

HOUSE BILL No. 2784

By Committee on Health and Human Services

Requested by Representative Landwehr

2-8

1 AN ACT concerning adult care homes; relating to continuing care
2 retirement communities; transferring authority for certification of such
3 facilities from the Kansas insurance department to the Kansas
4 department for aging and disability services; lowering the nursing
5 facility provider assessment for such facilities; amending K.S.A. 39-
6 923, 40-2231, 40-2232, 40-2233, 40-2234, 40-2235 and 40-2238 and
7 K.S.A. 2023 Supp. 39-936 and 75-7435 and repealing the existing
8 sections.
9

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

11 Section 1. K.S.A. 39-923 is hereby amended to read as follows: 39-
12 923. (a) As used in this act:

13 (1) "Adult care home" means any nursing facility, nursing facility for
14 mental health, intermediate care facility for people with intellectual
15 disability, assisted living facility, residential healthcare facility, home plus,
16 boarding care home, *continuing care retirement community* and adult day
17 care facility, all of which are classifications of adult care homes and are
18 required to be licensed by the secretary for aging and disability services.

19 (2) "Nursing facility" means any place or facility operating 24 hours a
20 day, seven days a week, caring for six or more individuals not related
21 within the third degree of relationship to the administrator or owner by
22 blood or marriage and who, due to functional impairments, need skilled
23 nursing care to compensate for activities of daily living limitations.

24 (3) "Nursing facility for mental health" means any place or facility
25 operating 24 hours a day, seven days a week, caring for six or more
26 individuals not related within the third degree of relationship to the
27 administrator or owner by blood or marriage and who, due to functional
28 impairments, need skilled nursing care and special mental health services
29 to compensate for activities of daily living limitations.

30 (4) "Intermediate care facility for people with intellectual disability"
31 means any place or facility operating 24 hours a day, seven days a week,
32 caring for four or more individuals not related within the third degree of
33 relationship to the administrator or owner by blood or marriage and who,
34 due to functional impairments caused by intellectual disability or related
35 conditions, need services to compensate for activities of daily living

1 limitations.

2 (5) "Assisted living facility" means any place or facility caring for six
3 or more individuals not related within the third degree of relationship to
4 the administrator, operator or owner by blood or marriage and who, by
5 choice or due to functional impairments, may need personal care and ~~may~~
6 ~~need~~ supervised nursing care to compensate for activities of daily living
7 limitations and in which the place or facility includes apartments for
8 residents and provides or coordinates a range of services including
9 personal care or supervised nursing care available 24 hours a day, seven
10 days a week, for the support of resident independence. The provision of
11 skilled nursing procedures to a resident in an assisted living facility is not
12 prohibited by this act. Generally, the skilled services provided in an
13 assisted living facility shall be provided on an intermittent or limited term
14 basis, or if limited in scope, a regular basis.

15 (6) "Residential healthcare facility" means any place or facility, or a
16 contiguous portion of a place or facility, caring for six or more individuals
17 not related within the third degree of relationship to the administrator,
18 operator or owner by blood or marriage and who, by choice or due to
19 functional impairments, may need personal care and ~~may need~~ supervised
20 nursing care to compensate for activities of daily living limitations and ~~in~~
21 ~~which the~~ *where such* place or facility includes individual living units and
22 provides or coordinates personal care or supervised nursing care available
23 ~~on a 24-hour~~ *24 hours a day, seven days a week basis* ~~seven days a week~~
24 for the support of resident independence. The provision of skilled nursing
25 procedures to a resident in a residential healthcare facility is not prohibited
26 by this act. Generally, the skilled services provided in a residential
27 healthcare facility shall be provided on an intermittent or limited term
28 basis, or if limited in scope, a regular basis.

29 (7) "Home plus" means any residence or facility caring for not more
30 than 12 individuals not related within the third degree of relationship to the
31 operator or owner by blood or marriage unless the resident in need of care
32 is approved for placement by the secretary for children and families, and
33 who, due to functional impairment, needs personal care and may need
34 supervised nursing care to compensate for activities of daily living
35 limitations. The level of care provided to residents shall be determined by
36 preparation of the staff and rules and regulations developed by the Kansas
37 department for aging and disability services. An adult care home may
38 convert a portion of one wing of the facility to a not less than five-bed ~~and~~
39 ~~but~~ not more than 12-bed home plus facility ~~provided that if~~ the home plus
40 facility remains separate from the adult care home, and each facility ~~must~~
41 ~~remain~~ *remains* contiguous. Any home plus that provides care for more
42 than eight individuals after the effective date of this act shall adjust
43 staffing personnel and resources as necessary to meet residents' needs in

1 order to maintain the current level of nursing care standards. Personnel of
 2 any home plus who provide services for residents with dementia shall be
 3 required to take annual dementia care training.

4 (8) "Boarding care home" means any place or facility operating 24
 5 hours a day, seven days a week, caring for not more than 10 individuals
 6 not related within the third degree of relationship to the operator or owner
 7 by blood or marriage and who, due to functional impairment, need
 8 supervision of activities of daily living but who are ambulatory and
 9 essentially capable of managing their own care and affairs.

10 (9) *"Continuing care retirement community" means any place or*
 11 *facility that combines a range of housing and services to encompass the*
 12 *continuum of aging care needs provided at an independent living facility,*
 13 *an assisted living facility, a residential healthcare facility and a skilled*
 14 *nursing care facility within a single place or facility to avoid the need for*
 15 *residents to relocate to a separate place or facility. The provision of*
 16 *community care includes the multiple levels of care provided within a*
 17 *continuing care retirement community.*

18 (10) "Adult day care" means any place or facility operating less than
 19 24 hours a day caring for individuals not related within the third degree of
 20 relationship to the operator or owner by blood or marriage and who, due to
 21 functional impairment, need supervision of or assistance with activities of
 22 daily living.

23 ~~(10)(11)~~ "Place or facility" means a building or any one or more
 24 complete floors of a building, or any one or more complete wings of a
 25 building, or any one or more complete wings and one or more complete
 26 floors of a building, ~~and the term.~~ "Place or facility" ~~may include~~ multiple
 27 buildings.

28 ~~(11)(12)~~ "Skilled nursing care" means services performed by or under
 29 the immediate supervision of a registered professional nurse and additional
 30 licensed nursing personnel. Skilled nursing includes administration of
 31 medications and treatments as prescribed by a licensed physician or
 32 dentist; and other nursing functions that require substantial nursing
 33 judgment and skill based on the knowledge and application of scientific
 34 principles.

35 ~~(12)(13)~~ "Supervised nursing care" means services provided by or
 36 under the guidance of a licensed nurse with initial direction for nursing
 37 procedures and periodic inspection of the actual act of accomplishing the
 38 procedures; administration of medications and treatments as prescribed by
 39 a licensed physician or dentist and assistance of residents with the
 40 performance of activities of daily living.

41 ~~(13)(14)~~ "Resident" means all individuals kept, cared for, treated,
 42 boarded or otherwise accommodated in any adult care home.

43 ~~(14)(15)~~ "Person" means any individual, firm, partnership,

1 corporation, company, association or joint-stock association, and the legal
2 successor thereof.

3 ~~(15)~~(16) "Operate an adult care home" means to own, lease, sublease,
4 establish, maintain, conduct the affairs of or manage an adult care home,
5 except that for the purposes of this definition ~~the word~~ words "own" and
6 ~~the word~~ "lease" ~~shall do~~ not include hospital districts, cities and counties
7 that hold title to an adult care home purchased or constructed through the
8 sale of bonds.

9 ~~(16)~~(17) "Licensing agency" means the secretary for aging and
10 disability services.

11 ~~(17)~~(18) "Skilled nursing home" means a nursing facility.

12 ~~(18)~~(19) "Intermediate nursing care home" means a nursing facility.

13 ~~(19)~~(20) "Apartment" means a private unit that includes, but is not
14 limited to, a toilet room with bathing facilities, a kitchen, sleeping, living
15 and storage area and a lockable door.

16 ~~(20)~~(21) "Individual living unit" means a private unit that includes,
17 but is not limited to, a toilet room with bathing facilities, sleeping, living
18 and storage area and a lockable door.

19 ~~(21)~~(22) "Operator" means an individual registered pursuant to the
20 operator registration act, K.S.A. 39-973 et seq., and amendments thereto,
21 who may be appointed by a licensee to have the authority and
22 responsibility to oversee an assisted living facility or residential healthcare
23 facility with fewer than 61 residents, a home plus or adult day care facility.

24 ~~(22)~~(23) "Activities of daily living" means those personal, functional
25 activities required by an individual for continued well-being, including,
26 but not limited to, eating, nutrition, dressing, personal hygiene, mobility
27 and toileting.

28 ~~(23)~~(24) "Personal care" means care provided by staff to assist an
29 individual with; or to perform activities of daily living.

30 ~~(24)~~(25) "Functional impairment" means an individual has
31 experienced a decline in physical, mental and psychosocial well-being
32 and, as a result, is unable to compensate for the effects of the decline.

33 ~~(25)~~(26) "Kitchen" means a food preparation area that includes a
34 sink, refrigerator and a microwave oven or stove.

35 ~~(26)~~(27) ~~The term~~ "Intermediate personal care home" for purposes of
36 those individuals applying for or receiving veterans' benefits means
37 residential healthcare facility.

38 ~~(27)~~(28) "Paid nutrition assistant" means an individual who is paid to
39 feed residents of an adult care home, or who is used under an arrangement
40 with another agency or organization, who is trained by a person meeting
41 nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152,
42 42 C.F.R. § 483.160 and 42 C.F.R. § 483.35(h), and who provides such
43 assistance under the supervision of a registered professional or licensed

1 practical nurse.

2 ~~(28)~~(29) "Medicaid program" means the Kansas program of medical
3 assistance for which federal or state moneys, or any combination thereof,
4 are expended, ~~or~~ any successor federal or state, or both, health insurance
5 program or waiver granted thereunder.

6 ~~(29)~~(30) "Licensee" means any person or persons acting jointly or
7 severally who are licensed by the secretary for aging and disability
8 services pursuant to the adult care home licensure act, K.S.A. 39-923 et
9 seq., and amendments thereto.

10 ~~(30)~~(31) "Insolvent" means that the adult care home; or any
11 individual or entity that operates an adult care home or appears on the
12 adult care home license; *and* has stopped paying debts in the ordinary
13 course of business or is unable to pay debts as they come due in the
14 ordinary course of business.

15 (b) The term "adult care home" does not include institutions operated
16 by federal or state governments, except institutions operated by the
17 director of the Kansas commission on veterans affairs office, hospitals or
18 institutions for the treatment and care of psychiatric patients, child care
19 facilities, maternity centers, hotels, offices of physicians or hospices that
20 are certified to participate in the medicare program under 42 C.F.R. §
21 418.1 et seq., and ~~that~~ provide services only to hospice patients, or centers
22 approved by the centers for medicare and medicaid services as a program
23 for all-inclusive care for the elderly (PACE) under 42 C.F.R. § 460 et seq.,
24 that provides services only to PACE participants.

25 (c) Nursing facilities in existence on the effective date of this act
26 changing licensure categories to become residential healthcare facilities
27 shall be required to provide private bathing facilities in a minimum of 20%
28 of the individual living units.

29 (d) Facilities licensed under the adult care home licensure act on the
30 day immediately preceding the effective date of this act shall continue to
31 be licensed facilities until the annual renewal date of such license and may
32 renew such license in the appropriate licensure category under the adult
33 care home licensure act subject to the payment of fees and other conditions
34 and limitations of such act.

35 (e) Nursing facilities with ~~less~~ *fewer* than 60 beds converting a
36 portion of the facility to residential healthcare shall have the option of
37 licensing for residential healthcare for ~~less~~ *fewer* than six individuals but
38 not less than 10% of the total bed count within a contiguous portion of the
39 facility.

40 (f) The licensing agency may by rule and regulation change the name
41 of the different classes of homes when necessary to avoid confusion in
42 terminology, and ~~the~~ *such* agency may further amend, substitute, change
43 and in a manner consistent with the definitions established in this section,

1 further define and identify the specific acts and services that shall fall
2 within the respective categories of facilities so long as the above categories
3 for adult care homes are used as guidelines to define and identify the
4 specific acts.

5 Sec. 2. K.S.A. 2023 Supp. 39-936 is hereby amended to read as
6 follows: 39-936. (a) The presence of each resident in an adult care home
7 shall be covered by a statement provided at the time of admission, or prior
8 thereto, setting forth the general responsibilities and services and daily or
9 monthly charges for such responsibilities and services. Each resident shall
10 be provided with a copy of such statement, with a copy going to any
11 individual responsible for payment of such services and the adult care
12 home shall keep a copy of such statement in the resident's file. No such
13 statement shall be construed to relieve any adult care home of any
14 requirement or obligation imposed upon it by law or by any requirement,
15 standard or rule and regulation adopted pursuant thereto.

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

22 (c) (1) The licensing agency shall require unlicensed employees
23 working in an adult care home, except an adult care home licensed for the
24 provision of services to people with intellectual disability that has been
25 granted an exception by the secretary for aging and disability services
26 upon a finding by the licensing agency that an approved training program
27 for certified nurse aides is in place for such adult care home, who provide
28 direct, individual care to residents and who do not administer medications
29 to residents and who have not completed a course of education and
30 training relating to resident care and treatment approved by the secretary
31 for aging and disability services or are not participating in such a course to
32 complete successfully 40 hours of training in basic resident care skills.
33 Any unlicensed employee who has not completed at least 40 hours of the
34 certified nurse aide training approved by the secretary for aging and
35 disability services or who is not making progress to complete the course of
36 education and training required by the secretary for aging and disability
37 services under paragraph (2) within four months following completion of
38 such 40 hours shall not provide direct, individual care to residents.

39 (A) The 40 hours of training and remaining hours in the certified
40 nurse aide training shall be performed under the general supervision of a
41 course supervisor. The course supervisor shall be defined in rules and
42 regulations and approved by the secretary for aging and disability services.
43 As used in this subparagraph, "supervision" means the same as defined in

1 K.S.A. 65-1165, and amendments thereto. The 40 hours of training may be
2 prepared and administered by an adult care home, hospital, as defined in
3 K.S.A. 65-425, and amendments thereto, hospice or program for all-
4 inclusive care for the elderly or by any other qualified course sponsor and
5 may be conducted on the premises of the adult care home, hospital,
6 hospice or program for all-inclusive care for the elderly. The 40 hours of
7 training required in this section shall be a part of an approved certified
8 nurse aide training course required by the secretary for aging and disability
9 services under subsection (c)(2).

10 (B) Each instructor under the supervision of a course supervisor of
11 the certified nurse aide training course shall be licensed to practice in
12 Kansas and in good standing. As used in this subparagraph, "in good
13 standing" includes the possession of a license, certificate or registration
14 that is subject to probation or non-disciplinary conditions, limitations or
15 restrictions, but does not include a license, certificate or registration that is
16 revoked, canceled or surrendered or subject to pending license-related
17 disciplinary action. If the records of the Kansas department for aging and
18 disability services reflect that an individual has a prohibiting offense, such
19 license, certificate or registration shall not be considered "in good
20 standing." Any license, certificate or registration that is subject to
21 disciplinary conditions, limitations or restrictions shall remain subject to
22 such conditions, limitations or restrictions.

23 (C) Training for paid nutrition assistants shall consist of at least eight
24 hours of instruction, at a minimum, that meets the requirements of 42
25 C.F.R. § 483.160.

26 (2) The licensing agency may require unlicensed employees working
27 in an adult care home, except an adult care home licensed for the provision
28 of services to people with intellectual disability that has been granted an
29 exception by the secretary for aging and disability services upon a finding
30 by the licensing agency that an appropriate training program for certified
31 nurse aides is in place for such adult care home, who provide direct,
32 individual care to residents and who do not administer medications to
33 residents and who do not meet the definition of paid nutrition assistant
34 ~~under as defined in K.S.A. 39-923(a)(27)~~, and amendments thereto, after
35 90 days of employment to successfully complete an approved course of
36 instruction and an examination relating to resident care and treatment as a
37 condition to continued employment by an adult care home.

38 (A) A course of instruction may be prepared and administered by any
39 adult care home, hospital, as defined in K.S.A. 65-425, and amendments
40 thereto, hospice or program for all-inclusive care for the elderly or by any
41 other qualified person. A course of instruction prepared and administered
42 by an adult care home, hospital, hospice or program for all-inclusive care
43 for the elderly may be conducted on the premises of the adult care home,

1 hospital, hospice or program for all-inclusive care for the elderly that
2 prepared and that will administer the course of instruction.

3 (B) As evidence of successful completion of the training course, such
4 unlicensed employees shall demonstrate competency in a list of skills that
5 are identified and prescribed by the secretary for aging and disability
6 services. The skills demonstration shall be evaluated by a registered
7 professional nurse licensed, including multistate licensure privilege, and in
8 good standing in this state. Such registered professional nurse shall have at
9 least one year of licensed nurse experience providing care for the elderly
10 or chronically ill in a healthcare setting approved by the secretary for
11 aging and disability services. As used in this subparagraph, "in good
12 standing" includes the possession of a license, certificate or registration
13 that is subject to probation or non-disciplinary conditions, limitations or
14 restrictions, but does not include a license, certificate or registration that is
15 revoked, canceled or surrendered or subject to pending license-related
16 disciplinary action. If the records of the Kansas department for aging and
17 disability services reflect that an individual has a prohibiting offense, such
18 license, certificate or registration shall not be considered "in good
19 standing." Any license, certificate or registration that is subject to
20 disciplinary conditions, limitations or restrictions shall remain subject to
21 such conditions, limitations or restrictions.

22 (3) The licensing agency shall not require unlicensed employees
23 working in an adult care home who provide direct, individual care to
24 residents and who do not administer medications to residents to enroll in
25 any particular approved course of instruction as a condition to the taking
26 of an examination, but the secretary for aging and disability services shall
27 prepare guidelines for the preparation and administration of courses of
28 instruction and shall approve or disapprove courses of instruction.

29 (4) Unlicensed employees working in adult care homes who provide
30 direct, individual care to residents and who do not administer medications
31 to residents may enroll in any approved course of instruction and upon
32 completion of the approved course of instruction shall be eligible to take
33 an examination. The examination shall be:

34 (A) Prescribed by the secretary for aging and disability services;

35 (B) reasonably related to the duties performed by unlicensed
36 employees working in adult care homes who provide direct, individual
37 care to residents and who do not administer medications to residents; and

38 (C) the same examination given by the secretary for aging and
39 disability services to all unlicensed employees working in adult care
40 homes who provide direct, individual care to residents and who do not
41 administer medications.

42 (5) The secretary for aging and disability services shall fix, charge
43 and collect a fee to cover all or any part of the costs of the licensing

1 agency under this subsection. The fee shall be fixed by rules and
2 regulations of the secretary for aging and disability services. The fee shall
3 be remitted to the state treasurer in accordance with the provisions of
4 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
5 remittance, the state treasurer shall deposit the entire amount in the state
6 treasury to the credit of the health occupations credentialing fee fund
7 created by K.S.A. 39-979, and amendments thereto.

8 (6) The secretary for aging and disability services shall establish a
9 state registry containing information about certified nurse aides working in
10 adult care homes who provide direct, individual care to residents and who
11 do not administer medications in compliance with the requirements
12 pursuant to PL 100-203, subtitle C, as amended November 5, 1990.

13 (7) No adult care home shall use an individual working as a certified
14 nurse aide in an adult care home who provides direct, individual care to
15 residents and who does not administer medications unless the facility has
16 inquired of the state registry as to information contained in the registry
17 concerning the individual.

18 (8) (A) The adult care home shall require any certified nurse aide
19 working in an adult care home to complete an approved refresher course if
20 such employee:

21 (i) Provides direct, individual care to residents;

22 (ii) does not administer medications; and

23 (iii) since passing the examination required under paragraph (2), has
24 had a continuous period of 24 consecutive months when the certified nurse
25 aide has not provided direct, individual care to residents.

26 (B) The secretary for aging and disability services shall prepare
27 guidelines for the preparation and administration of refresher courses and
28 shall approve or disapprove courses.

29 (d) Any person who has been employed as a certified nurse aide
30 working in an adult care home in another state may be so employed in this
31 state without an examination if the secretary for aging and disability
32 services determines that such other state requires training or examination,
33 or both, for such employees at least equal to that required by this state.

34 (e) All medical care and treatment shall be given under the direction
35 of a person licensed by the state board of healing arts to practice medicine
36 and surgery and shall be provided promptly as needed.

37 (f) No adult care home shall require as a condition of admission to or
38 as a condition to continued residence in the adult care home that a person
39 change from a supplier of medication needs of their choice to a supplier of
40 medication selected by the adult care home. Nothing in this subsection
41 shall be construed to abrogate or affect any agreements entered into prior
42 to the effective date of this act between the adult care home and any person
43 seeking admission to or resident of the adult care home.

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

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

10 Sec. 3. K.S.A. 40-2231 is hereby amended to read as follows: 40-
 11 2231. As used in this act:

12 (a) *"Continuing care means the multiple levels of care provided*
 13 *within a continuing care retirement community, as defined in K.S.A. 39-*
 14 *923, and amendments thereto.*

15 (b) "Continuing care contract" means an agreement pursuant to which
 16 a provider undertakes to furnish to a person, not related by consanguinity
 17 or affinity to the provider, shelter and medical or nursing services or other
 18 health-related benefits ~~which~~ *that* require a present or deferred transfer of
 19 assets or an entrance fee ~~in the amount of \$5,000 or equivalent value or~~
 20 ~~such greater amount as set by the commissioner in rules and regulations in~~
 21 ~~addition to or in lieu of periodic charges. Continuing care contract shall~~
 22 ~~also mean an agreement of any other provider who voluntarily applies for~~
 23 ~~a certificate pursuant to K.S.A. 40-2235.~~

24 (b)(c) "Entrance fee" means the total of any initial or deferred transfer
 25 to, or for the benefit of, a provider of a sum of money or other property
 26 made or promised to be made as full or partial consideration for
 27 acceptance of a person as a resident pursuant to a continuing care contract.

28 (e)(d) "Home" means the facility or facilities occupied, or planned to
 29 be occupied, by five or more residents where the provider undertakes
 30 pursuant to the continuing care contract to provide continuing care to such
 31 residents.

32 (d)(e) "Provider" or "continuing care provider" means the person,
 33 corporation, partnership, association or other legal entity ~~which~~ *that* agrees
 34 to provide continuing care to residents in a home.

35 (e)(f) "Resident" means an individual or individuals who have entered
 36 into an agreement with a provider for continuing care in a home.

37 (f)(g) ~~"Commissioner~~ *Secretary"* ~~means commissioner of insurance of~~
 38 ~~the state of Kansas~~ *the secretary for aging and disability services.*

39 (h) *"Act" means the provisions of K.S.A. 40-2231 through 40-2238*
 40 *and amendments thereto.*

41 Sec. 4. K.S.A. 40-2232 is hereby amended to read as follows: 40-
 42 2232. A provider shall be required to complete an annual disclosure
 43 statement prescribed by the ~~commissioner~~ *secretary* and shall be required

1 to deliver the disclosure statement to individuals who are prospective
2 residents, or current residents who request such disclosure statement. The
3 text of the disclosure statement shall contain the following information:

4 (a) The name and business address of the provider and a statement of
5 whether the provider is an individual, partnership, corporation or any other
6 legal entity.

7 (b) The names of the individual or individuals who constitute the
8 provider or, if the provider is a partnership, corporation or other legal
9 entity, whether for profit or not for profit, the names of the officers,
10 directors, trustees or managing or general partners of the provider. If the
11 provider is a corporation, the name of any individual who owns 10% or
12 more of the stock of such corporation shall also be disclosed.

13 (c) With respect to a provider ~~which~~ *that* is either not incorporated or
14 not established and operated on a not-for-profit basis, the names and
15 business addresses of any individual having any ownership or any
16 beneficial interest in the provider and a description of such individual's
17 interest in or occupation with the provider.

18 (d) A statement as to whether or not the provider is, or is affiliated
19 with, a religious, charitable or other nonprofit organization and the extent
20 of the affiliation, if any; the extent to which any affiliate organization will
21 be responsible for the financial and contractual obligations of the
22 provider; the provision of the United States internal revenue code, if any,
23 under which the provider or any of the provider's affiliates is or are exempt
24 from the payment of federal income taxes; and; a statement of whether the
25 home is exempt from local property taxation.

26 (e) A statement that the provider is required to have an annual
27 certified audit by a certified public accountant and that a copy of such
28 audit shall be made available upon request.

29 (f) If the operation of the home has not yet commenced, and with
30 receipt of contract considerations as defined in K.S.A. 40-2231 ~~(a) and (b)~~
31 *and (c), and amendments thereto*, the provider shall provide a statement of
32 the anticipated source and application of the funds used or to be used in
33 the purchase or construction of the facility, including but not limited to:

34 (1) An estimate of such costs as financing expense, legal expense,
35 land costs, marketing costs and other similar costs ~~which~~ *that* the provider
36 expects to incur or become obligated for prior to the commencement of
37 operations;

38 (2) a description of any mortgage loan or any other financing
39 intended to be used for the financing of the facility, including the
40 anticipated terms and costs of such financing;

41 (3) an estimate of the total entrance fee to be received from or on
42 behalf of residents at or prior to commencement of operation; and

43 (4) an estimate of the funds, if any, ~~which~~ *that* are anticipated to be

1 necessary to fund start-up losses and provide reserve funds to assure full
2 performance of the obligations of the provider under continuing care
3 contracts.

4 (g) A statement as to whether the manager or any official or director
5 of the provider, has been convicted of a crime or been a party of any civil
6 action claiming fraud, embezzlement, fraudulent conversion or
7 misappropriation of property ~~which~~ *that* resulted in a judgment against
8 such person and whether any such person has had any state or federal
9 license or permits related to care and housing suspended or revoked.

10 (h) A statement of the years of experience of the provider and
11 manager in the operation of homes providing continuing care.

12 (i) A statement of the fiscal year of the provider.

13 Sec. 5. K.S.A. 40-2233 is hereby amended to read as follows: 40-
14 2233. *On or before April 1 of each year, a provider shall file with the*
15 ~~commissioner secretary within four months of completion of such~~
16 ~~provider's fiscal year~~ the annual disclosure statement referred to in K.S.A.
17 40-2232, *and amendments thereto*, the continuing care contract referred to
18 in K.S.A. 40-2234, *and amendments thereto*, and an annual audit certified
19 by a certified public accountant.

20 Sec. 6. K.S.A. 40-2234 is hereby amended to read as follows: 40-
21 2234. The provider shall provide the ~~commissioner~~ *secretary* a copy of any
22 continuing care contract form entered into on or after the effective date of
23 this act or entered into between the provider and any resident, which shall
24 include or have attached thereto:

25 (a) A description of all fees and or charges required of residents, a
26 description of all services to be provided or committed to providing in the
27 future *in compliance with the definitions in K.S.A. 39-923, and*
28 *amendments thereto*, and a description of any services for which an extra
29 charge is made over and above entrance fees and periodic charges that are
30 provided for in the contract;

31 (b) a listing of the terms and conditions under which the agreement
32 may be cancelled by either party to the agreement or by which any or all of
33 the entrance fee or transfer of assets would be refunded, less the value of
34 any services received; and

35 (c) a statement describing health and financial conditions required to
36 continue as a resident, including any changes in either health or financial
37 conditions of the resident.

38 Sec. 7. K.S.A. 40-2235 is hereby amended to read as follows: 40-
39 2235. No provider shall act as or hold themselves out to be a continuing
40 care provider, as defined in this act, in this state, unless the provider shall
41 hold a certificate of registration as a continuing care provider issued by the
42 ~~commissioner of insurance~~ *secretary*. Application for such certificate shall
43 be made to the ~~commissioner~~ *secretary* on a form prescribed by such

1 ~~commissioner~~ *secretary* and shall be accompanied by a filing fee of \$50.
2 Such certificate may be continued for successive annual periods by
3 notifying the ~~commissioner of insurance~~ *secretary* of such intent and
4 payment of a \$25 continuation fee. Such certificate shall be issued *or*
5 *renewed* to a continuing care provider ~~or continued by the commissioner~~
6 *secretary if unless the commissioner secretary after due notice and hearing*
7 ~~shall have determined~~ *determines* that the continuing care provider is ~~not~~
8 in compliance with this act *on or before April 1 of the current calendar*
9 *year.*

10 Sec. 8. K.S.A. 40-2238 is hereby amended to read as follows: 40-
11 2238. The ~~commissioner~~ *secretary* shall ~~promulgate~~ *adopt any* rules and
12 regulations necessary to carry out the provisions of this act.

13 Sec. 9. K.S.A. 2023 Supp. 75-7435 is hereby amended to read as
14 follows: 75-7435. (a) As used in this section, unless the context requires
15 otherwise:

16 (1) ~~Such words and phrases mean the same as defined by provided by~~
17 K.S.A. 39-923, and amendments thereto, *mean the same as defined*
18 *therein.*

19 (2) *"Agent" means the Kansas department for aging and disability*
20 *services.*

21 (3) *"Continuing care retirement community" means a place or facility*
22 *holding a certificate of registration issued by the agent pursuant to K.S.A.*
23 *40-2235, and amendments thereto.*

24 (4) *"High medicaid volume skilled nursing care facility" means any*
25 *facility that provided more than 25,000 days of nursing facility care to*
26 *medicaid recipients during the most recent calendar year cost-reporting*
27 *period.*

28 (5) *"Licensed bed" means those beds within a skilled nursing care*
29 *facility that such facility is licensed to operate.*

30 (6) *"Nursing facility provider assessment program" means the*
31 *determination, imposition, assessment, collection and management of an*
32 *annual assessment imposed on each licensed bed in a skilled nursing care*
33 *as facility as required by this section.*

34 (7) *"Skilled nursing care facility" means a licensed nursing facility,*
35 *nursing facility for mental health as defined in K.S.A. 39-923, and*
36 *amendments thereto, or a hospital long-term care unit licensed by the*
37 *department of health and environment, providing skilled nursing care, but*
38 ~~shall~~ *does not include the Kansas soldiers' home or the Kansas veterans'*
39 *home.*

40 (8) *"Skilled nursing care facility that is part of a continuing care*
41 *retirement community" means a provider who is certified as such by the*
42 *survey, certification and credentialing commission of the Kansas*
43 *department for aging and disability services before the start of the state's*

1 *fiscal year when the assessment process is occurring.*

2 (9) "Small skilled nursing care facility" means any facility with at
3 least 40 but fewer than 46 licensed nursing facility beds.

4 ~~(3) "Licensed bed" means those beds within a skilled nursing care~~
5 ~~facility that the facility is licensed to operate.~~

6 ~~(4) "Agent" means the Kansas department for aging and disability~~
7 ~~services.~~ (5) "Continuing care retirement facility" means a facility
8 holding a certificate of registration issued by the commissioner of
9 insurance pursuant to K.S.A. 40-2235, and amendments thereto.

10 (b) (1) Except as otherwise provided in this section, there is hereby
11 imposed and the ~~secretary of health and environment~~ *agent* shall assess an
12 annual assessment per licensed bed, hereinafter called a ~~quality care~~
13 ~~nursing facility provider~~ assessment, on each skilled nursing care facility.
14 The assessment ~~rate~~ on all facilities ~~in the aggregate that provide skilled~~
15 ~~nursing care~~ shall be ~~an amount fixed by rules and regulations of the~~
16 ~~secretary of health and environment, shall not exceed \$4,908 at \$4,000~~
17 ~~annually per licensed bed;. Such amount shall be imposed as an amount~~
18 ~~per licensed bed and shall be imposed uniformly on all skilled nursing care~~
19 ~~facilities. except that~~ The assessment rate *shall be reduced to \$2,000* for
20 skilled nursing care facilities that are part of a continuing care retirement
21 ~~facility community~~, small skilled nursing care facilities and high medicaid
22 volume skilled nursing care facilities. ~~shall not exceed $\frac{1}{6}$ of the actual~~
23 ~~amount assessed all other skilled nursing care facilities. No Rules and~~
24 ~~regulations of adopted by the agent~~ ~~secretary of health and environment~~
25 ~~shall not grant any exception to or exemption from the quality care~~
26 ~~nursing facility provider~~ assessment. The assessment shall be paid
27 quarterly, with ~~one fourth~~ $\frac{1}{4}$ of the annual amount due by the 30th day after
28 the end of the month of each calendar quarter. ~~The secretary of health and~~
29 ~~environment is authorized to~~ *agent may* establish delayed payment
30 schedules for skilled nursing care facilities that are unable to make
31 quarterly payments when due under this section due to financial
32 difficulties, as determined by the ~~secretary of health and environment~~
33 *agent*. *The agent may allow a skilled nursing facility an extension to*
34 *complete payment of the assessment, but such extension shall not exceed*
35 *90 days.* ~~As used in this paragraph, the terms "small skilled nursing care~~
36 ~~facilities" and "high medicaid volume skilled nursing care facilities" shall~~
37 ~~be defined by the secretary of health and environment by rules and~~
38 ~~regulations, except that the definition of "small skilled nursing care~~
39 ~~facility" shall not be fewer than 40 beds.~~

40 (2) Beds licensed after July 1 each year shall pay a prorated amount
41 of the applicable annual assessment so that the assessment applies only ~~for~~
42 *to* the days such new beds are licensed. The proration shall be calculated
43 by multiplying the applicable assessment by the percentage of days the

1 beds are licensed during the year. Any change that reduces the number of
2 licensed beds in a facility shall not result in a refund being issued to the
3 skilled nursing care facility.

4 (3) If an entity conducts, operates or maintains more than one
5 licensed skilled nursing care facility, the entity shall pay the nursing
6 facility assessment for each facility separately. No skilled nursing care
7 facility shall create a separate line-item charge for the purpose of passing
8 through the ~~quality care nursing facility provider~~ assessment to residents.
9 No skilled nursing care facility shall be guaranteed, expressly or
10 otherwise, that any additional moneys paid to the facility under this section
11 will equal or exceed the amount of ~~its quality care such facility's nursing~~
12 ~~facility provider~~ assessment.

13 (4) The payment of the ~~quality care nursing facility provider~~
14 assessment to the ~~secretary of health and environment~~ agent shall be an
15 allowable cost for medicaid reimbursement purposes. A rate adjustment
16 pursuant to subsection (d)(5) shall be made effective on the date of
17 imposition of the assessment, to reimburse the portion of this cost imposed
18 on medicaid days.

19 (5) The ~~secretary of health and environment~~ agent shall seek a waiver
20 from the United States department of health and human services to allow
21 the state to impose varying levels of assessments on skilled nursing care
22 facilities based on specified criteria. It is the intent of the legislature that
23 the waiver sought by the ~~secretary of health and environment~~ agent be
24 structured to minimize the negative fiscal impact on certain classes of
25 skilled nursing care facilities.

26 (c) Each skilled nursing care facility shall prepare and submit to the
27 ~~secretary of health and environment~~ agent any additional information
28 required and requested by the ~~secretary of health and environment~~ agent to
29 implement or administer the provisions of this section. Each skilled
30 nursing care facility shall prepare and submit quarterly to the secretary for
31 aging and disability services the rate the facility charges to private pay
32 residents, and the secretary shall cause this information to be posted on the
33 web site of the department for aging and disability services.

34 (d) (1) There is hereby created in the state treasury the ~~quality care~~
35 ~~nursing facility provider~~ fund to be administered by the ~~secretary of health~~
36 ~~and environment~~ for aging and disability services. All moneys received for
37 the assessments imposed pursuant to subsection (b), including any penalty
38 assessments imposed thereon pursuant to subsection (e), shall be remitted
39 to the state treasurer in accordance with K.S.A. 75-4215, and amendments
40 thereto. Upon receipt of each such remittance, the state treasurer shall
41 deposit the entire amount in the state treasury to the credit of the ~~quality~~
42 ~~care nursing facility provider~~ fund. All expenditures from the ~~quality care~~
43 ~~nursing facility provider~~ fund shall be made in accordance with

1 appropriation acts upon warrants of the director of accounts and reports
2 issued pursuant to vouchers approved by the secretary ~~of health and~~
3 ~~environment for health and environment~~ or the secretary's agent.

4 (2) All moneys in the ~~quality-care nursing facility provider~~ fund shall
5 be used to finance initiatives to maintain or improve the quantity and
6 quality of skilled nursing care in skilled nursing care facilities in Kansas.
7 No moneys credited to the ~~quality-care nursing facility provider~~ fund shall
8 be transferred to or otherwise revert to the state general fund at any time.
9 Notwithstanding the provisions of any other law to the contrary, if any
10 moneys credited to the ~~quality-care nursing facility provider~~ fund are
11 transferred or otherwise revert to the state general fund, 30 days following
12 the transfer or reversion, the ~~quality-care nursing facility provider~~
13 assessment shall terminate, and the secretary ~~of health and environment~~
14 ~~for aging and disability services~~ shall discontinue the imposition,
15 assessment and collection of the assessment. Upon termination of the
16 assessment, all collected assessment revenues, including the moneys
17 inappropriately transferred or reverting to the state general fund, less any
18 amounts expended by the secretary ~~of health and environment for aging~~
19 ~~and disability services~~, shall be returned on a pro rata basis to skilled
20 nursing care facilities that paid the assessment.

21 (3) Any moneys received by the state of Kansas from the federal
22 government as a result of federal financial participation in the state
23 medicaid program that are derived from the ~~quality-care nursing facility~~
24 ~~provider~~ assessment shall be deposited in the ~~quality-care nursing facility~~
25 ~~provider~~ fund and used to finance actions to maintain or increase
26 healthcare in skilled nursing care facilities.

27 (4) Moneys in the fund shall be used exclusively for the following
28 purposes:

29 (A) To pay administrative expenses incurred by the secretary of
30 health and environment or the agent in performing the activities authorized
31 by this section, except that such expenses shall not exceed a total of 1% of
32 the aggregate assessment funds collected pursuant to subsection (b) for the
33 prior fiscal year;

34 (B) to increase nursing facility payments to fund covered services to
35 medicaid beneficiaries within medicare upper payment limits, as may be
36 negotiated;

37 (C) to reimburse the medicaid share of the ~~quality-care nursing~~
38 ~~facility provider~~ assessment as a pass-through medicaid allowable cost;

39 (D) to restore the medicaid rate reductions implemented on January 1,
40 2010;

41 (E) to restore funding for fiscal year 2010, including rebasing and
42 inflation to be applied to rates in fiscal year 2011; and

43 (F) the remaining amount, if any, shall be expended first to increase

1 the direct health care costs center limitation up to 150% of the case mix
2 adjusted median, and then, if there are remaining amounts, for other
3 ~~quality-care nursing facility provider~~ enhancement of skilled nursing care
4 facilities as approved by the ~~quality-care nursing facility provider~~
5 improvement panel but shall not be used directly or indirectly to replace
6 existing state expenditures for payments to skilled nursing care facilities
7 for providing services pursuant to the state medicaid program.

8 (5) Any moneys received by a skilled nursing care facility from the
9 ~~quality-care nursing facility provider~~ fund shall not be expended by any
10 skilled nursing care facility to provide for bonuses or profit-sharing for any
11 officer, employee or parent corporation but may be used to pay to
12 employees who are providing direct care to a resident of such facility.

13 (6) Adjustment payments may be paid quarterly or within the daily
14 medicaid rate to reimburse covered medicaid expenditures in the aggregate
15 within the upper payment limits.

16 (7) On or before the 10th day of each month, the director of accounts
17 and reports shall transfer from the state general fund to the ~~quality-care~~
18 ~~nursing facility provider~~ fund interest earnings based on:

19 (A) The average daily balance of moneys in the ~~quality-care nursing~~
20 ~~facility provider~~ fund for the preceding month; and

21 (B) the net earnings rate of the pooled money investment portfolio for
22 the preceding month.

23 (e) If a skilled nursing care facility fails to pay the full amount of the
24 ~~quality-care nursing facility provider~~ assessment imposed pursuant to
25 subsection (b), when due and payable, including any extensions of time
26 granted under that subsection, the secretary of health and environment
27 shall assess a penalty in the amount of the lesser of \$500 per day or 2% of
28 the ~~quality-care nursing facility provider~~ assessment owed for each day the
29 assessment is delinquent. The secretary of health and environment is
30 authorized to establish delayed payment schedules for skilled nursing care
31 facilities that are unable to make installment payments when due under
32 this section because of financial difficulties, as determined by the secretary
33 of health and environment.

34 (f) (1) The secretary of health and environment shall assess and
35 collect ~~quality-care nursing facility provider~~ assessments imposed pursuant
36 to subsection (b), including any penalty assessments imposed thereon
37 pursuant to subsection (e), from skilled nursing care facilities on and after
38 July 1, 2010, except that no assessments or penalties shall be assessed
39 under subsections (a) through (h) until:

40 (A) An amendment to the state plan for medicaid that increases the
41 rates of payments made to skilled nursing care facilities for providing
42 services pursuant to the federal medicaid program and ~~that~~ is proposed for
43 approval for purposes of subsections (a) through (h) is approved by the

1 federal government, in which case the initial assessment is due not earlier
2 than 60 days after state plan approval; and

3 (B) the skilled nursing care facilities have been compensated
4 retroactively within 60 days after state plan approval at the increased rate
5 for services provided pursuant to the federal medicaid program for the
6 period commencing on and after July 1, 2010.

7 (2) The secretary of health and environment shall implement and
8 administer the provisions of subsections (a) through (h) in a manner
9 consistent with applicable federal medicaid laws and regulations. The
10 secretary of health and environment shall seek any necessary approvals by
11 the federal government that are required for the implementation of
12 subsections (a) through (h).

13 (3) The provisions of subsections (a) through (h) shall be null and
14 void and shall have no force and effect if one of the following occur:

15 (A) The medicaid plan amendment that increases the rates of
16 payments made to skilled nursing care facilities for providing services
17 pursuant to the federal medicaid program and ~~that~~ is proposed for approval
18 for purposes of subsections (a) through (h) is not approved by the United
19 States centers for medicare and medicaid services;

20 (B) the rates of payments made to skilled nursing care facilities for
21 providing services pursuant to the federal medicaid program are reduced
22 below the rates calculated on December 31, 2009, increased by revenues in
23 the ~~quality care~~ *nursing facility provider* fund and matched by federal
24 financial participation and rebasing as provided for in K.S.A. 75-5958, and
25 amendments thereto;

26 (C) any funds are utilized to supplant funding for skilled nursing care
27 facilities as required by subsection (g);

28 (D) any funds are diverted from those purposes set forth in subsection
29 (d)(4); or

30 (E) upon the governor signing, or allowing to become law without
31 signature, legislation that, by proviso or otherwise, directs any funds from
32 those purposes set forth in subsection (d)(4) or that would propose to
33 suspend the operation of this section.

34 (g) On and after July 1, 2010, reimbursement rates for skilled nursing
35 care facilities shall be restored to those in effect during December 2009.
36 No funds generated by the assessments or federal funds generated
37 therefrom shall be utilized for such restoration, ~~but~~ *except that* such funds
38 may be used to restore the rate reduction in effect from January 1, 2010, ~~to~~
39 *through* June 30, 2010.

40 (h) Rates of reimbursement shall not be limited by private pay
41 charges.

42 (i) If the provisions of subsections (a) through (h) are repealed, expire
43 or become null and void and have no further force and effect, all moneys

1 in the ~~quality care nursing facility provider~~ fund that were paid under the
2 provisions of subsections (a) through (h) shall be returned to the skilled
3 nursing care facilities that paid such moneys on the basis on which such
4 payments were assessed and paid pursuant to subsections (a) through (h).

5 (j) The department of health and environment may adopt rules and
6 regulations necessary to implement the provisions of this section.

7 (k) For purposes of administering and selecting the reimbursements
8 of moneys in the ~~quality care nursing facility provider~~ assessment fund,
9 the ~~quality care nursing facility provider~~ improvement panel is hereby
10 established. The panel shall consist of the following members: Two
11 persons appointed by leadingage Kansas; two persons appointed by the
12 Kansas health care association; one person appointed by Kansas advocates
13 for better care; one person appointed by the Kansas hospital association;
14 one person appointed by the governor who is a member of the Kansas
15 adult care executives association; one person appointed by the governor
16 who is a skilled nursing care facility resident or the family member of such
17 a resident; one person appointed by the Kansas foundation for medical
18 care; one person appointed by the governor from the department for aging
19 and disability services; one person appointed by the governor from the
20 department of health and environment; one person appointed by the
21 president of the senate who is affiliated with an organization representing
22 and advocating the interests of retired persons in Kansas; and one person
23 appointed by the speaker of the house of representatives who is a volunteer
24 with the office of the state long-term care ombudsman established by the
25 long-term care ombudsman act. The person appointed by the governor
26 from the department for aging and disability services and the person
27 appointed by the governor from the department of health and environment
28 shall be nonvoting members of the panel. The panel shall meet as soon as
29 possible subsequent to the effective date of this act and shall elect a
30 chairperson from among the members appointed by the trade organizations
31 specified in this subsection. The members of the ~~quality care nursing~~
32 ~~facility provider~~ improvement panel shall serve without compensation or
33 expenses. The ~~quality care nursing facility provider~~ improvement panel
34 shall report annually on or before January 10 to the senate committees on
35 public health and welfare and ways and means, the house committees on
36 appropriations and health and human services and the Robert G. (Bob)
37 Bethell joint committee on home and community based services and
38 KanCare oversight concerning the progress to reduce the incidence of
39 antipsychotic drug use in elders with dementia, participation in the nursing
40 facility quality and efficiency outcome incentive factor, participation in the
41 culture change and person-centered care incentive program, annual
42 resident satisfaction ratings for Kansas skilled nursing care facilities and
43 the activities of the panel during the preceding calendar year and any

1 recommendations that the panel may have concerning the administration
2 of and expenditures from the ~~quality care~~ *nursing facility provider*
3 assessment fund.

4 (l) The provisions of this section shall expire on July 1, 2030.

5 Sec. 10. K.S.A. 39-923, 40-2231, 40-2232, 40-2233, 40-2234, 40-
6 2235 and 40-2238 and K.S.A. 2023 Supp. 39-936 and 75-7435 are hereby
7 repealed.

8 Sec. 11. This act shall take effect and be in force from and after its
9 publication in the statute book.