

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 453**

As Agreed to March 31, 2022

Brief*

SB 453 would amend law concerning the required completion of 40 hours of training in basic resident care skills for unlicensed employees working in adult care homes, who provide direct, individual care to residents, who do not administer medications to residents, and who have not completed or are participating in a course of education and training relating to resident care and treatment approved by the Secretary for Aging and Disability Services (Secretary), referred to as “unlicensed employees” herein. The bill would also amend licensure requirements for certain professions licensed by the Behavioral Sciences Regulatory Board (BSRB). Further, the bill would add an exception requiring the BSRB to accept master’s degrees from applicants for licensure who graduate from the Masters of Social Work Program at Fort Hays State University, which is currently pending accreditation. The exception would apply retroactively and expire on July 1, 2023.

Regarding the training for unlicensed employees, the bill would clarify the 40 hours of training would be a part of an approved certified nurse aide (CNA) training course required by the Secretary for unlicensed employees working in an adult care home. The bill would specify who may prepare, administer, and teach the first 40 hours and remaining hours of CNA training, where the training may be conducted, the timeframe for completion of the training, and who may evaluate the skills demonstration to confirm successful completion of the training course. The bill would also prohibit any unlicensed employees not making progress toward completion of the CNA training required by the Secretary within four months following completion of the first 40 hours of CNA training from providing direct, individual care to residents.

The bill would also expand the entities authorized to prepare and administer the training to include a hospital, hospice, Program of All-Inclusive Care for the Elderly (PACE), or qualified course sponsor and would expand the premises at which the training could be conducted to include a hospital, hospice, or PACE.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

Training

Required CNA Training

The bill would clarify that any unlicensed employee who has not completed at least 40 hours of CNA training approved by the Secretary, or who is not making progress to complete the course of education and training required by the Secretary as a condition of continued employment by an adult care home within four months following completion of such 40 hours, would be prohibited from providing direct, individual care to residents. The 40 hours of training required would be a part of an approved CNA training course required by the Secretary for unlicensed employees working in an adult care home, with certain exceptions.

The bill would clarify the licensing agency could not require unlicensed employees working in an adult care home licensed for the provision of services to people with intellectual disability to successfully complete the 40 hours of CNA training if the Secretary has granted an exception based on a finding that an approved training program for CNAs is in place for such adult care home.

Course supervisor. The bill would require the 40 hours of training and the remaining hours in the CNA training to be performed under the general supervision of a course supervisor. The bill would require the “course supervisor” to be defined in rules and regulations and approved by the Secretary. “Supervision” would mean the same as defined in the Kansas Nurse Practice Act relating to supervision of delegated nursing procedures.

The bill would allow a hospital (as defined in law regarding licensing of hospitals), hospice, or PACE, as well as an adult care home or any other qualified course sponsor as in continuing law, to prepare and administer the 40 hours of training. The training could be conducted on the premises of an adult care home (continuing law), hospital, hospice, or PACE.

Instructor qualifications. Each instructor under the supervision of a course supervisor of the CNA training course would be required to be licensed to practice in Kansas and in good standing. The bill would define “in good standing” to include the possession of a license, certificate, or registration that is subject to probation or non-disciplinary conditions, limitations, or restrictions, but would not include a license, certificate, or registration that is revoked, canceled, surrendered, or subject to pending license-related disciplinary action. If the records of the Kansas Department for Aging and Disability Services (KDADS) reflect an individual has a prohibiting offense, such license, certificate, or registration would not be considered in good standing. Any license, certificate, or registration subject to disciplinary conditions, limitations, or restrictions would remain under such.

Course of Instruction

Current law allows the licensing agency to require unlicensed employees working in an adult care home, with certain exceptions, after 90 days of employment to successfully complete an approved course of instruction and examination relating to resident care and treatment as a condition of continued employment by an adult care home. The bill would allow a hospital, hospice, or PACE, as well as an adult care home or any other qualified person as in continuing law, to prepare and administer the course of instruction. The course of instruction prepared and

administered by these entities could be conducted on the premises of the entity that prepared and would be administering the course of instruction.

The bill would clarify the licensing agency could not require unlicensed employees working in an adult care home licensed for the provision of services to people with intellectual disability to successfully complete, after 90 days of employment, an approved course of instruction and examination relating to resident care and treatment as a condition of continued employment if such adult care home has been granted an exception by the Secretary upon a finding by the licensing agency that an appropriate training program for CNAs is in place.

Evidence of training completion. As evidence of successful completion of the training course, the bill would require unlicensed employees to demonstrate competency in a list of skills identified and prescribed by the Secretary. The bill would require the skills demonstration to be evaluated by a registered professional nurse licensed, including multi-state licensure privilege, and in good standing in Kansas, with at least one year of licensed nursing experience providing care for the elderly or chronically ill in a health care setting approved by the Secretary. "In good standing" would have the same meaning as described for an instructor.

State CNA Registry

The bill would amend the requirement that the Secretary establish a state registry containing information about unlicensed employees working in nursing homes who provide direct, individual care to residents and who do not administer medications and instead require the state registry contain information about CNAs. The bill would clarify adult care homes would not be allowed to use an individual working as a CNA in an adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has checked the state registry concerning such individual.

CNA Refresher Course; Out-of-State CNA

The bill would replace references to an "unlicensed employee" with "CNA" in current statute pertaining to completion of an approved refresher course and to employment in Kansas of a CNA working in an adult care home in another state without requiring an examination if the Secretary determines such other state requires training or examination, or both, at least equal to that required by Kansas.

Direction for Care and Treatment

The bill would clarify that all medical care and treatment must be given under the direction of a person licensed by the Board of Healing Arts to practice medicine and surgery.

Behavioral Sciences Regulatory Board Licensure Requirements

The bill would add to the list of requirements for licensure as a specialist clinical social worker an allowance for applicants who complete additional postgraduate supervised experience as determined by the Behavioral Sciences Regulatory Board (BSRB) in lieu of completing a graduate-level supervised clinical practicum, as required by continuing law.

The bill would allow a master social worker, specialist clinical social worker, professional counselor, clinical professional counselor, marriage and family therapist, clinical marriage and family therapist, master's level psychologist, clinical psychotherapist, or psychologist currently licensed in Kansas to be eligible to take a BSRB-approved examination for licensure as an addiction counselor.

Exception for Fort Hays State University Social Work Program

The bill would add a provision specifying an exemption for graduates from the Masters of Social Work Program at Fort Hays State University, which is currently pending accreditation. The bill would allow such graduates to receive licensure as a master social worker without additional or alternative requirements, retroactively and until July 1, 2023, when the program anticipates achieving accreditation.

Technical Amendments

The bill would also make technical amendments.

Conference Committee Action

On March 28, 2022, the Conference Committee agreed to the provisions of SB 453, as amended by the House Committee on Health and Human Services, but removing New Section 1 regarding an annual report to specified legislative committees. The Conference Committee also agreed to add the contents of HB 2734, as introduced, regarding licensure requirements for certain professions licensed by the BSRB.

On March 31, 2022, the Conference Committee agreed to add an exemption for the Fort Hays State University Masters of Social Work Program, currently pending accreditation, directing the BSRB to allow graduates from the program to receive master social worker licensure.

Background

The Conference Committee added the contents of HB 2734, as introduced, to SB 453, as amended by the House Committee on Health and Human Services, but excluding New Section 1 of SB 453 regarding reports to specified legislative committees.

SB 453 (Unlicensed Employees Working in Adult Care Homes)

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator O'Shea.

Senate Committee on Public Health and Welfare

During the Senate Committee hearing on February 15, 2022, the President of Wichita State University Tech and representatives of Comfort Care Homes and Comfort Keepers, NMC

Health, and the Wichita Regional Chamber of Commerce provided **proponent** testimony, stating that the bill would address the current shortage of nurses affecting adult care facilities. Proponents stated that the bill would allow for greater flexibility for instructors and for care facilities that must stay open, regardless of staffing shortages.

Written-only proponent testimony was provided by representatives of Axiom Healthcare Services, Care Haven Homes, Catholic Care Center, Comfort Care Homes of Harvey County, Good Shepherd Hospice, the Greater Kansas City Chamber of Commerce, Harry Hynes Memorial Hospice, Kansas Adult Care Executives, Kansas Health Care Association and Kansas Center for Assisted Living, Kansas Hospital Association, Kansas Technical Colleges, LeadingAge Kansas, Midland Care, Mission Health, and NMC Health.

Opponent testimony was provided by representatives from Kansas Advocates for Better Care and Kansas State Nurses Association, stating concern that decreased educational requirements and lack of certification would negatively impact the quality of care for residents and patients.

Written-only opponent testimony was provided by the Kansas State Long-Term Care Ombudsman.

Neutral testimony was provided by a representative of the Kansas Association of Community College Trustees, requesting that any changes made to training comply with federal Centers for Medicaid and Medicare Services regulations and that a registered nurse still be required to provide oversight in cases where other providers would be teaching.

Written-only neutral testimony was provided by a representative of the Board of Nursing.

The Senate Committee amended the bill to remove a provision relating to simulation experiences in training courses [*Note:* The amendment was retained by the Conference Committee.] and to replace references to “unlicensed employees” with “certified aides.” [*Note:* The amendment was not retained by the Conference Committee.]

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by representatives of Comfort Care Homes and Comfort Care Keepers of Wichita, Kansas Adult Care Executives, Kansas Health Care Association and Kansas Center for Assisted Living, LeadingAge Kansas, Medicalodges, Inc., Midland Care Connection, NMC Health, Wichita Regional Chamber of Commerce, and WSU Tech. The proponents generally stated the bill would expand training available to unlicensed employees working in adult care homes to help address the workforce shortage in those facilities.

Written-only proponent testimony was provided by representatives of ComfortCare Homes, LLC., ComfortCare Homes of Harvey County, Good Shepherd Hospice, Kansas Hospital Association, and Kansas Technical Colleges.

Opponent testimony was provided by representatives of Kansas Advocates for Better Care and Kansas State Nurses Association and by a private citizen, stating the bill would allow individuals with a reduced number of hours of training and taught by trainers with less training to provide hands-on care to individuals in adult care homes, resulting in poorer care for older adults in these facilities.

Written-only opponent testimony was provided by the Kansas State Long-Term Care Ombudsman, a representative of AARP Kansas, and three private citizens.

Written-only neutral testimony was provided by representatives of the Kansas Association of Community College Trustees, KDADS, and Board of Nursing.

The House Committee amended the bill to:

- Require the Board to submit an annual report to select House and Senate standing committees on health regarding the number and nature of disciplinary complaints in the prior year and prohibit inclusion of any personally identifiable information or any information that is confidential or restricted from disclosure under the Kansas Open Records Act in such reports [*Note*: The amendment was not retained by the Conference Committee.];
- Replace the references to “certified aides” with “unlicensed employees” or “unlicensed employees working in an adult care home,” as applicable [*Note*: The amendment was retained by the Conference Committee.];
- Require the CNA training in an adult care home licensed for the provision of services to people with intellectual disability be approved [*Note*: The amendment was retained by the Conference Committee.];
- Clarify the training for unlicensed employees referenced would be a part of the CNA training course [*Note*: The amendment was retained by the Conference Committee.];
- Delete language requiring the instructor for the 40 hours of CNA training to be licensed and in good standing as a registered professional nurse or a licensed practical nurse and allowing an instructor with multi-state licensure privilege to satisfy this requirement [*Note*: The amendment was retained by the Conference Committee.];
- Delete language requiring the 40 hours of training be supervised by a registered professional nurse and the training content and administration comply with rules and regulations of the Secretary and replace it with language requiring the 40 hours of training and remaining hours of CNA training be performed under the general supervision of a course supervisor to be defined in rules and regulations approved by the Secretary [*Note*: The amendment was retained by the Conference Committee.];
- Define “supervision” and “in good standing” [*Note*: The amendment was retained by the Conference Committee.];
- Expand the entities that could prepare and administer the training and the premises where such training could be conducted [*Note*: The amendment was retained by the Conference Committee.];
- Define the role and qualifications of an instructor [*Note*: The amendment was retained by the Conference Committee.]; and
- Prohibit an unlicensed employee who is not making progress toward completion of training required by the Secretary within four months of completion of the first 40 hours of training from providing direct, individual care to residents [*Note*: The amendment was retained by the Conference Committee.].

HB 2734 (BSRB Licensure Requirements)

The bill was introduced by the House Committee on Appropriations at the request of the BSRB. [Note: A similar bill, SB 387, was introduced in the House. HB 2734 contains language identical to SB 387, as amended by the Senate Committee on Public Health and Welfare.]

House Committee on Health and Human Services

In the House Committee hearing, a representative of the Board provided **proponent** testimony, stating the bill would restore a provision removed by 2021 Senate Sub. for HB 2208 that allowed the Board to evaluate applicants to become a licensed specialist clinical social worker who had completed a different form of practicum. The representative stated the bill would allow current master's level or clinical level practitioners the flexibility to use their qualifications to seek licensure to become a licensed addiction counselor. A representative of Association of Community Mental Health Centers of Kansas also provided proponent testimony, stating the bill would help address workforce shortages by lessening the burden on qualified clinical staff seeking licensure.

Written-only proponent testimony was submitted by a representative of EmberHope Youthville.

No other testimony was provided.

Fiscal Information

SB 453 (Unlicensed Employees Working in Adult Care Homes)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board of Nursing indicates that enactment of the bill would require communication with registered nurses and licensed practical nurses and any costs of communication would be absorbed by the Board. KDADS indicates that enactment of the bill would have no fiscal effect on the agency.

HB 2734 (BSRB Licensure Requirements)

According to the fiscal note prepared by the Division of the budget on HB 2734, the BSRB indicates certain provisions would be technical in nature while others would increase revenue and expenditures related to additional individuals seeking licensure. The BSRB indicates 10.0 percent of any new revenue produced by enactment of the bill would be remitted to the State General Fund, and the remaining amount would be credited to the Board in accordance with current law. The BSRB states it is unable to determine the number of individuals who may seek licensure under the provisions of the bill, so it could not estimate any revenues and expenditures that may result from the bill's enactment.

Adult care homes; home health; unlicensed employees; certified nurse aide training; hospitals; hospices; Program of All-Inclusive Care for the Elderly; Behavioral Sciences Regulatory Board; licensure; clinical and master social worker; psychologist

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