

HOUSE BILL No. 2201

By Representative Wilson

2-2

1 AN ACT concerning the adult care home licensure act; relating to adult
2 care home requirements, admissions and penalties; licensed and
3 unlicensed employees; amending K.S.A. 39-953b and K.S.A. 2014
4 Supp. 39-936, 39-946 and 39-953a and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2014 Supp. 39-936 is hereby amended to read as
8 follows: 39-936. (a) The presence of each resident in an adult care home
9 shall be covered by a statement provided at the time of admission, or prior
10 thereto, setting forth the general responsibilities and services and daily or
11 monthly charges for such responsibilities and services. Each resident shall
12 be provided with a copy of such statement, with a copy going to any
13 individual responsible for payment of such services and the adult care
14 home shall keep a copy of such statement in the resident's file. No such
15 statement shall be construed to relieve any adult care home of any
16 requirement or obligation imposed upon it by law or by any requirement,
17 standard or rule and regulation adopted pursuant thereto.

18 (b) (1) A qualified person or persons shall be in attendance at all
19 times upon residents receiving accommodation, board, care, training or
20 treatment in adult care homes. The licensing agency may establish
21 necessary standards and rules and regulations prescribing the number,
22 qualifications, training, standards of conduct and integrity for such
23 qualified person or persons attendant upon the residents.

24 (2) *An adult care home shall conspicuously post for each wing and*
25 *shift the current number of licensed and unlicensed nursing personnel*
26 *directly responsible for resident care and current ratios of residents to*
27 *licensed and unlicensed nursing personnel. Such information shall be*
28 *displayed on a form approved by the secretary for aging and disability*
29 *services. For the purposes of this subsection, "licensed nursing personnel"*
30 *means registered professional nurses and licensed practical nurses and*
31 *"unlicensed nursing personnel" means nurse aides, nurse aide trainees,*
32 *medication aides and paid nutrition assistants.*

33 (c) (1) The licensing agency shall require unlicensed employees of an
34 adult care home, except an adult care home licensed for the provision of
35 services to people with intellectual disability which has been granted an
36 exception by the secretary for aging and disability services upon a finding

1 by the licensing agency that an appropriate training program for
2 unlicensed employees is in place for such adult care home, employed on
3 and after the effective date of this act *January 1, 2016*, who provide direct,
4 individual care to residents and who do not administer medications to
5 residents and who have not completed a course of education and training
6 relating to resident care and treatment approved by the secretary for aging
7 and disability services or are not participating in such a course on the
8 effective date of this act to complete successfully ~~40~~ 90 hours of *education*
9 and training in basic resident care ~~skills and treatment approved by the~~
10 *secretary for aging and disability services*. Any unlicensed person who has
11 not completed ~~40~~ 90 hours of *education and* training relating to resident
12 care and treatment approved by the secretary for aging and disability
13 services shall not provide direct, individual care to residents. The ~~40~~ 90
14 hours of *education and* training shall be supervised by a registered
15 professional nurse and the content and administration thereof shall comply
16 with rules and regulations adopted by the secretary for aging and disability
17 services. The ~~40~~ 90 hours of *education and* training may be prepared and
18 administered by an adult care home or by any other qualified person and
19 may be conducted on the premises of the adult care home. The ~~40~~ 90 hours
20 of *education and* training required in this section shall be a part of any
21 course of education and training required by the secretary for aging and
22 disability services under subsection (c)(2). Training for paid nutrition
23 assistants shall consist of at least ~~eight~~ 12 hours of instruction, at a
24 minimum, which meets the requirements of 42 C.F.R. § 483.160.

25 (2) The licensing agency may require unlicensed employees of an
26 adult care home, except an adult care home licensed for the provision of
27 services to people with intellectual disability which has been granted an
28 exception by the secretary for aging and disability services upon a finding
29 by the licensing agency that an appropriate training program for
30 unlicensed employees is in place for such adult care home, who provide
31 direct, individual care to residents and who do not administer medications
32 to residents and who do not meet the definition of paid nutrition assistant
33 under ~~paragraph (a)(27) of~~ K.S.A. 39-923(a)(27), and amendments thereto,
34 after ~~90~~ 60 days of employment to successfully complete an approved
35 course of instruction and an examination relating to resident care and
36 treatment as a condition to continued employment by an adult care home.
37 A course of instruction may be prepared and administered by any adult
38 care home or by any other qualified person. A course of instruction
39 prepared and administered by an adult care home may be conducted on the
40 premises of the adult care home which prepared and which will administer
41 the course of instruction. The licensing agency shall not require unlicensed
42 employees of an adult care home who provide direct, individual care to
43 residents and who do not administer medications to residents to enroll in

1 any particular approved course of instruction as a condition to the taking
2 of an examination, but the secretary for aging and disability services shall
3 prepare guidelines for the preparation and administration of courses of
4 instruction and shall approve or disapprove courses of instruction.
5 Unlicensed employees of adult care homes who provide direct, individual
6 care to residents and who do not administer medications to residents may
7 enroll in any approved course of instruction and upon completion of the
8 approved course of instruction shall be eligible to take an examination.
9 The examination shall be prescribed by the secretary for aging and
10 disability services, shall be reasonably related to the duties performed by
11 unlicensed employees of adult care homes who provide direct, individual
12 care to residents and who do not administer medications to residents and
13 shall be the same examination given by the secretary for aging and
14 disability services to all unlicensed employees of adult care homes who
15 provide direct, individual care to residents and who do not administer
16 medications.

17 (3) The secretary for aging and disability services shall fix, charge
18 and collect a fee to cover all or any part of the costs of the licensing
19 agency under this subsection (c). The fee shall be fixed by rules and
20 regulations of the secretary for aging and disability services. The fee shall
21 be remitted to the state treasurer in accordance with the provisions of
22 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
23 remittance, the state treasurer shall deposit the entire amount in the state
24 treasury to the credit of the state general fund.

25 (4) The secretary for aging and disability services shall establish a
26 state registry containing information about unlicensed employees of adult
27 care homes who provide direct, individual care to residents and who do not
28 administer medications in compliance with the requirements pursuant to
29 PL 100-203, Subtitle C, as amended November 5, 1990.

30 (5) No adult care home shall use an individual as an unlicensed
31 employee of the adult care home who provides direct, individual care to
32 residents and who does not administer medications unless the facility has
33 inquired of the state registry as to information contained in the registry
34 concerning the individual.

35 (6) Beginning July 1, ~~1993~~ 2015, the adult care home must require
36 any unlicensed employee of the adult care home who provides direct,
37 individual care to residents and who does not administer medications and
38 who since passing the examination required under paragraph (2) of this
39 subsection has had a continuous period of ~~24~~ 18 consecutive months
40 during none of which the unlicensed employee provided direct, individual
41 care to residents to complete an approved refresher course. The secretary
42 for aging and disability services shall prepare guidelines for the
43 preparation and administration of refresher courses and shall approve or

1 disapprove courses.

2 (d) Any person who has been employed as an unlicensed employee of
3 an adult care home in another state may be so employed in this state
4 without an examination if the secretary for aging and disability services
5 determines that such other state requires training or examination, or both,
6 for such employees at least equal to that required by this state.

7 (e) All medical care and treatment shall be given under the direction
8 of a physician authorized to practice under the laws of this state and shall
9 be provided promptly as needed.

10 (f) No adult care home shall require as a condition of admission to or
11 as a condition to continued residence in the adult care home that a person
12 change from a supplier of medication needs of their choice to a supplier of
13 medication selected by the adult care home. Nothing in this subsection (f)
14 shall be construed to abrogate or affect any agreements entered into prior
15 to the effective date of this act between the adult care home and any
16 person seeking admission to or resident of the adult care home.

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

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

26 Sec. 2. K.S.A. 2014 Supp. 39-946 is hereby amended to read as
27 follows: 39-946. (a) If upon reinspection by the state fire marshal or the
28 marshal's representative or a duly authorized representative of the
29 secretary for aging and disability services, which reinspection shall be
30 conducted within 14 days from the day the correction order is served upon
31 the licensee, it is found that the licensee of the adult care home which was
32 issued a correction order has not corrected the deficiency or deficiencies
33 specified in the order, the secretary for aging and disability services may
34 assess a civil penalty in an amount not to exceed \$500 per day per
35 deficiency against the licensee of an adult care home for each day
36 subsequent to the day following the time allowed for correction of the
37 deficiency as specified in the correction order that the adult care home has
38 not corrected the deficiency or deficiencies listed in the correction order,
39 but the maximum assessment shall not exceed ~~\$2,500~~ \$3,000. A written
40 notice of assessment shall be served upon the licensee of an adult care
41 home either personally or by certified mail, return receipt requested.

42 (b) Before the assessment of a civil penalty, the secretary for aging
43 and disability services shall consider the following factors in determining

1 the amount of the civil penalty to be assessed: (1) The severity of the
2 violation; (2) the good faith effort exercised by the adult care home to
3 correct the violation; and (3) the history of compliance of the ownership of
4 the adult care home with the rules and regulations. If the secretary for
5 aging and disability services finds that some or all deficiencies cited in the
6 correction order have also been cited against the adult care home as a
7 result of any inspection or investigation which occurred within 18 months
8 prior to the inspection or investigation which resulted in such correction
9 order, the secretary for aging and disability services may double the civil
10 penalty assessed against the licensee of the adult care home, the maximum
11 not to exceed ~~\$5,000~~ \$6,000.

12 (c) All civil penalties assessed shall be due and payable within 10
13 days after written notice of assessment is served on the licensee, unless a
14 longer period of time is granted by the secretary. If a civil penalty is not
15 paid within the applicable time period, the secretary for aging and
16 disability services may file a certified copy of the notice of assessment
17 with the clerk of the district court in the county where the adult care home
18 is located. The notice of assessment shall be enforced in the same manner
19 as a judgment of the district court.

20 Sec. 3. K.S.A. 2014 Supp. 39-953a is hereby amended to read as
21 follows: 39-953a. (a) At any time the secretary for aging and disability
22 services initiates any action concerning an adult care home in which it is
23 alleged that there has been a substantial failure to comply with the
24 requirements, standards or rules and regulations established under the
25 adult care home licensure act, that conditions exist in the adult care home
26 which are life threatening or endangering to the residents of the adult care
27 home, that the adult care home is insolvent, or that the adult care home has
28 deficiencies which significantly and adversely affect the health, safety,
29 nutrition or sanitation of the adult care home residents, the secretary for
30 aging and disability services ~~may~~ shall issue an order, pursuant to the
31 emergency proceedings provided for under the Kansas administrative
32 procedure act, prohibiting any new admissions into the adult care home
33 until further determination by the secretary for aging and disability
34 services. This remedy granted to the secretary for aging and disability
35 services is in addition to any other statutory authority the secretary for
36 aging and disability services has relating to the licensure and operation of
37 adult care homes and is not be construed to limit any of the powers and
38 duties of the secretary for aging and disability services under the adult care
39 home licensure act.

40 (b) This section shall be part of and supplemental to the adult care
41 home licensure act.

42 Sec. 4. K.S.A. 39-953b is hereby amended to read as follows: 39-
43 953b. (a) The secretary shall issue annually to each adult care home a

1 report summarizing by category of licensure, violation and frequency of
2 occurrence those violations which have resulted in the issuance of
3 correction orders and civil penalties within the preceding ~~twelve-month~~
4 12-month period.

5 (b) *The secretary shall report annually to the committee on children*
6 *and seniors and the social services budget committee of the house of*
7 *representatives, and the committee on public health and welfare and the*
8 *committee on ways and means of the senate, an assessment of whether the*
9 *minimum nursing care hours established pursuant to section 5, and*
10 *amendments thereto, are sufficient to meet residents' needs. If the*
11 *secretary finds that such minimum nursing care hours are insufficient to*
12 *meet the needs of residents, the secretary shall include in the annual*
13 *report required by this subsection any recommendations to adjust*
14 *minimum nursing care hours to sufficiently meet residents' needs.*

15 (c) This section shall be part of and supplemental to the adult care
16 home licensure act.

17 New Sec. 5. (a) As used in this section:

18 (1) "Nurse aide personnel" means nurse aides, nurse aide trainees,
19 medication aides or paid nutrition assistants.

20 (2) "Qualified nursing personnel" means:

21 (A) Registered professional nurses or licensed practical nurses;

22 (B) nurse aides, nurse aide trainees or medication aides; and

23 (C) paid nutrition assistants.

24 (3) "Resident day" means a period of service rendered to a resident
25 between census-taking hours on two successive days and all other days in
26 an adult care home. Census-taking hours shall consist of 24 hours
27 beginning at midnight.

28 (b) (1) The minimum nursing care hours provided in this section
29 apply to all residents residing within an adult care home, regardless of
30 payment source.

31 (2) On and after July 1, 2015, the required hours of qualified nursing
32 personnel per resident day in nursing facilities shall be at least 2 hours and
33 50 minutes, of which at least 40 minutes shall be allocated to registered
34 professional nurse time, at least 27 minutes shall be allocated to licensed
35 practical nurse time, and at least one hour and 43 minutes shall be
36 allocated to nurse aide personnel time;

37 (3) on and after July 1, 2016, the required hours of qualified nursing
38 personnel per resident day in nursing facilities shall be at least 3 hours and
39 39 minutes, of which at least 51 minutes shall be allocated to registered
40 professional nurse time, at least 35 minutes shall be allocated to licensed
41 practical nurse time, and at least two hours and 13 minutes shall be
42 allocated to nurse aide personnel time; and

43 (4) on and after July 1, 2017, the required hours of qualified nursing

1 personnel per resident day in nursing facilities shall be at least 4 hours and
2 26 minutes, of which at least 62 minutes shall be allocated to registered
3 professional nurse time, at least 42 minutes shall be allocated to licensed
4 practical nurse time, and at least two hours and 42 minutes shall be
5 allocated to nurse aide personnel time.

6 (c) (1) For nursing facilities of 60 residents or less, registered
7 professional nurse time may include the director of nursing;

8 (2) for nursing facilities of 61 through 100 residents, registered
9 professional nurse time shall not include the director of nursing; and

10 (3) for nursing facilities of 101 residents or more, registered
11 professional nurse time shall not include the director of nursing or the
12 assistant director of nursing.

13 (d) Except as otherwise provided in subsections (b) and (c), nothing
14 in this section shall be interpreted to change existing standards, rules and
15 regulations established by the secretary for aging and disability services
16 pursuant to K.S.A. 39-936, and amendments thereto.

17 (e) This section shall be part of and supplemental to the adult care
18 home licensure act.

19 Sec. 6. K.S.A. 39-953b and K.S.A. 2014 Supp. 39-936, 39-946 and
20 39-953a are hereby repealed.

21 Sec. 7. This act shall take effect and be in force from and after its
22 publication in the statute book.