

Certification, Licensing, and On-site Inspections; HB 2784

HB 2784 transfers authority for certification of continuing care retirement communities (CCRCs) from the Kansas Insurance Department (Department) to the Kansas Department for Aging and Disability Services (KDADS).

The bill permits the Secretary for Aging and Disability Services to waive a requirement of the rules and regulations related to licensing of disability services in certain circumstances, includes a definition for “day service provider” as it relates to criminal history record checks, and requires notices to licensees to include information on appeals available under the Kansas Administrative Procedure Act (KAPA) and the Kansas Judicial Review Act (KJRA).

The bill also amends law regarding the certification of Certified Community Behavioral Health Centers (CCBHCs).

The bill prohibits the State Fire Marshal (Marshal) and the Marshal’s representatives from wearing or operating an audio or video recording device during an on-site inspection in certain facilities.

Use of Body Camera or Other Audio or Video Recording Device by State Fire Marshal and Marshal’s Representatives

The bill prohibits the Marshal and the Marshal’s representatives from wearing or operating a body camera or other audio or video recording device during an on-site inspection in a licensed care facility or community-based locations where individuals with intellectual and developmental disabilities (I/DD) receive habilitation services.

Definitions Regarding Inspections of Facilities by State Fire Marshal

The bill defines these terms:

- “Body camera” means a device that is worn by a law enforcement officer that electronically records audio or video of such officer’s activities; and
- “Licensed care facility” means child care facilities and adult care homes and include the following types of facilities:
 - Child care facility, as defined in KSA 65-503, which includes the following:
 - A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both, except children in the custody of the Secretary for Children and Families who are placed with a prospective adoptive family or who are related to the person by blood, marriage, or legal adoption;

- Children's home, orphanage, maternity home, day care facility, or other facility of a type determined by the Secretary of Health and Environment to require regulation;
 - Child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age; or
 - Any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the State;
- Qualified residential treatment program, which includes a program designated by the Secretary for Children and Families as a qualified residential treatment program pursuant to federal law;
 - Psychiatric residential treatment facility, which includes any non-hospital facility with a provider agreement with the licensing agency to provide the inpatient services for individuals under the age of 21 who will receive highly structured, intensive treatment for which the licensee meets the requirements as set forth by regulations created and adopted by the Secretary for Children and Families;
 - Secure facility, which means a facility, other than a staff secure facility or juvenile detention facility, that is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or that relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. No secure facility is in a city or county jail;
 - Shelter facility, which means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with the Revised Kansas Code for Care of Children for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer-term care under a dispositional order;
 - Youth residential facility, which means any home, foster home, or structure that provides 24-hour-a-day care for children and that is licensed by the Kansas Department of Health and Environment;
 - Any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility, all of which are classifications of adult care homes and are required to be licensed by the Secretary for Aging and Disability Services;
 - Medical care facilities, which includes hospitals, ambulatory surgical centers, or recuperation centers; and

- Hospice facilities that are certified to participate in the Medicare program under 42 CFR § 418.1 *et seq.*

Disability Service Provider Licenses

Waivers of Adopted Rules and Regulations for Disability Service Provider Licenses

The bill allows the Secretary for Aging and Disability Services (Secretary) to grant a waiver for disability service provider licenses for a violation of rules and regulations if the waiver is in the public interest and would not detrimentally affect the life, safety, health, or welfare of any person receiving care or treatment in a licensed center, facility, or hospital, or an individual receiving services from a licensed provider.

Criminal History Record Checks for Day Service Providers

The bill requires persons who meet the definition of “day service provider” to have a criminal history record check completed and specify such persons could be disqualified from employment based upon their criminal history record check.

The term “day service provider” means a provider of day support services for development in self-help, social, recreational, and work skills for adults with I/DD that is licensed by KDADS or a separate and distinct dedicated division of a provider of day support services for development in self-help, social, recreational, and work skills for adults with intellectual or developmental disabilities licensed by KDADS.

Disability Service Providers Licensing Failure to Comply

Whenever a failure to comply with requirements, standards, or adopted rules and regulations is found, the bill permits the licensing agency to make an order denying, conditioning, restricting, suspending, or revoking the disability service provider license after issuing a notice and opportunity for a hearing in accordance with KAPA. [*Note: Law required the licensing agency to issue an order denying, suspending, or revoking the license of a disability service provider when a substantial failure to comply with requirements, standards, or rules and regulations is found.*]

The bill also provides for a person to appeal an order made on a license. “Person” is defined as any person:

- Who is an applicant for a license or who is the licensee and who has any direct or indirect ownership interest of 25 percent or more in the center, facility, or hospital; or
- Who is the owner, in whole or in part, of any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the center, facility, or hospital; or

- Who, if the center, facility, hospital, or provider is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

Disability Service Providers Licensing Notice of Appeal

Continuing law provides for, if it is found upon reinspection that a licensee has not corrected the deficiency or deficiencies specified in the correction order, the Secretary may assess a civil penalty, and a written notice of assessment would be served upon the licensee. The bill adds that when a licensee is issued a written notice of assessment, the licensee must be notified of the opportunity to be heard under KAPA and that an appeal of an administrative order may be made to the district court, in accordance with the provisions of KJRA.

Disability Service Providers Licensing Civil Penalty

The bill specifies that a licensee has ten days to appeal a civil penalty assessment after receiving written notice of assessment. The licensee will be required to file a written notice of appeal with the Office of Administrative Hearings (OAH) specifying why the civil penalty should not be assessed. However, the filing of a notice of appeal will not stay the payment of a civil penalty. OAH will be required to have a hearing on the notice of appeal. If OAH finds in favor of the appellant licensee and the Secretary affirms the initial order, the civil penalty will be refunded to the appellant licensee. Either party will be permitted to file an appeal on the final order to the District Court in accordance with KJRA.

Certified Community Behavioral Health Center Certification

The bill requires that, prior to February 1, 2027, only Community Mental Health Centers (CMHCs) licensed by KDADS and that provide certain services could be certified as CCBHCs in Kansas. On or after February 1, 2027, the bill requires KDADS to certify as a CCBHC any CMHC or qualified nonprofit provider that is licensed by KDADS and provides certain services.

The bill also requires KDADS to adopt rules and regulations to implement and administer the certification process.

CCBHC Certification Renewal

The bill specifies that programs and treatments provided by a CCBHC may be granted a certification renewal if such programs and treatments have been:

- Previously certified by the Secretary; and
- Accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accrediting body approved by the Secretary.

Continuing Care Retirement Communities

Definitions

The bill adds a definition of CCRC to law regarding adult care homes. “Continuing care retirement community” means any place or facility that combines a range of housing and services to encompass the continuum of aging care needs provided at an independent living facility, an assisted living facility, a residential health care facility, home plus, or a skilled nursing care facility within a single place or facility to avoid the need for residents to relocate to a separate place or facility. The provision on community care includes the multiple levels of care provided as part of a CCRC.

The bill also adds a definition for “continuing care” in law regarding insurance uniform policy provisions. Continuing care means the multiple levels of care provided as part of a CCRC.

Certification Authority for Continuing Care Retirement Communities

The bill transfers authority for certifying CCRCs by replacing the definition of “Commissioner” with “Secretary” to mean the Secretary in the insurance uniform policy provisions statute regarding CCRCs. The bill also replaces “Commissioner” with “Secretary” to clarify in the continuing law that the Secretary would:

- Prescribe an annual disclosure statement for CCRC providers to complete;
- Accept annual disclosure statements filed by CCRC providers, continuing care contracts, and annual audits certified by a certified public accountant;
- Accept copies of continuing care contract forms entered into between the provider and any resident and associated required documents;
- Issue certificates of registration for CCRC providers;
- Prescribe and accept applications for CCRC certificates of registration; and
- Renew certificates of registration with appropriate notification and payment of the continuation fee, unless the Secretary determines that the CCRC is not in compliance with statute.

The bill specifies that CCRC providers will be required to file annual disclosure statements, continuing care contracts, and annual audits within four months of completion of such provider’s fiscal year. The bill also requires the Secretary to renew certificates of registration for CCRCs in compliance with requirements within four months of completion of such provider’s fiscal year.

The bill also transfers to the Secretary the authority to adopt any rules and regulations necessary to carry out CCRC oversight.