

SENATE BILL No. 276

By Committee on Federal and State Affairs

2-18

1 AN ACT concerning health and healthcare; relating to the state fire
2 marshal; requiring the state fire marshal to complete certain annual
3 training in person-centered care and responding to individuals with
4 Alzheimer's disease and intellectual and developmental disabilities;
5 removing the state fire marshal from the adult care home licensure act
6 and the providers of disability services act; amending K.S.A. 39-925,
7 39-928, 39-929, 39-938, 39-2005, 39-2008 and 39-2012 and repealing
8 the existing sections.
9

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

11 New Section 1. The office of the state fire marshal shall complete
12 annual training on the following:

13 (a) Person-centered care in aged services training through leadingage
14 Kansas;

15 (b) approaching Alzheimer's: First responder training through the
16 Alzheimer's association; and

17 (c) intellectual and developmental disabilities training for first
18 responders through interhab.

19 New Sec. 2. (a) The secretary for aging and disability services may
20 enter into an agreement to subcontract with the office of the state fire
21 marshal for the purpose of conducting life safety code surveys in adult
22 care homes licensed under the adult care home licensure act.

23 (b) Any such subcontract shall specify that:

24 (1) The office of the state fire marshal may conduct life safety code
25 surveys in accordance with applicable state and federal requirements;

26 (2) the findings and recommendations of the office of the state fire
27 marshal shall be submitted to the Kansas department for aging and
28 disability services for review; and

29 (3) the final determination regarding any deficiencies cited, including
30 any tags or citations issued and the enforcement of such, shall be made
31 solely by the Kansas department for aging and disability services.

32 (c) Nothing in this section shall be construed to grant the office of the
33 state fire marshal independent authority to impose penalties, issue
34 corrective action requirements or take enforcement action against adult
35 care homes licensed under the adult care home licensure act, excluding
36 nursing facilities certified by medicare and medicaid through the United

1 States centers for medicare and medicaid services. For such certified
2 nursing facilities, the office of the state fire marshal may fulfill any
3 requirements of the United States centers for medicare and medicaid
4 services related to life safety code compliance as authorized by federal
5 regulations

6 Sec. 3. K.S.A. 39-925 is hereby amended to read as follows: 39-925.

7 (a) The administration of the adult care home licensure act is hereby
8 transferred from the secretary of health and environment to the secretary
9 for aging and disability services, except as otherwise provided by this act.
10 On the effective date of this act, the administration of the adult care home
11 licensure act shall be under authority of the secretary for aging and
12 disability services as the licensing agency ~~in conjunction with the state fire~~
13 ~~marshal~~; and shall have the assistance of the county, city-county or
14 multicounty health departments, local fire and safety authorities and other
15 agencies of government in this state. The secretary for aging and disability
16 services shall appoint an officer to administer the adult care home
17 licensure act and such officer shall be in the unclassified service under the
18 Kansas civil service act.

19 (b) The secretary for aging and disability services shall be a
20 continuation of the secretary of health and environment as to the programs
21 transferred and shall be the successor in every way to the powers, duties
22 and functions of the secretary of health and environment for such
23 programs, except as otherwise provided by this act. On and after the
24 effective date of this act, for each of the programs transferred, every act
25 performed in the exercise of such powers, duties and functions by or under
26 the authority of the secretary for aging and disability services shall be
27 deemed to have the same force and effect as if performed by the secretary
28 of health and environment in whom such powers were vested prior to the
29 effective date of this act.

30 (c) (1) No suit, action or other proceeding, judicial or administrative,
31 ~~which that~~ pertains to any of the transferred adult care home survey,
32 certification and licensing programs, and reporting of abuse, neglect or
33 exploitation of adult care home residents, ~~which that~~ is lawfully
34 commenced, or could have been commenced, by or against the secretary of
35 health and environment in such secretary's official capacity or in relation
36 to the discharge of such secretary's official duties, shall abate by reason of
37 the transfer of such programs. The secretary for aging and disability
38 services shall be named or substituted as the defendant in place of the
39 secretary of health and environment in any suit, action or other proceeding
40 involving claims arising from facts or events first occurring either on or
41 before the effective date of this act or thereafter.

42 (2) No suit, action or other proceeding, judicial or administrative,
43 pertaining to the adult care home survey, certification and licensing

1 programs or to the reporting of abuse, neglect or exploitation of adult care
2 home residents—~~which that~~ otherwise would have been dismissed or
3 concluded shall continue to exist by reason of any transfer under this act.

4 (3) No criminal action commenced or—~~which that~~ could have been
5 commenced by the state shall abate by the taking effect of this act.

6 (4) Any final appeal decision of the department of health and
7 environment entered pursuant to K.S.A. 39-923 et seq., and amendments
8 thereto, K.S.A. 39-1401 et seq., and amendments thereto, or the Kansas
9 judicial review act, K.S.A. 77-601 et seq., and amendments thereto,
10 currently pertaining to adult care home certification, survey and licensing
11 or reporting of abuse, neglect or exploitation of adult care home residents,
12 transferred pursuant to this act shall be binding upon and applicable to the
13 secretary for aging and disability services and the Kansas department for
14 aging and disability services.

15 (5) All orders and directives under the adult care home licensure act
16 by the secretary of health and environment in existence immediately prior
17 to the effective date of the transfer of powers, duties and functions by this
18 act, shall continue in force and effect and shall be deemed to be duly
19 issued orders, and directives of the secretary for aging and disability
20 services, until reissued, amended or nullified pursuant to law.

21 (d) All rules and regulations of the department of health and
22 environment adopted pursuant to K.S.A. 39-923 et seq., and amendments
23 thereto, and in effect on the effective date of this act, ~~which that~~ promote
24 the safe, proper and adequate treatment and care of individuals in adult
25 care homes shall continue to be effective and shall be deemed to be rules
26 and regulations of the secretary for aging and disability services, until
27 revised, amended, revoked or nullified by the secretary for aging and
28 disability services, or otherwise, pursuant to law.

29 (e) All contracts shall be made in the name of "secretary for aging
30 and disability services" and in that name the secretary for aging and
31 disability services may sue and be sued on such contracts. The grant of
32 authority under this subsection shall not be construed to be a waiver of any
33 rights retained by the state under the 11th amendment to the United States
34 constitution and shall be subject to and shall not supersede the provisions
35 of any appropriation act of this state.

36 Sec. 4. K.S.A. 39-928 is hereby amended to read as follows: 39-928.
37 Upon receipt of an application for license, the licensing agency ~~with the~~
38 ~~approval of the state fire marshal~~ shall issue a license if the applicant is fit
39 and qualified and if the adult care home facilities meet the requirements
40 established under this law. The licensing agency, the state fire marshal, and
41 the county, city-county or multicounty health departments or their
42 designated representatives shall make such inspections and investigations
43 as are necessary to determine the conditions existing in each case and a

1 written report of such inspections and investigations and the
2 recommendations of the state fire marshal and the county, city-county or
3 multicounty health department or their authorized agents shall be filed
4 with the licensing agency. The licensing agency ~~and the state fire marshal~~
5 may designate and use county, city-county or multicounty health
6 departments and local fire and safety authorities as ~~their~~ *its* agents in
7 making such inspections and investigations as are deemed necessary or
8 advisable. Such local authorities are hereby authorized, empowered and
9 directed to perform such duties as are designated. A copy of any inspection
10 reports required by this section shall be furnished to the applicant.

11 A license, unless sooner suspended or revoked, shall remain in effect
12 upon filing by the licensee, and approval by the licensing agency ~~and the~~
13 ~~state fire marshal~~ or their duly authorized agents, of an annual report upon
14 such uniform dates and containing such information in such form as the
15 licensing agency prescribes and payment of an annual fee. Each license
16 shall be issued only for the premises and persons named in the application
17 and shall not be transferable or assignable. It shall be posted in a
18 conspicuous place in the adult care home. If the annual report is not so
19 filed and annual fee is not paid, such license is automatically canceled.
20 Any license granted under the provisions of this act shall state the type of
21 facility for which license is granted, number of residents for which
22 granted, the person or persons to whom granted, the date and such
23 additional information and special limitations as are deemed advisable by
24 the licensing agency.

25 Sec. 5. K.S.A. 39-929 is hereby amended to read as follows: 39-929.
26 A provisional license may be issued to any adult care home, the facilities
27 of which are temporarily unable to conform to all the standards,
28 requirements, rules and regulations established under the provisions of this
29 act: ~~Provided, however, That the issuance of such provisional license shall~~
30 ~~be approved by the state fire marshal.~~ A provisional license may be issued
31 to provide time to make necessary corrections for not more than six ~~(6)~~
32 months. One additional successive six-month provisional license may be
33 granted at the discretion of the licensing agency. A change of ownership
34 during the provisional licensing period will not extend the time for the
35 requirements to be met that were the basis for the provisional license nor
36 entitle the new owner to an additional provisional license.

37 Sec. 6. K.S.A. 39-938 is hereby amended to read as follows: 39-938.
38 Adult care homes shall comply with all the lawfully established
39 requirements and rules and regulations of the secretary for aging and
40 disability services ~~and the state fire marshal~~, and any other agency of
41 government so far as pertinent and applicable to adult care homes, their
42 buildings, operators, staffs, facilities, maintenance, operation, conduct, and
43 the care and treatment of residents. The administrative rules and

1 regulations of the state board of cosmetology ~~and of~~, the Kansas board of
2 barbering *and the state fire marshal* shall not apply to adult care homes.

3 Sec. 7. K.S.A. 39-2005 is hereby amended to read as follows: 39-
4 2005. All pertinent laws of this state and lawfully adopted ordinances and
5 rules and regulations shall be strictly complied with in the operation of any
6 center, facility, hospital or provision of services in this state. All centers,
7 facilities, hospitals and providers shall comply with all the lawfully
8 established requirements and rules and regulations of the secretary ~~and the~~
9 ~~state fire marshal~~, and any other agency of government so far as pertinent
10 and applicable to such centers, facilities, hospitals and providers, their
11 buildings, staff, facilities, maintenance, operation, conduct and the care
12 and treatment of individuals. *Administrative rules and regulations adopted*
13 *by the state fire marshal shall not apply to disability service providers as*
14 *defined in K.S.A. 39-2002, and amendments thereto.*

15 Sec. 8. K.S.A. 39-2008 is hereby amended to read as follows: 39-
16 2008. (a) Upon receipt of an initial or renewal application for a license, the
17 licensing agency, ~~with the approval of the state fire marshal~~, shall issue a
18 license if the applicant is fit and qualified and if the center, facility,
19 hospital or provider meets the requirements established under this act and
20 such rules and regulations as are adopted under the provisions of this act.
21 The licensing agency, the state fire marshal and the county, city-county or
22 multi-county health departments or their designated representatives shall
23 make such inspections and investigations as are necessary to determine the
24 conditions existing in each case, and a written report of such inspections
25 and investigations and the recommendations of the state fire marshal and
26 the county, city-county or multi-county health department or their
27 authorized agents shall be filed with the licensing agency. A copy of any
28 inspection report required by this section shall be furnished to the
29 applicant.

30 (b) The initial application for licensure and renewal of licensure fees
31 for a license shall be fixed by the secretary by rules and regulations. The
32 initial application for licensure fee shall be paid to the secretary when the
33 license is applied for and annually thereafter. The fee shall not be
34 refundable. Fees in effect under this subsection immediately prior to the
35 effective date of this act shall continue in effect on and after the effective
36 date of this act until a different fee is established by the secretary by rules
37 and regulations.

38 (c) Each license shall be issued only for the premises or providers
39 named in the application, or both, and shall not be transferable or
40 assignable. The license shall be posted in a conspicuous place in the
41 center, facility, hospital or provider's principal location. If the annual report
42 is not so filed and a renewal of licensure fee, if any, is not paid, such
43 license shall be automatically denied or revoked. Any license granted

1 under the provisions of this act shall state the type of facility or service for
2 which the license is granted, the number of individuals for whom granted,
3 the person or persons to whom granted, the date and such additional
4 information and special limitations deemed appropriate by the licensing
5 agency.

6 (d) A license, unless sooner suspended or revoked, shall remain in
7 effect until the date of expiration specified by the secretary. Licensees
8 seeking renewal shall file a renewal application containing such
9 information in such form as the licensing agency prescribes together with
10 payment of any required annual fee. Upon review and approval by the
11 licensing agency ~~and the state fire marshal~~ or their duly authorized agents,
12 a license shall be issued and effective until the date of expiration.

13 (e) (1) Programs and treatments provided by a community mental
14 health center that have been previously licensed by the secretary for aging
15 and disability services and that have also been accredited by the
16 commission on accreditation of rehabilitation facilities or the joint
17 commission, or another national accrediting body approved by the
18 secretary for aging and disability services, shall be granted a license
19 renewal based on such accreditation.

20 (2) The Kansas department for aging and disability services shall
21 inspect accredited community mental health centers to determine
22 compliance with state licensing standards and rules and regulations not
23 covered by the accrediting entity's standards. Community mental health
24 centers receiving accreditation shall continue to be subject to inspections
25 and investigations by the Kansas department for aging and disability
26 services resulting from complaints.

27 Sec. 9. K.S.A. 39-2012 is hereby amended to read as follows: 39-
28 2012. A provisional license may be issued to any center, facility, hospital
29 or provider ~~which~~ that is temporarily unable to conform to all the
30 standards, requirements and rules and regulations established under the
31 provisions of this act. ~~The issuance of such provisional license shall be~~
32 ~~subject to approval by the state fire marshal.~~ A provisional license may be
33 issued for not more than six months to provide time to make necessary
34 corrections. One additional successive six-month provisional license may
35 be granted at the discretion of the licensing agency. A change of ownership
36 during the provisional licensing period will not extend the time for the
37 requirements to be met that were the basis for the provisional license, nor
38 entitle the new owner to an additional provisional license.

39 Sec. 10. K.S.A. 39-925, 39-928, 39-929, 39-938, 39-2005, 39-2008
40 and 39-2012 are hereby repealed.

41 Sec. 11. This act shall take effect and be in force from and after its
42 publication in the statute book.