

HOUSE BILL No. 2763

By Committee on Health and Human Services

2-6

9 AN ACT concerning adult care homes; relating to paid nutrition assis-
10 tants; amending K.S.A. 2003 Supp. 39-923 and 39-936 and repealing
11 the existing sections.

12

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

14 Section 1. K.S.A. 2003 Supp. 39-923 is hereby amended to read as
15 follows: 39-923. (a) As used in this act:

16 (1) "Adult care home" means any nursing facility, nursing facility for
17 mental health, intermediate care facility for the mentally retarded, as-
18 sisted living facility, residential health care facility, home plus, boarding
19 care home and adult day care facility, all of which classifications of adult
20 care homes are required to be licensed by the secretary of aging.

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

26 (3) "Nursing facility for mental health" means any place or facility
27 operating 24 hours a day, seven days a week caring for six or more indi-
28 viduals not related within the third degree of relationship to the admin-
29 istrator or owner by blood or marriage and who, due to functional im-
30 pairments, need skilled nursing care and special mental health services
31 to compensate for activities of daily living limitations.

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

38 (5) "Assisted living facility" means any place or facility caring for six
39 or more individuals not related within the third degree of relationship to
40 the administrator, operator or owner by blood or marriage and who, by
41 choice or due to functional impairments, may need personal care and
42 may need supervised nursing care to compensate for activities of daily
43 living limitations and in which the place or facility includes apartments

1 for residents and provides or coordinates a range of services including
2 personal care or supervised nursing care available 24 hours a day, seven
3 days a week for the support of resident independence. The provision of
4 skilled nursing procedures to a resident in an assisted living facility is not
5 prohibited by this act. Generally, the skilled services provided in an as-
6 sisted living facility shall be provided on an intermittent or limited term
7 basis, or if limited in scope, a regular basis.

8 (6) “Residential health care facility” means any place or facility, or a
9 contiguous portion of a place or facility, caring for six or more individuals
10 not related within the third degree ~~or~~ of relationship to the administrator,
11 operator or owner by blood or marriage and who, by choice or due to
12 functional impairments, may need personal care and may need supervised
13 nursing care to compensate for activities of daily living limitations and in
14 which the place or facility includes individual living units and provides or
15 coordinates personal care or supervised nursing care available on a 24-
16 hour, seven-day-a-week basis for the support of resident independence.
17 The provision of skilled nursing procedures to a resident in a residential
18 health care facility is not prohibited by this act. Generally, the skilled
19 services provided in a residential health care facility shall be provided on
20 an intermittent or limited term basis, or if limited in scope, a regular
21 basis.

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

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

41 (9) “Adult day care” means any place or facility operating less than
42 24 hours a day caring for individuals not related within the third degree
43 of relationship to the operator or owner by blood or marriage and who,

1 due to functional impairment need supervision of or assistance with ac-
2 tivities of daily living.

3 (10) "Place or facility" means a building or any one or more complete
4 floors of a building, or any one or more complete wings of a building, or
5 any one or more complete wings and one or more complete floors of a
6 building, and the term "place or facility" may include multiple buildings.

7 (11) "Skilled nursing care" means services performed by or under the
8 immediate supervision of a registered professional nurse and additional
9 licensed nursing personnel. Skilled nursing includes administration of
10 medications and treatments as prescribed by a licensed physician or den-
11 tist; and other nursing functions which require substantial nursing judg-
12 ment and skill based on the knowledge and application of scientific
13 principles.

14 (12) "Supervised nursing care" means services provided by or under
15 the guidance of a licensed nurse with initial direction for nursing proce-
16 dures and periodic inspection of the actual act of accomplishing the pro-
17 cedures; administration of medications and treatments as prescribed by
18 a licensed physician or dentist and assistance of residents with the per-
19 formance of activities of daily living.

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

22 (14) "Person" means any individual, firm, partnership, corporation,
23 company, association or joint-stock association, and the legal successor
24 thereof.

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

31 (16) "Licensing agency" means the secretary of aging.

32 (17) "Skilled nursing home" means a nursing facility.

33 (18) "Intermediate nursing care home" means a nursing facility.

34 (19) "Apartment" means a private unit which includes, but is not
35 limited to, a toilet room with bathing facilities, a kitchen, sleeping, living
36 and storage area and a lockable door.

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

40 (21) "Operator" means an individual who operates an assisted living
41 facility or residential health care facility with fewer than 61 residents, a
42 home plus or adult day care facility and has completed a course approved
43 by the secretary of health and environment aging on principles of assisted

1 living and has successfully passed an examination approved by the sec-
2 retary of health and environment on principles of assisted living and such
3 other requirements as may be established by the secretary of ~~health and~~
4 ~~environment~~ *aging* by rules and regulations.

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

9 (23) “Personal care” means care provided by staff to assist an indi-
10 vidual with, or to perform activities of daily living.

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

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

16 (26) The term “intermediate personal care home” for purposes of
17 those individuals applying for or receiving veterans’ benefits means resi-
18 dential health care facility.

19 (27) *“Paid nutrition assistant” means an individual who is paid to*
20 *feed residents of an adult care home, or who is used under an arrangement*
21 *with another agency or organization, and who provides such assistance*
22 *under the supervision of a registered professional or licensed practical*
23 *nurse.*

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

32 (c) Nursing facilities in existence on the effective date of this act
33 changing licensure categories to become residential health care facilities
34 shall be required to provide private bathing facilities in a minimum of
35 20% of the individual living units.

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

42 (e) Nursing facilities with less than 60 beds converting a portion of
43 the facility to residential health care shall have the option of licensing for

1 residential health care for less than six individuals but not less than 10%
2 of the total bed count within a contiguous portion of the facility.

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

11 Sec. 2. K.S.A. 2003 Supp. 39-936 is hereby amended to read as fol-
12 lows: 39-936. (a) The presence of each resident in an adult care home
13 shall be covered by a statement provided at the time of admission, or
14 prior thereto, setting forth the general responsibilities and services and
15 daily or monthly charges for such responsibilities and services. Each res-
16 ident shall be provided with a copy of such statement, with a copy going
17 to any individual responsible for payment of such services and the adult
18 care home shall keep a copy of such statement in the resident's file. No
19 such statement shall be construed to relieve any adult care home of any
20 requirement or obligation imposed upon it by law or by any requirement,
21 standard or rule and regulation adopted pursuant thereto.

22 (b) A qualified person or persons shall be in attendance at all times
23 upon residents receiving accommodation, board, care, training or treat-
24 ment in adult care homes. The licensing agency may establish necessary
25 standards and rules and regulations prescribing the number, qualifica-
26 tions, training, standards of conduct and integrity for such qualified per-
27 son or persons attendant upon the residents.

28 (c) (1) The licensing agency shall require unlicensed employees of
29 an adult care home, except an adult care home licensed for the provision
30 of services to the mentally retarded which has been granted an exception
31 by the secretary of ~~health and environment~~ *aging* upon a finding by the
32 licensing agency that an appropriate training program for unlicensed em-
33 ployees is in place for such adult care home, employed on and after the
34 effective date of this act who provide direct, individual care to residents
35 and who do not administer medications to residents and who have not
36 completed a course of education and training relating to resident care
37 and treatment approved by the secretary of ~~health and environment~~ *aging*
38 or are not participating in such a course on the effective date of this act
39 to complete successfully 40 hours of training in basic resident care skills.
40 Any unlicensed person who has not completed 40 hours of training re-
41 lating to resident care and treatment approved by the secretary of ~~health~~
42 ~~and environment~~ *aging* shall not provide direct, individual care to resi-
43 dents. The 40 hours of training shall be supervised by a registered pro-

1 fessional nurse and the content and administration thereof shall comply
2 with rules and regulations adopted by the secretary of ~~health and envi-~~
3 ~~ronment~~ *aging*. The 40 hours of training may be prepared and adminis-
4 tered by an adult care home or by any other qualified person and may be
5 conducted on the premises of the adult care home. The 40 hours of
6 training required in this section shall be a part of any course of education
7 and training required by the secretary of ~~health and environment~~ *aging*
8 under subsection (c)(2). *Training for paid nutrition assistants shall consist*
9 *of at least eight hours of instruction, at a minimum, which meets the*
10 *requirements of 42 C.F.R. § 483.160.*

11 (2) The licensing agency may require unlicensed employees of an
12 adult care home, except an adult care home licensed for the provision of
13 services to the mentally retarded which has been granted an exception
14 by the secretary of ~~health and environment~~ *aging* upon a finding by the
15 licensing agency that an appropriate training program for unlicensed em-
16 ployees is in place for such adult care home, who provide direct, individual
17 care to residents and who do not administer medications to residents *and*
18 *who do not meet the definition of paid nutrition assistance under para-*
19 *graph (a)(27) of K.S.A. 39-923, and amendments thereto* after 90 days of
20 employment to successfully complete an approved course of instruction
21 and an examination relating to resident care and treatment as a condition
22 to continued employment by an adult care home. A course of instruction
23 may be prepared and administered by any adult care home or by any
24 other qualified person. A course of instruction prepared and administered
25 by an adult care home may be conducted on the premises of the adult
26 care home which prepared and which will administer the course of in-
27 struction. The licensing agency shall not require unlicensed employees of
28 an adult care home who provide direct, individual care to residents and
29 who do not administer medications to residents to enroll in any particular
30 approved course of instruction as a condition to the taking of an exami-
31 nation, but the secretary of ~~health and environment~~ *aging* shall prepare
32 guidelines for the preparation and administration of courses of instruction
33 and shall approve or disapprove courses of instruction. Unlicensed em-
34 ployees of adult care homes who provide direct, individual care to resi-
35 dents and who do not administer medications to residents may enroll in
36 any approved course of instruction and upon completion of the approved
37 course of instruction shall be eligible to take an examination. The exam-
38 ination shall be prescribed by the secretary of ~~health and environment~~
39 *aging*, shall be reasonably related to the duties performed by unlicensed
40 employees of adult care homes who provide direct, individual care to
41 residents and who do not administer medications to residents and shall
42 be the same examination given by the secretary of ~~health and environment~~
43 *aging* to all unlicensed employees of adult care homes who provide direct,

- 1 individual care to residents and who do not administer medications.
- 2 (3) The secretary of ~~health and environment~~ *aging* shall fix, charge
3 and collect a fee to cover all or any part of the costs of the licensing
4 agency under this subsection (c). The fee shall be fixed by rules and
5 regulations of the secretary of ~~health and environment~~ *aging*. The fee
6 shall be remitted to the state treasurer in accordance with the provisions
7 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
8 remittance, the state treasurer shall deposit the entire amount in the state
9 treasury to the credit of the state general fund.
- 10 (4) The secretary of ~~health and environment~~ *aging* shall establish a
11 state registry containing information about unlicensed employees of adult
12 care homes who provide direct, individual care to residents and who do
13 not administer medications in compliance with the requirements pursu-
14 ant to PL 100-203, Subtitle C, as amended November 5, 1990.
- 15 (5) No adult care home shall use an individual as an unlicensed em-
16 ployee of the adult care home who provides direct, individual care to
17 residents and who does not administer medications unless the facility has
18 inquired of the state registry as to information contained in the registry
19 concerning the individual.
- 20 (6) Beginning July 1, 1993, the adult care home must require any
21 unlicensed employee of the adult care home who provides direct, indi-
22 vidual care to residents and who does not administer medications and
23 who since passing the examination required under paragraph (2) of this
24 subsection has had a continuous period of 24 consecutive months during
25 none of which the unlicensed employee provided direct, individual care
26 to residents to complete an approved refresher course. The secretary of
27 ~~health and environment~~ *aging* shall prepare guidelines for the preparation
28 and administration of refresher courses and shall approve or disapprove
29 courses.
- 30 (d) Any person who has been employed as an unlicensed employee
31 of an adult care home in another state may be so employed in this state
32 without an examination if the secretary of ~~health and environment~~ *aging*
33 determines that such other state requires training or examination, or both,
34 for such employees at least equal to that required by this state.
- 35 (e) All medical care and treatment shall be given under the direction
36 of a physician authorized to practice under the laws of this state and shall
37 be provided promptly as needed.
- 38 (f) No adult care home shall require as a condition of admission to
39 or as a condition to continued residence in the adult care home that a
40 person change from a supplier of medication needs of their choice to a
41 supplier of medication selected by the adult care home. Nothing in this
42 subsection (f) shall be construed to abrogate or affect any agreements
43 entered into prior to the effective date of this act between the adult care

1 home and any person seeking admission to or resident of the adult care
2 home.

3 (g) Except in emergencies as defined by rules and regulations of the
4 licensing agency and except as otherwise authorized under federal law,
5 no resident may be transferred from or discharged from an adult care
6 home involuntarily unless the resident or legal guardian of the resident
7 has been notified in writing at least 30 days in advance of a transfer or
8 discharge of the resident.

9 (h) No resident who relies in good faith upon spiritual means or
10 prayer for healing shall, if such resident objects thereto, be required to
11 undergo medical care or treatment.

12 Sec. 3. K.S.A. 2003 Supp. 39-923 and 39-936 are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.