

HOUSE BILL No. 2297

By Committee on Health and Human Services

2-7

1 AN ACT concerning health and healthcare; relating to nurse aides;
2 pertaining to training requirements; amending K.S.A. 65-5115 and
3 K.S.A. 2016 Supp. 39-936 and 39-1908 and repealing the existing
4 sections.
5

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

7 Section 1. K.S.A. 2016 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) A qualified person or persons shall be in attendance at all times
19 upon residents receiving accommodation, board, care, training or treatment
20 in adult care homes. The licensing agency may establish necessary
21 standards and rules and regulations prescribing the number, qualifications,
22 training, standards of conduct and integrity for such qualified person or
23 persons attendant upon the residents.

24 (c) (1) The licensing agency shall require unlicensed employees of an
25 adult care home, except an adult care home licensed for the provision of
26 services to people with intellectual disability ~~which~~ that has been granted
27 an exception by the secretary for aging and disability services upon a
28 finding by the licensing agency that an appropriate training program for
29 unlicensed employees is in place for such adult care home, employed on
30 and after the effective date of this act who provide direct, individual care
31 to residents and who do not administer medications to residents and who
32 have not completed a course of education and training relating to resident
33 care and treatment approved by the secretary for aging and disability
34 services or are not participating in such a course on the effective date of
35 this act to complete successfully 40 hours of training in basic resident care
36 skills. Any unlicensed person who has not completed 40 hours of training

1 relating to resident care and treatment approved by the secretary for aging
2 and disability services shall not provide direct, individual care to residents.
3 The 40 hours of training shall be supervised by a registered professional
4 nurse and the content and administration thereof shall comply with rules
5 and regulations adopted by the secretary for aging and disability services.
6 The 40 hours of training may be prepared and administered by an adult
7 care home or by any other qualified person and may be conducted on the
8 premises of the adult care home. The 40 hours of training required in this
9 section shall be a part of any course of education and training required by
10 the secretary for aging and disability services under subsection (c)(2).
11 Training for paid nutrition assistants shall consist of at least eight hours of
12 instruction, at a minimum, which meets the requirements of 42 C.F.R. §
13 483.160.

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

1 care to residents and who do not administer medications to residents and
2 shall be the same examination given by the secretary for aging and
3 disability services to all unlicensed employees of adult care homes who
4 provide direct, individual care to residents and who do not administer
5 medications.

6 (3) (A) *Clinical instruction and demonstration of the skills specified*
7 *in the part I nurse aide training and competency evaluation program task*
8 *checklist shall be performed in only one or a combination of the following*
9 *settings that offer the full range of clinical tasks and experiences as*
10 *specified in the Kansas certified nurse aide curriculum guidelines - 90*
11 *hours:*

12 (i) *An adult care home;*
13 (ii) *a long-term care unit of a hospital;*
14 (iii) *a simulated laboratory; or*
15 (iv) *a professional healthcare association approved by the secretary*
16 *for aging and disability services.*

17 (B) *An adult care home shall not sponsor or provide clinical*
18 *instruction for a 90-hour nurse aide course if that adult care home has*
19 *been subject to any of the sanctions under the federal regulations for long-*
20 *term care facilities listed in 42 C.F.R. § 483.151(b)(2), as in effect on May*
21 *24, 2010.*

22 (C) (1) *No correspondence course shall be approved as a nurse aide*
23 *course.*

24 (2) *Nationally approved training curriculum and training materials*
25 *may be used as approved by the secretary for aging and disability*
26 *services.*

27 ~~(3)~~ (4) The secretary for aging and disability services shall fix, charge
28 and collect a fee to cover all or any part of the costs of the licensing
29 agency under this subsection (c). The fee shall be fixed by rules and
30 regulations of the secretary for aging and disability services. The fee shall
31 be remitted to the state treasurer in accordance with the provisions of
32 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
33 remittance, the state treasurer shall deposit the entire amount in the state
34 treasury to the credit of the state general fund.

35 ~~(4)~~ (5) The secretary for aging and disability services shall establish a
36 state registry containing information about unlicensed employees of adult
37 care homes who provide direct, individual care to residents and who do not
38 administer medications in compliance with the requirements pursuant to
39 PL 100-203, Subtitle C, as amended November 5, 1990.

40 ~~(5)~~ (6) No adult care home shall use an individual as an unlicensed
41 employee of the adult care home who provides direct, individual care to
42 residents and who does not administer medications unless the facility has
43 inquired of the state registry as to information contained in the registry

1 concerning the individual.

2 ~~(6)~~ (7) Beginning July 1, 1993, the adult care home must require any
3 unlicensed employee of the adult care home who provides direct,
4 individual care to residents and who does not administer medications and
5 who since passing the examination required under paragraph (2) of this
6 subsection has had a continuous period of 24 consecutive months during
7 none of which the unlicensed employee provided direct, individual care to
8 residents to complete an approved refresher course. The secretary for
9 aging and disability services shall prepare guidelines for the preparation
10 and administration of refresher courses and shall approve or disapprove
11 courses.

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

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

20 (f) No adult care home shall require as a condition of admission to or
21 as a condition to continued residence in the adult care home that a person
22 change from a supplier of medication needs of their choice to a supplier of
23 medication selected by the adult care home. Nothing in this subsection (f)
24 shall be construed to abrogate or affect any agreements entered into prior
25 to the effective date of this act between the adult care home and any person
26 seeking admission to or resident of the adult care home.

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

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

36 Sec. 2. K.S.A. 2016 Supp. 39-1908 is hereby amended to read as
37 follows: 39-1908. (a) The following parts of the health occupations
38 credentialing program of the department of health and environment under
39 the Kansas act on credentialing, K.S.A. 65-5001 through 65-5011, and
40 amendments thereto, shall be transferred to *the Kansas department for*
41 *aging and disability services* and shall be administered by the secretary for
42 aging and disability services:

43 (1) Licensure of adult care home administrators, as defined by

- 1 ~~subsection (e) of K.S.A. 65-3501(c), and amendments thereto;~~
2 (2) licensure of dieticians, as defined by ~~subsection (f) of K.S.A. 65-~~
3 ~~5902(f), and amendments thereto;~~
4 (3) certification of residential care facility operators, as defined by
5 subsection (a)(24) of K.S.A. 39-923, and amendments thereto;
6 (4) certification of activity directors, as defined by ~~subsection (a) of~~
7 ~~K.A.R. 26-39-100(a) on the effective date of K.S.A. 2016 Supp. 39-1901~~
8 ~~through 39-1914, and amendments thereto;~~
9 (5) certification of social service designees, as defined by ~~subsection~~
10 ~~(ppp) of K.A.R. 26-39-100(ppp) on the effective date of K.S.A. 2016~~
11 ~~Supp. 39-1901 through 39-1914, and amendments thereto;~~
12 (6) certification of nurse aides, as defined by ~~subsection (pp) of~~
13 ~~K.A.R. 26-39-100(pp) on the effective date of K.S.A. 2016 Supp. 39-1901~~
14 ~~through 39-1914, and amendments thereto;~~
15 (7) certification of medication aides, as defined by ~~subsection (mm)~~
16 ~~of K.A.R. 26-39-100(mm) on the effective date of K.S.A. 2016 Supp. 39-~~
17 ~~1901 through 39-1914, and amendments thereto;~~
18 (8) certification of home health aides, as defined by ~~subsection (d) of~~
19 ~~K.S.A. 65-5101(d), and amendments thereto; and~~
20 (9) maintenance of the Kansas nurse aide registry under ~~subsection~~
21 ~~(e) of K.S.A. 39-936(c), and amendments thereto, and K.S.A. 39-1411,~~
22 ~~and amendments thereto.~~
23 (b) The criminal history record check program, as authorized by
24 individual credentialing statutes or rules and regulations, K.S.A. 39-969,
25 and amendments thereto, K.S.A. 39-970, and amendments thereto, and
26 ~~subsection (b) of K.S.A. 22-4707(b), and amendments thereto, is hereby~~
27 transferred from the department of health and environment to the Kansas
28 department for aging and disability services and shall be a part thereof.
29 (c) The licensure of adult care home administrators, the licensure of
30 dieticians, the certification of residential care facility operators, the
31 certification of activity directors, the certification of social service
32 designees, the certification of nurse aides, the certification of medication
33 aides, the certification of home health aides, the board of adult care home
34 administrators, the maintenance of the Kansas nurse aide registry and the
35 criminal history record check program shall be administered by the
36 secretary for aging and disability services. Nothing in K.S.A. 2016 Supp.
37 39-1901 through 39-1914, and amendments thereto, shall change or
38 diminish the authority of the board of adult care home administrators
39 established by K.S.A. 65-3506, and amendments thereto.
40 (d) Except as otherwise provided by K.S.A. 2016 Supp. 39-1901
41 through 39-1914, and amendments thereto, all powers, duties and
42 functions of the secretary of health and environment pertaining to the
43 licensure of adult care home administrators, the licensure of dieticians, the

1 certification of residential care facility operators, the certification of
2 activity directors, the certification of social service designees, the
3 certification of nurse aides, the certification of medication aides, the
4 certification of home health aides, the board of adult care home
5 administrators, the Kansas nurse aide registry and the criminal record
6 check program transferred by K.S.A. 2016 Supp. 39-1901 through 39-
7 1914, and amendments thereto, are hereby transferred to and imposed
8 upon the secretary for aging and disability services.

9 (e) The Kansas department for aging and disability services shall be
10 the successor in every way to the powers, duties and functions of the
11 department of health and environment pertaining to those portions of the
12 health occupations credentialing program transferred by K.S.A. 2016
13 Supp. 39-1901 through 39-1914, and amendments thereto. Every act
14 performed in the exercise of such transferred powers, duties and functions
15 by or under the authority of the Kansas department for aging and disability
16 services shall be deemed to have the same force and effect as if performed
17 by the department of health and environment in which such powers, duties
18 and functions were vested prior to the effective date of K.S.A. 2016 Supp.
19 39-1901 through 39-1914, and amendments thereto.

20 Sec. 3. K.S.A. 65-5115 is hereby amended to read as follows: 65-
21 5115. (a) The secretary may require, as a condition to continued
22 employment by a home health agency that home health aides, after 90 days
23 of employment, successfully complete an approved course of instruction
24 and take and satisfactorily pass an examination prescribed by the secretary.
25 The secretary may not require as a condition to employment or continued
26 employment by a home health agency that persons providing only
27 attendant care services as an employee of a home health agency complete
28 any course of instruction or pass any examination.

29 (b) A course of instruction for home health aides may be prepared
30 and administered by any home health agency or by any other qualified
31 person. A course of instruction prepared and administered by a home
32 health agency may be conducted on the premises of the home health
33 agency which prepared and which will administer the course of
34 instruction. The secretary shall not require home health aides to enroll in
35 any particular approved course of instruction, but the secretary shall
36 prepare guidelines for the preparation and administration of courses of
37 instruction and shall approve or disapprove courses of instruction.

38 (c) Prior to July 1, 1991, the secretary may require that home health
39 aides complete the course of instruction and pass the examination
40 established pursuant to ~~subsection (c)(3) of~~ K.S.A. 39-936(c), and
41 amendments thereto, before enrolling in an approved course of instruction
42 authorized by this section. On and after July 1, 1991, the secretary may not
43 require that home health aides complete the course of instruction and pass

1 the examination established pursuant to ~~subsection (e)(3)~~ of K.S.A. 39-
2 936(c), and amendments thereto, before enrolling in an approved course of
3 instruction authorized by this section. Home health aides may enroll in any
4 approved course of instruction.

5 (d) The examination required under this section shall be prescribed by
6 the secretary and shall be reasonably related to the duties performed by
7 home health aides. The same examination shall be given by the secretary
8 to all home health aides.

9 (e) The secretary shall fix, charge and collect an examination fee to
10 cover all or any part of the cost of the examination required under
11 subsection (a). The examination fee shall be fixed by rules and regulations
12 of the secretary. The examination fee shall be deposited in the state
13 treasury and credited to the state general fund.

14 Sec. 4. K.S.A. 65-5115 and K.S.A. 2016 Supp. 39-936 and 39-1908
15 are hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.