

Substitute for HOUSE BILL No. 2246

By Committee on Judiciary

2-22

1 AN ACT concerning adult residential care facilities; relating to involuntary
2 transfer or discharge of residents from an adult residential care facility;
3 authorizing the secretary for aging and disability services to investigate
4 violations; requiring the state long-term care ombudsman to publish a
5 report.

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

8 Section 1. (a) The administrator or operator of each adult residential
9 care facility shall ensure that a resident is not involuntarily transferred or
10 discharged from the adult residential care facility unless one or more of the
11 following conditions are met:

12 (1) The transfer or discharge is necessary for the resident's welfare
13 and the resident's needs cannot be met by the current adult residential care
14 facility;

15 (2) the health or safety of other individuals in the adult residential
16 care facility is endangered;

17 (3) the resident has failed, after reasonable and appropriate notice, to
18 pay the rates and charges imposed by the adult residential care facility; or

19 (4) the adult residential care facility ceases to operate.

20 (b) Before a resident may be transferred or discharged involuntarily,
21 the administrator or operator, or designee, shall:

22 (1) Notify the resident, and, if known, a representative or designated
23 family member, of the transfer or discharge and the reason for the transfer
24 or discharge;

25 (2) if the reason for transfer or discharge is specified in subsection (a)
26 (1) through (a)(3), record and substantiate in the resident's clinical record
27 as follows:

28 (A) The resident's physician shall document the rationale for transfer
29 or discharge in the resident's clinical record if the transfer or discharge is
30 necessary for the resident's welfare and the resident's needs cannot be met
31 by the adult residential care facility;

32 (B) the resident's physician shall document the rationale for transfer
33 or discharge in the resident's clinical record if the transfer or discharge is
34 appropriate because the resident's health has improved sufficiently so that
35 the resident no longer needs the services provided by the adult residential
36 care facility; or

1 (C) a physician shall document the rationale for transfer or discharge
2 in the resident's clinical record if the transfer or discharge is necessary
3 because the health or safety of other individuals in the adult residential
4 care facility is endangered; and

5 (3) provide a written transfer or discharge notice that shall include the
6 following:

7 (A) The reason for the transfer or discharge;

8 (B) the effective date of the transfer or discharge;

9 (C) the contact information for the state long-term care ombudsman;

10 (D) an affirmative statement listing what services are necessary for
11 the resident that the existing negotiated services agreement with the
12 facility does not include;

13 (E) for a resident with an intellectual or developmental disability,
14 dementia or another cognitive-limiting condition, the contact information
15 for the agency responsible for the protection and advocacy of individuals
16 with such conditions; and

17 (F) for a resident with a mental disorder or related disability, the
18 contact information for the agency responsible for protection and advocacy
19 of individuals with a mental disorder or related disability.

20 (c) The administrator or operator, or designee, shall provide the
21 notice of transfer or discharge required by subsection (b) to the resident, or
22 the resident's representative, at least 30 days in advance of the resident's
23 transfer or discharge, unless:

24 (1) The safety of other individuals in the adult residential care facility
25 would be endangered; or

26 (2) the resident's urgent medical needs require an immediate transfer
27 to another healthcare facility.

28 (d) The administrator or operator, or designee, shall provide sufficient
29 preparation and orientation to each resident before a resident's discharge,
30 including development of a discharge plan, with involvement of the
31 resident, the resident's representative and designated family and subject to
32 approval of the resident's physician, if practicable.

33 (e) The administrator or operator, or designee, shall provide the
34 secretary for aging and disability services and the state long-term care
35 ombudsman a copy of the transfer or discharge notice. The secretary and
36 the state long-term care ombudsman shall maintain the copy of the notice
37 for three years.

38 (f) If a resident of an adult residential care facility receives notice of a
39 pending involuntary transfer or discharge in violation of this section, the
40 secretary for aging and disability services shall investigate such violation.
41 The secretary, after providing notice and an opportunity for a hearing in
42 accordance with the Kansas administrative procedure act, may assess a
43 civil penalty in an amount not to exceed \$5,000 against any facility that

1 violates this section.

2 (g) The state long-term care ombudsman shall publish an annual
3 report regarding notices issued and violations of this section.

4 (h) As used in sections 1 through 4, and amendments thereto, "adult
5 residential care facility" means an assisted living facility, a residential
6 healthcare facility, home plus or a boarding care home as such terms are
7 defined in K.S.A. 39-923, and amendments thereto.

8 Sec. 2. (a) The secretary for aging and disability services shall make
9 available to all adult residential care facilities a 30-day involuntary transfer
10 or discharge notice form that shall include, but not be limited to, the
11 information in subsection (c).

12 (b) The administrator or operator of an adult residential care facility,
13 or designee, shall not be required to use the 30-day involuntary transfer or
14 discharge notice form prescribed by the secretary, but any form used by
15 the facility shall include, but not be limited to, the information in
16 subsection (c).

17 (c) A 30-day involuntary transfer or discharge notice shall be written
18 and include, but not be limited to, the same contents for notice as required
19 in section 1, and amendments thereto.

20 Sec. 3. (a) In the case of an emergency transfer or discharge, the
21 administrator or operator of an adult residential care facility, or designee,
22 shall provide a notice of emergency involuntary transfer or discharge to
23 the resident, or the resident's representative, prior to or within 48 hours
24 following the transfer or discharge. A copy of the notice shall be provided
25 to the secretary and the state long-term care ombudsman. The secretary
26 and the state long-term care ombudsman shall maintain the copy of the
27 notice for three years.

28 (b) A notice of emergency involuntary transfer or discharge shall
29 include:

30 (1) The same contents for a transfer or discharge notice as required in
31 section 1, and amendments thereto; and

32 (2) the nature of the emergency that requires the transfer or
33 discharge.

34 (c) The secretary for aging and disability services shall adopt rules
35 and regulations to define an emergency or establish other necessary criteria
36 used by adult residential care facilities when determining whether a
37 resident may be subject to an emergency transfer or discharge.

38 Sec. 4. Nothing in sections 1 through 3, and amendments thereto,
39 shall be construed to limit any other remedies available under law to
40 residents or adult residential care facilities.

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