

HOUSE BILL No. 2418

AN ACT concerning Kansas department for aging and disability services; relating to adult care homes; amending K.S.A. 2013 Supp. 39-923 and 39-925 and repealing the existing sections.

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

Section 1. K.S.A. 2013 Supp. 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 people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary ~~of aging and disability services~~ *for aging and disability services*.

(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 people with intellectual disability” means any place or facility operating 24 hours a day, seven days a week, caring for four 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 intellectual disability 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 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 individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-days-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 12 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 for children and families~~ *for aging and disability 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 to residents shall be determined by preparation of the staff and rules and regulations developed by the *Kansas department on aging for aging and disability services*. 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 12-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous. Any home plus that provides care for more than eight individuals after the effective date of this act shall adjust staffing personnel and resources as necessary to meet residents' needs in order to maintain the current level of nursing care standards. Personnel of any home plus who provide services for residents with dementia shall be required to take annual dementia care training.

(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 ~~aging~~ *aging for aging and disability services*.

(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 *registered pursuant to the operator registration act, section 2 et seq., and amendments thereto, who operates* ~~may be appointed by a licensee to have the authority and responsibility to oversee~~ 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 secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment 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 and 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.

(27) “Paid nutrition assistant” means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152, 42 C.F.R. § 483.160 and paragraph (h) of 42 C.F.R. § 483.35, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(28) “Medicaid program” means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(29) *“Licensee” means any person or persons acting jointly or severally who are licensed by the secretary for aging and disability services pursuant to the adult care home licensure act, K.S.A. 39-923 et seq., and amendments thereto.*

(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) 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.

(d) 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.

(e) 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.

(f) 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.

New Sec. 2. Sections 2 through 9, and amendments thereto, shall be known and may be cited as the operator registration act.

New Sec. 3. As used in the operator registration act:

(a) “Operator” means an individual registered pursuant to the operator registration act who may be appointed by a licensee to have authority and responsibility to oversee an adult care home.

(b) “Secretary” means the secretary for aging and disability services.

(c) “Department” means the Kansas department for aging and disability services.

(d) “Adult care home” means an assisted living facility or residential health care facility licensed for less than 61 residents, home plus or adult day care as defined by K.S.A. 39-923, and amendments thereto, or by the rules and regulations of the licensing agency adopted pursuant to such section for which a license is required under article 9 of chapter 39 of the Kansas Statutes Annotated, and amendments thereto.

(e) “Licensee” shall have the meaning ascribed to such term in K.S.A. 39-923, and amendments thereto.

New Sec. 4. (a) On and after July 1, 2014, no person shall represent that such person is an operator unless such person is registered under the operator registration act as an operator. A violation of this subsection is a class C misdemeanor.

(b) The secretary shall adopt by rules and regulations a system for registering operators. Such rules and regulations shall include qualifications for registration. Such rules and regulations shall require, at a minimum, that the applicant:

- (1) Be at least 21 years of age;
- (2) (A) Possess a high school diploma or equivalent, with one year relevant experience as determined by the secretary;
- (B) possess an associate’s degree in a relevant field as determined by the secretary; or
- (C) possess a baccalaureate degree;
- (3) has successfully completed a course approved by the secretary on principles of assisted living;
- (4) has passed an examination approved by the secretary on principles of assisted living and such other requirements as may be established by the secretary by rules and regulations;
- (5) has filed an application; and
- (6) has paid the required application fee.

New Sec. 5. On and after July 1, 2014, no adult care home shall be operated unless under the supervision of an operator who holds a valid registration as an operator issued pursuant to the operator registration act or an adult care home administrator who holds a valid license as a licensed adult care home administrator pursuant to K.S.A. 65-3501 et seq., and amendments thereto.

New Sec. 6. (a) Upon application and within two years of July 1, 2014, the secretary may waive the requirements of (b)(2) and (b)(6) of section 4, and amendments thereto, and grant a registration to any applicant so long as the applicant: (1) Has completed the operator course prior to July 1, 2014, that was approved by the secretary; and (2) has passed an examination prior to July 1, 2014, that was approved by the secretary.

(b) A person who has completed the operator course approved by the secretary and has passed an examination that was approved by the secretary prior to July 1, 2014, and does not apply within two years of July 1, 2014, shall be considered to have a registration that has lapsed for failure to renew.

New Sec. 7. (a) Every individual who holds a valid registration as an operator shall apply to the department for renewal of such registration in accordance with rules and regulations adopted by the secretary.

(b) Upon making an application for a renewal of registration, such individual shall pay a renewal fee to be fixed by rules and regulations and shall submit evidence satisfactory to the secretary that during the period immediately preceding application for renewal the applicant has completed continuing education requirements as provided by the rules and regulations. Any individual who submits an application for a renewal of registration within 30 days after the date of expiration shall also pay a late renewal fee fixed by rules and regulations. Any individual who submits an application for a renewal of registration after the 30-day period following the date of expiration shall be considered as having a registration that has lapsed for failure to renew and shall be reissued a registration only after the individual has been reinstated under subsection (d).

(c) The department shall issue a registration to an operator upon receipt of an application for renewal of registration, the renewal fee and the evidence required for approval.

(d) An operator who allows their registration to lapse by failing to

renew may be reinstated upon payment of the renewal fee, the reinstatement fee and submission of evidence demonstrating satisfactory completion of any applicable program or a course of study established by the secretary for reinstatement of persons whose registrations have lapsed for failure to renew. The secretary shall adopt rules and regulations establishing appropriate requirements for reinstatement of persons whose registrations have lapsed for failure to renew.

(e) The expiration date of registrations issued or renewed shall be established by rules and regulations of the secretary. Subject to the provisions of this subsection, each registration shall be renewable on a biennial basis upon the filing of a renewal application prior to the expiration of an existing registration and upon payment of the renewal fee established pursuant to rules and regulations. To provide for a system of biennial renewal of registrations, the secretary may provide by rules and regulations that registrations issued or renewed for the first time after July 1, 2014, may expire less than two years from the date of issuance or renewal. In each case in which a registration is issued or renewed for a period of time less than two years, the secretary shall prorate to the nearest whole month the registration or renewal fee established pursuant to rules and regulations. No proration shall be made under this subsection on delinquent registration renewals.

New Sec. 8. All fees under the operator registration act shall be established by rules and regulations of the secretary. The amounts received for such fees shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the state licensure fee fund administered by the department pursuant to K.S.A. 39-930, and amendments thereto.

New Sec. 9. (a) The secretary may deny, refuse to renew, suspend or revoke a registration where the operator or applicant:

- (1) Has obtained, or attempted to obtain, a registration by means of fraud, misrepresentation or concealment of material facts;
- (2) has a finding of abuse, neglect or exploitation against a resident of an adult care home as defined in K.S.A. 39-1401, and amendments thereto;
- (3) has been convicted of a crime found by the secretary to have direct bearing on whether the registrant or applicant can be entrusted to serve the public in the position of an operator;
- (4) has violated a lawful order or rule or regulation of the secretary;
- (5) had disciplinary action taken against such operator on a professional or occupational healthcare credential issued by this state or by another jurisdiction; or
- (6) has violated any provisions of the operator registration act.

(b) Such denial, refusal to renew, suspension or revocation of a registration may be ordered by the secretary after notice and hearing on the matter in accordance with the provisions of the Kansas administrative procedure act.

(c) A person whose registration has been revoked may apply to the secretary for reinstatement. The secretary shall have discretion to accept or reject an application for reinstatement and may hold a hearing to consider such reinstatement. An applicant for reinstatement shall submit an application for reinstatement and a reinstatement fee established by the secretary and fulfill the requirements under subsection (d) of section 7, and amendments thereto.

Sec. 10. K.S.A. 2013 Supp. 39-925 is hereby amended to read as follows: 39-925. (a) The administration of the adult care home licensure act is hereby transferred from the secretary of health and environment to the secretary of ~~aging~~ *for aging and disability services*, except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of ~~aging~~ *for aging and disability services* as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state. The secretary of ~~aging~~ *for aging and disability services* shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.

(b) The secretary of ~~aging~~ *for aging and disability services* shall be a

continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary ~~of aging~~ *for aging and disability services* shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.

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

(2) No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

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

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

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

~~(d)(1)~~ All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, ~~except those specified in subsection (d)(2) of this section,~~ shall continue to be effective and shall be deemed to be rules and regulations of the secretary ~~of aging~~ *for aging and disability services*, until revised, amended, revoked or nullified by the secretary ~~of aging~~ *for aging and disability services*, or otherwise, pursuant to law.

~~(2)~~ ~~The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.~~

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

Sec. 11. K.S.A. 2013 Supp 39-923 and 39-925 are hereby repealed.

Sec. 12. 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 concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.