

{As Amended by House Committee of the Whole}

As Further Amended by House Committee

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Session of 2014

HOUSE BILL No. 2717

By Committee on Children and Seniors

2-14

1 AN ACT concerning the department for aging and disability services;
2 relating to registration of operators; amending K.S.A. 2013 Supp. 39-
3 923 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2013 Supp. 39-923 is hereby amended to read as
7 follows: 39-923. (a) As used in this act:

8 (1) "Adult care home" means any nursing facility, nursing facility for
9 mental health, intermediate care facility for people with intellectual
10 disability, assisted living facility, residential health care facility, home plus,
11 boarding care home and adult day care facility; all of which are
12 classifications of adult care homes and are required to be licensed by the
13 secretary of aging ~~of aging~~ **{for aging and disability services}**.

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

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

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

32 (5) "Assisted living facility" means any place or facility caring for six

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

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

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

1 annual dementia care training.

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

8 (9) "Adult day care" means any place or facility operating less than
9 24 hours a day caring for individuals not related within the third degree of
10 relationship to the operator or owner by blood or marriage and who, due to
11 functional impairment, need supervision of or assistance with activities of
12 daily living.

13 (10) "Place or facility" means a building or any one or more complete
14 floors of a building, or any one or more complete wings of a building, or
15 any one or more complete wings and one or more complete floors of a
16 building, and the term "place or facility" may include multiple buildings.

17 (11) "Skilled nursing care" means services performed by or under the
18 immediate supervision of a registered professional nurse and additional
19 licensed nursing personnel. Skilled nursing includes administration of
20 medications and treatments as prescribed by a licensed physician or
21 dentist; and other nursing functions which require substantial nursing
22 judgment and skill based on the knowledge and application of scientific
23 principles.

24 (12) "Supervised nursing care" means services provided by or under
25 the guidance of a licensed nurse with initial direction for nursing
26 procedures and periodic inspection of the actual act of accomplishing the
27 procedures; administration of medications and treatments as prescribed by
28 a licensed physician or dentist and assistance of residents with the
29 performance of activities of daily living.

30 (13) "Resident" means all individuals kept, cared for, treated, boarded
31 or otherwise accommodated in any adult care home.

32 (14) "Person" means any individual, firm, partnership, corporation,
33 company, association or joint-stock association, and the legal successor
34 thereof.

35 (15) "Operate an adult care home" means to own, lease, establish,
36 maintain, conduct the affairs of or manage an adult care home, except that
37 for the purposes of this definition the word "own" and the word "lease"
38 shall not include hospital districts, cities and counties which hold title to an
39 adult care home purchased or constructed through the sale of bonds.

40 (16) "Licensing agency" means the secretary ~~of aging~~ **{for aging and**
41 **disability services}**.

42 (17) "Skilled nursing home" means a nursing facility.

43 (18) "Intermediate nursing care home" means a nursing facility.

1 (19) "Apartment" means a private unit which includes, but is not
2 limited to, a toilet room with bathing facilities, a kitchen, sleeping, living
3 and storage area and a lockable door.

4 (20) "Individual living unit" means a private unit which includes, but
5 is not limited to, a toilet room with bathing facilities, sleeping, living and
6 storage area and a lockable door.

7 (21) "Operator" means an individual *registered pursuant to the*
8 *operator registration act, section 2 et seq., and amendments thereto*, who
9 ~~operates~~ *may be appointed by a licensee to have the authority and*
10 *responsibility to oversee* an assisted living facility or residential health care
11 facility with fewer than 61 residents, a home plus or adult day care facility
12 ~~and has completed a course approved by the secretary of health and~~
13 ~~environment on principles of assisted living and has successfully passed an~~
14 ~~examination approved by the secretary of health and environment on~~
15 ~~principles of assisted living and such other requirements as may be~~
16 ~~established by the secretary of health and environment by rules and~~
17 ~~regulations.~~

18 (22) "Activities of daily living" means those personal, functional
19 activities required by an individual for continued well-being, including but
20 not limited to eating, nutrition, dressing, personal hygiene, mobility and
21 toileting.

22 (23) "Personal care" means care provided by staff to assist an
23 individual with, or to perform activities of daily living.

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

27 (25) "Kitchen" means a food preparation area that includes a sink,
28 refrigerator and a microwave oven or stove.

29 (26) The term "intermediate personal care home" for purposes of
30 those individuals applying for or receiving veterans' benefits means
31 residential health care facility.

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

39 (28) "Medicaid program" means the Kansas program of medical
40 assistance for which federal or state moneys, or any combination thereof,
41 are expended, or any successor federal or state, or both, health insurance
42 program or waiver granted thereunder.

43 (29) "Licensee" means any person or persons acting jointly or

1 *severally who are licensed by the secretary for aging and disability*
2 *services pursuant to the adult care home licensure act, K.S.A. 39-923 et*
3 *seq., and amendments thereto.*

4 (b) The term "adult care home" shall not include institutions operated
5 by federal or state governments, except institutions operated by the Kansas
6 commission on veterans affairs, hospitals or institutions for the treatment
7 and care of psychiatric patients, child care facilities, maternity centers,
8 hotels, offices of physicians or hospices which are certified to participate
9 in the medicare program under 42 code of federal regulations, chapter IV,
10 section 418.1 et seq., and amendments thereto, and which provide services
11 only to hospice patients.

12 (c) Nursing facilities in existence on the effective date of this act
13 changing licensure categories to become residential health care facilities
14 shall be required to provide private bathing facilities in a minimum of 20%
15 of the individual living units.

16 (d) Facilities licensed under the adult care home licensure act on the
17 day immediately preceding the effective date of this act shall continue to
18 be licensed facilities until the annual renewal date of such license and may
19 renew such license in the appropriate licensure category under the adult
20 care home licensure act subject to the payment of fees and other conditions
21 and limitations of such act.

22 (e) Nursing facilities with less than 60 beds converting a portion of
23 the facility to residential health care shall have the option of licensing for
24 residential health care for less than six individuals but not less than 10% of
25 the total bed count within a contiguous portion of the facility.

26 (f) The licensing agency may by rule and regulation change the name
27 of the different classes of homes when necessary to avoid confusion in
28 terminology and the agency may further amend, substitute, change and in a
29 manner consistent with the definitions established in this section, further
30 define and identify the specific acts and services which shall fall within the
31 respective categories of facilities so long as the above categories for adult
32 care homes are used as guidelines to define and identify the specific acts.

33 New Sec. 2. Sections 2 through-8 9, and amendments thereto, shall be
34 known and may be cited as the operator registration act.

35 New Sec. 3. As used in the operator registration act:

36 (a) "Operator" means an individual registered pursuant to the operator
37 registration act who may be appointed by a licensee to have authority and
38 responsibility to oversee an adult care home.

39 (b) "Secretary" means the secretary for aging and disability services.

40 (c) "Department" means the Kansas department for aging and
41 disability services.

42 (d) "Adult care home" means an assisted living facility **or residential**
43 **health care facility** licensed for less than 61 residents, ~~residential health~~

1 ~~care facility~~, home plus or adult day care as defined by K.S.A. 39-923, and
 2 amendments thereto, or by the rules and regulations of the licensing
 3 agency adopted pursuant to such section for which a license is required
 4 under article 9 of chapter 39 of the Kansas Statutes Annotated, and
 5 amendments thereto.

6 (e) "Licensee" shall have the meaning ascribed to such term in K.S.A.
 7 39-923, and amendments thereto.

8 ~~(f) "Sponsor" means entities approved by the secretary to provide~~
 9 ~~continuing education programs or courses on an ongoing basis under the~~
 10 ~~operator registration act and in accordance with any rules and regulations~~
 11 ~~promulgated by the secretary in accordance with the operator registration~~
 12 ~~act.~~

13 New Sec. 4. (a) On and after July 1, 2014, no person shall represent
 14 that such person is ~~a~~ **an** operator unless such person is registered under the
 15 operator registration act as an operator. A violation of this subsection is a
 16 class C misdemeanor.

17 (b) The secretary shall adopt by rules and regulations a system for
 18 registering operators. Such rules and regulations shall include
 19 qualifications for registration. Such rules and regulations shall require, at a
 20 minimum, that the applicant:

21 (1) Be at least 21 years of age;

22 (2) **(A) Possess a high school diploma or equivalent, with one year**
 23 **relevant experience as determined by the secretary;**

24 **(B) possess an associate's degree in a relevant field as determined**
 25 **by the secretary; or**

26 **(C) possess a baccalaureate degree;**

27 (3) has successfully completed a course approved by the secretary on
 28 principles of assisted living;

29 (4) has passed an examination approved by the secretary on
 30 principles of assisted living and such other requirements as may be
 31 established by the secretary by rules and regulations;

32 (5) has filed an application; and

33 (6) has paid the required application fee.

34 New Sec. 5. On and after July 1, 2014, no adult care home shall be
 35 operated unless under the supervision of an operator who holds a valid
 36 registration as an operator issued pursuant to the operator registration act
 37 **or an adult care home administrator who holds a valid license as a**
 38 **licensed adult care home administrator pursuant to K.S.A. 65-3501 et**
 39 **seq., and amendments thereto.**

40 New Sec. 6. (a) Upon application and within two years of July 1,
 41 2014, the secretary may waive the ~~registration~~ ~~application~~ ~~fee~~
 42 **requirements of (b)(2) and (b)(6) of section 4, and amendments**
 43 **thereto**, and grant a registration to any applicant so long as the applicant:

1 (1) Has completed the operator course **{prior to July 1, 2014, that was}**
2 approved by the secretary; and (2) has passed an examination **{prior to**
3 **July 1, 2014, that was}** approved by the secretary ~~prior to July 1, 2014.~~

4 (b) A person who has completed the operator course approved by the
5 secretary and has passed an examination approved by the secretary prior to
6 July 1, 2014, and does not apply within two years of July 1, 2014, shall be
7 considered to have a registration that has lapsed for failure to renew.

8 New Sec. 7. (a) Every individual who holds a valid registration as an
9 operator shall apply to the department for renewal of such registration in
10 accordance with rules and regulations adopted by the secretary.

11 (b) Upon making an application for a renewal of registration, such
12 individual shall pay a renewal fee to be fixed by rules and regulations and
13 shall submit evidence satisfactory to the secretary that during the period
14 immediately preceding application for renewal the applicant has
15 completed continuing education requirements as provided by the rules and
16 regulations. Any individual who submits an application for a renewal of
17 registration within 30 days after the date of expiration shall also pay a late
18 renewal fee fixed by rules and regulations. Any individual who submits an
19 application for a renewal of registration after the 30-day period following
20 the date of expiration shall be considered as having a registration that has
21 lapsed for failure to renew and shall be reissued a registration only after
22 the individual has been reinstated under subsection (d).

23 (c) The department shall issue a registration to an operator upon
24 receipt of an application for renewal of registration, the renewal fee and
25 the evidence required for approval.

26 (d) An operator who allows their registration to lapse by failing to
27 renew may be reinstated upon payment of the renewal fee, the
28 reinstatement fee and submission of evidence demonstrating satisfactory
29 completion of any applicable program or a course of study established by
30 the secretary for reinstatement of persons whose registrations have lapsed
31 for failure to renew. The secretary shall adopt rules and regulations
32 establishing appropriate requirements for reinstatement of persons whose
33 registrations have lapsed for failure to renew.

34 (e) The expiration date of registrations issued or renewed shall be
35 established by rules and regulations of the secretary. Subject to the
36 provisions of this subsection, each registration shall be renewable on a
37 biennial basis upon the filing of a renewal application prior to the
38 expiration of an existing registration and upon payment of the renewal fee
39 established pursuant to rules and regulations. To provide for a system of
40 biennial renewal of registrations, the secretary may provide by rules and
41 regulations that registrations issued or renewed for the first time after July
42 1, 2014, may expire less than two years from the date of issuance or
43 renewal. In each case in which a registration is issued or renewed for a

1 period of time less than two years, the secretary shall prorate to the nearest
2 whole month the registration or renewal fee established pursuant to rules
3 and regulations. No proration shall be made under this subsection on
4 delinquent registration renewals.

5 **New Sec. 8. All fees under the operator registration act shall be**
6 **established by rules and regulations of the secretary. The amounts**
7 **received for such fees shall be deposited in the state treasury in**
8 **accordance with K.S.A. 75-4215, and amendments thereto, and shall**
9 **be credited to the state licensure fee fund administered by the**
10 **department pursuant to K.S.A. 39-930, and amendments thereto.**

11 ~~New Sec.-8.~~ **9.** (a) The secretary may deny, refuse to renew, suspend
12 or revoke a registration where the operator or applicant:

13 (1) Has obtained, or attempted to obtain, a registration by means of
14 fraud, misrepresentation or concealment of material facts;

15 (2) has a finding of abuse, neglect or exploitation against a resident of
16 an adult care home as defined in K.S.A. 39-1401, and amendments thereto;

17 (3) has been convicted of a crime found by the secretary to have
18 direct bearing on whether the registrant or applicant can be entrusted to
19 serve the public in the position of an operator;

20 (4) has violated a lawful order or rule or regulation of the secretary;

21 (5) had disciplinary action taken against such operator on a
22 professional or occupational healthcare credential issued by this state or by
23 another jurisdiction; or

24 (6) has violated any provisions of the operator registration act.

25 (b) Such denial, refusal to renew, suspension or revocation of a
26 registration may be ordered by the secretary after notice and hearing on the
27 matter in accordance with the provisions of the Kansas administrative
28 procedure act.

29 (c) A person whose registration has been revoked may apply to the
30 secretary for reinstatement. The secretary shall have discretion to accept or
31 reject an application for reinstatement and may hold a hearing to consider
32 such reinstatement. An applicant for reinstatement shall submit an
33 application for reinstatement and a reinstatement fee established by the
34 secretary and fulfill the requirements under subsection (d) of section 7, and
35 amendments thereto.

36 ~~Sec.-9.~~ **10.** K.S.A. 2013 Supp. 39-923 is hereby repealed.

37 ~~Sec.-10.~~ **11.** This act shall take effect and be in force from and after its
38 publication in the statute book.