

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2471**

As Agreed to March 29, 2012

Brief*

HB 2471 would establish requirements for the appointment of the three state-licensed administrator members of the Board of Adult Care Home Administrators (Board), and make changes to the terms of Board members. The bill would also amend certain statutes regulating the licensure of adult care homes.

Board of Adult Care Home Administrators

The following specific changes were made with regard to the Board of Adult Care Home Administrators:

Administrator Member Nomination Procedure

The bill would require, at least 30 days prior to the expiration of each administrator member's term, at least one but not more than three names of persons of recognized ability and qualification be submitted to the Governor for consideration in making appointments to the Board. The names would be submitted for the not-for-profit representative by LeadingAge Kansas, for the for-profit representative by the Kansas Health Care Association, and for the professional association representative by the Kansas Adult Care Executives, or the successor of such entities. Individuals whose names were submitted to the Governor for

*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/klrd>

consideration as administrative members would not be required to be members of the nominating entities, or the successor to such entities, to be considered.

Administrator Member Qualifications

The administrator members of the Board would be required to have been actively engaged in the administration of adult care homes within the state for the three years immediately preceding appointment and would be required to remain actively engaged in the administration of adult care homes in Kansas while serving on the Board. Additionally, Board members would be required to not have had any published disciplinary action taken against them by the Board, or have any such action taken while serving on the Board.

Administrator Member Terms

The bill would change Board member terms on the effective date of this act, by allowing each current board member's term to be extended by one year from the term expiration date. Board members appointed on or after the effective date of this act would serve a term of three years or until otherwise disqualified from serving and would not serve more than two consecutive terms.

Licensure of Adult Care Homes

The bill would amend the definition of an intermediate care facility for the mentally retarded (ICF/MR) to apply to facilities which provide care for four or more individuals. The current definition applies to facilities caring for six or more individuals. The definition change would clarify the authority of the Kansas Department on Aging (KDOA) to license facilities which were licensed years ago as ICF/MRs but did not meet the definition of an ICF/MR, as a result of having

fewer than the required six or more individuals for which care was provided. The bill would prohibit the operation of an ICF/MR of five beds or less unless, on or before January 1, 2012, the facility was issued a license by the licensing agency or participated in the Medicaid program as an ICF/MR of five beds or less. The amendment would grandfather in the smaller ICF/MR facilities licensed on or before January 1, 2012.

Medicaid Program Definition

Under the bill, the Medicaid Program would be defined as "the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder."

Waiting Period for Application

The bill would provide when the licensing agency finds the adult care facility has substantially failed to comply with requirements, standards, or rules and regulations in the Adult Care Home Licensure Act, or a receiver has been appointed, the licensing agency would be required to make an order denying, suspending, or revoking the license. The applicant or licensee whose license has been denied, suspended, or revoked would not be eligible to apply for a new license for a period of two years from the date the license was denied, suspended, or revoked.

Two exceptions would be created by the bill for the waiver of the two year waiting period to apply for a new license or license reinstatement for a licensee or applicant whose license has been denied, revoked, or suspended. The waiting period would be waived and the following individuals would be allowed to apply at any time for a new license or license reinstatement by submitting a written waiver of rights under the Kansas Administrative Procedure Act and the

Kansas Judicial Review Act to the licensing agency in a settlement agreement, or other manner approved by the licensing agency:

- A licensee or applicant who is issued an emergency order by the licensing agency denying, revoking, or suspending a license; or
- A licensee who is issued a notice of intent to take disciplinary action by the licensing agency.

Denial, Revocation, or Suspension of License

The bill would add the following as reasons for which the licensing agency may deny a license or suspend or revoke a license to operate an adult care home:

- The licensing authority of another state, territory, District of Columbia, or other country has:
 - denied, suspended, revoked, or limited a license;
 - censured or taken other disciplinary action; or
 - denied an application for licensure.

A certified copy of the record of such action would be conclusive evidence of these actions;

- The individual has failed or refused to comply with Medicaid requirements or regulations, as evidenced by a certified copy of the record of such action; or
- The individual has failed or refused to comply with Medicare requirements or regulations, as evidenced by a certified copy of the record of such action.

The bill would be in effect upon publication in the

Kansas Register.

Conference Committee Action

The Conference Committee agreed to the Senate Committee amendments to the bill and further agreed to the following changes:

- Deleted the Senate Committee of the Whole amendment and further amended the bill to insert the contents of HB 2619 (as recommended by the House Committee on Aging and Long-term Care).
- Replaced the term "mentally retarded" with the term "people with intellectual disability" to conform with the requirements of 2012 Sub. for SB 397 as passed by the Senate and House in March of 2012; and
- Added language clarifying that the portions of the bill related to the licensure of adult care homes would become effective on July 1, 2012.

The title of the bill was updated, by a technical amendment, to conform to Conference Committee amendments.

Background

HB 2471 was introduced by the House Committee on Aging and Long-term Care at the request of Representative Geraldine Flaharty. The House Committee on Aging and Long-term Care heard testimony in favor of the bill from representatives of LeadingAge Kansas and the Kansas Adult Care Executives Association (KACE). The proponents testified that the original bill would preserve in statute the long-standing informal practice by which the licensed adult care home administrator members of the Board of Adult Care

Home Administrators are selected by the Governor from nominations submitted by the professional and trade associations that serve adult care homes and adult care home administrators. The representative of KACE stated that by requiring the proposed Board members to represent the not-for-profit homes and the for-profit homes, the Board is assured of a balanced and equitable representation of the industry. A representative of Kansas Advocates for Better Care testified in opposition to the bill, requesting the bill be amended to increase consumer and professional representation on the Board to match administrator representation, and that a specific standard for administrators nominated to the Board be set. Written testimony in opposition to the bill from a representative of American Association of Retired Persons (AARP) Kansas requested equal consumer representation on the Board. Neutral testimony was heard from a representative of the Board of Adult Care Home Administrators, who asked the Committee to consider the changes made by the original bill and the possible impact of those changes on Board membership.

The House Aging and Long-term Care Committee amended the bill to eliminate the requirement that the Governor select the adult care home administrator members of the Board from a list provided by the three specifically named trade associations, and instead provide that the Governor may consider these lists in appointing administrator members to the Board. The amendment was made due to constitutional questions raised with regard to the separation of powers. The Committee also amended the bill to: eliminate the requirement that administrator members of the Board maintain current membership with the Kansas Adult Care Executive Association; prohibit administrator members of the Board from having had any published disciplinary action taken against them by the Board; and require, on or after the effective date of this act, Board member vacancies be appointed in compliance with the bill. Technical amendments also were made. The Committee recommended the bill be passed as amended.

The Senate Committee on Public Health and Welfare heard testimony in favor of the bill from representatives of the KACE and LeadingAge Kansas. The proponents presented testimony similar to that provided before the House Committee. Testimony in opposition to the bill was presented by representatives of AARP Kansas and Kansas Advocates for Better Care (KABC). Opponents expressed the same concerns with regard to equalizing Board member representation and setting specific administrator Board member standards as was stated before the House Committee.

The Senate Committee on Public Health and Welfare amended the bill to allow for the nomination of Board members by the successors of the named appointing entities, to require that published disciplinary action taken by the Board against active Board members would disqualify such members from continuing to serve, and to change Board member terms.

The Senate Committee of the Whole amended the bill to clarify that administrative Board members would not be required to be members of the nominating entities, or successors to such entities, to be considered.

HB 2619 was introduced at the request of the Kansas Department on Aging. The House Committee on Aging and Long-term Care heard testimony in favor of the bill from the Commissioner of Survey and Certification for the KDOA. The Commissioner stated by amending the licensing statute to define an ICF/MR to those caring for four or more individuals (a change from the existing requirement of six or more individuals), KDOA could continue licensing facilities licensed many years ago which did not meet licensing requirements at the time of initial licensure. The Commissioner noted the bill clarified situations in which an applicant would not be viewed as being "fit and qualified" to be issued a license. The Commissioner further stated it was the Secretary of Aging's belief that revoking or suspending a license for cause should require the owner to refrain from operating a new facility for at

least two years, even if the revocation occurred in another state, as this bill provides. No opposing or neutral testimony was presented to the House Committee.

The fiscal note on the original HB 2471 states the Department of Health and Environment indicated the passage of the bill would have no fiscal effect.

The fiscal note on HB 2619 prepared by the Division of the Budget states that the Department on Aging indicates passage of the bill would have no fiscal effect.

Adult Care Home Licensure, Board of Adult Care Home Administrators

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