(2) At least one-third ~~(1/3)~~ shall be individuals described in paragraph (2) of subsection (b), and at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability, *or shall be an individual with a developmental disability who resides or previously resided in an institution.*

Sec. 3. K.S.A. 2001 Supp. 74-5502 is hereby amended to read as follows: 74-5502. (a) The state ~~planning~~ council shall:

(1) Study the problems of prevention, education, rehabilitation and other programs affecting the general welfare of the developmentally disabled.

(2) Monitor, review and evaluate, at least annually, the implementation of the state plan for developmental disabilities.

(3) Review and comment, to the maximum extent feasible, on all state plans in the state which relate to programs affecting persons with developmental disabilities.

(4) Submit to the secretary of health, ~~education and welfare~~ *and human services*, through the governor, such periodic reports on its activities as the secretary of health, ~~education and welfare~~ *and human services* may reasonably request and keep such records and afford such access thereto as the secretary of health, ~~education and welfare~~ *and human services* finds necessary to verify such reports. In accordance with federal laws, the state plan for developmental disabilities shall be prepared jointly by the division of mental health and developmental disabilities of the department of social and rehabilitation services *that is responsible for programs for developmental disabilities* and the state ~~planning~~ council.

(5) Study the various state programs for the developmentally disabled and shall have power to make suggestions and recommendations to the various state departments for the coordination and improvements of such programs.

(b) The council may make proposed legislative recommendations having as a function the more efficient, economic and effective realization of intent, purpose and goal of the various programs for the developmentally disabled.

(c) Each state agency represented by membership on the council is hereby authorized to furnish such information, data, reports and statistics requested by the council.

Sec. 4. K.S.A. 74-5503 is hereby amended to read as follows: 74-5503. The state ~~planning~~ council shall conduct quarterly meetings and additional ~~ones~~ *meetings* deemed necessary, keep minutes and send a copy thereof to the governor and all participating state agencies and members. The council shall report regularly to the governor, the legislature, and various other state agencies and organizations working with the developmentally disabled on progress of programs throughout the state.

Sec. 5. K.S.A. 74-5504 is hereby amended to read as follows: 74-5504. Members of the state ~~planning~~ council on developmental disabilities ~~services~~ attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

Sec. 6. K.S.A. 2001 Supp. 74-5505 is hereby amended to read as follows: 74-5505. The division ~~of mental health and developmental disabilities~~ of the department of social and rehabilitation services *that is responsible for programs for developmental disabilities* is hereby designated as the agency to receive and administer federal funds under the federal ~~rehabilitation act of 1973 (29 U.S.C. 701 et seq.)~~ *developmental disabilities assistance and bill of rights act (42 U.S.C. 6000 et seq.)*, as amended. The state plan for developmental disabilities shall provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the state under such act.

Sec. 7. K.S.A. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

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

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

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

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

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

(6) “Residential health care facility” means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree or relationship to the administrator,

operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) “Home plus” means any residence or facility caring for not more than ~~five~~ *eight* individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the ~~operator staff~~ and rules and regulations developed by the department of health and environment. *An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.*

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

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

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

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

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

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

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

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

(16) “Licensing agency” means the secretary of health and environment.

(17) “Skilled nursing home” means a nursing facility.

(18) “Intermediate nursing care home” means a nursing facility.

(19) “Apartment” means a private unit which includes, but is not

limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

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

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

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

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

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

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

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

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

(c) Facilities licensed under K.S.A. 39-1501 *et seq.* and amendments thereto or K.S.A. 75-3307b and amendments thereto or ~~K.S.A. 39-923~~ *under this section* as an intermediate personal care home or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.

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

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

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

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

Sec. 8. K.S.A. 39-923, 74-5501, 74-5503, 74-5504 and 74-5506 and K.S.A. 2001 Supp. 39-1811, 74-5502 and 74-5505 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.