

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2418

As Amended by Senate Committee on Public
Health and Welfare

Brief*

HB 2418 would create the Operator Registration Act to require registration of operators responsible for the oversight of adult care homes and establish operator qualification requirements. The bill also would update state agency references and remove an outdated rule and regulation reference from the Adult Care Home Licensure Act.

Adult Care Home Licensure Act Definitions

Specifically, the bill would amend “operator” to mean an individual registered pursuant to the Operator Registration Act, who may be appointed by a licensee to have the authority and responsibility to oversee an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or an adult day care facility.

“Licensee” would be defined as any person or persons acting jointly or severally who are licensed by the Secretary for Aging and Disability Services (Secretary) pursuant to the Adult Care Home Licensure Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Operator Registration Act

Definitions

The Operator Registration Act (Act) would be created with definitions as follows:

- “Operator,” “adult care home,” and “licensee” would have the same definitions as found in the Adult Care Home Licensure Act; and
- “Secretary” and “department” would mean the Secretary for Aging and Disability Services and the Kansas Department for Aging and Disability Services (KDADS), respectively.

Registration

On or after July 1, 2014, persons would not be able to represent themselves as operators unless registered under the Act. A violation of this provision would be a class C misdemeanor.

The Secretary would be required to adopt by rules and regulations a system for registering operators. Rules and regulations would, at a minimum, need to require that an applicant seeking registration as an operator meet the following qualifications:

- Be at least 21 years of age;
- Possess:
 - A high school diploma or equivalent, with one year relevant experience as determined by the Secretary; or
 - An associate’s degree in a relevant field as determined by the Secretary; or
 - A bachelor’s degree;

- Successfully completed a course approved by the Secretary on the principles of assisted living;
- Passed an examination approved by the Secretary on the principles of assisted living and any other requirements established by the Secretary by rules and regulations;
- Filed an application; and
- Paid the required application fee.

Operation of an Adult Care Home

An adult care home would not be allowed to operate on or after July 1, 2014, without the supervision of an operator who is validly registered under the Act or a validly licensed adult care home administrator (authorized to operate an adult care home under existing law).

Registration

For applications made within two years of July 1, 2014, the Secretary would be allowed to waive the education, experience, and application fee requirements and grant registration as an operator to an applicant who has completed the operator course approved by the Secretary and has passed an examination approved by the Secretary prior to July 1, 2014. A person who meets these requirements but does not apply for registration as an operator within two years of July 1, 2014, would be considered to have a lapsed registration for failure to renew.

Registration Renewal

Application Requirements

Applications for renewal of valid registrations would be made to KDADS according to rules and regulations adopted by the Secretary. Along with the application, the individual would be required to pay a renewal fee fixed by rules and regulations and submit evidence, satisfactory to the Secretary, confirming completion of continuing education requirements as provided by rules and regulations. Applications for renewal submitted within 30 days after the expiration date also would be required to be accompanied by a late fee fixed by rules and regulations. KDADS would issue a registration to an applicant upon the applicant's meeting all registration requirements.

Lapsed Registrations for Failure to Renew

An individual who submits an application for a renewal of registration after the 30-day period following the date of expiration would be considered to have a lapsed registration for failure to renew, which would require reinstatement of the registration.

Reinstatement of a registration that lapsed for failure to renew would require the operator to pay the renewal fee and the reinstatement fee and to submit evidence showing satisfactory completion of any program or course of study established by the Secretary for persons whose registrations have lapsed for failure to renew. The Secretary would be required to adopt rules and regulations establishing appropriate requirements for the reinstatement of such individuals.

Renewal of Applications

The expiration dates for registrations issued or renewed would be established by rules and regulations of the Secretary. Registrations would be renewable biennially by filing a renewal application prior to the expiration of an existing registration and upon payment of the renewal fee, except as otherwise provided.

To allow for a system of biennial registration, the Secretary would be authorized to provide by rules and regulations that registrations issued or renewed for the first time after July 1, 2014, could expire less than two years from the date of issuance or renewal. The Secretary would be required to prorate to the nearest whole month the registration or renewal fee set by rules and regulations. Delinquent registration renewals would not be prorated.

Fees

All fees under the Act would be established by rules and regulations of the Secretary. The amounts received for fees would be credited to the State Licensure Fee Fund administered by KDADS.

Conditions for Denial, Refusal to Renew, Suspension, or Revocation of Registrations

The bill would allow the Secretary to deny, refuse to renew, suspend, or revoke a registration if the operator or applicant has committed any of the following:

- Has obtained, or attempted to obtain, a registration by means of fraud, misrepresentation or concealment of material facts;
- Has a finding of abuse, neglect, or exploitation against a resident of an adult care home;

- Has been convicted of a crime found by the Secretary to have direct bearing on whether the registrant or applicant can be entrusted to serve the public in the position of an operator;
- Has violated a lawful order, rule, or regulation of the Secretary;
- Had disciplinary action taken against the operator on a professional or occupational healthcare credential issued by Kansas or another jurisdiction; or
- Has violated any provisions of the Act.

The Secretary would be authorized to order a denial, refusal to renew, suspension, or revocation of a registration based on any of the above-mentioned conditions after notice and hearing on the matter according to the provisions of the Kansas Administrative Procedure Act.

Reinstatement of Revoked Registration

A person whose registration has been revoked would be allowed to apply to the Secretary for reinstatement. Acceptance or rejection of an application for reinstatement would be at the Secretary's discretion, and a hearing would be allowed to consider the reinstatement.

An individual seeking reinstatement would be required to submit an application for reinstatement, pay a reinstatement fee, and meet the requirements for an individual seeking reinstatement of a registration that lapsed for failure to renew.

Agency Name and Rule and Regulation Updates

The bill would update state agency references and remove an outdated rule and regulation reference from the Adult Care Home Licensure Act to reflect changes made by

2012 Executive Reorganization Order No. 41. Specifically, the bill would replace references to the Secretary of Aging and the Department on Aging with the Secretary for Aging and Disability Services and the Department for Aging and Disability Services, respectively, and would allow the Kansas Department of Health and Environment (KDHE) regulations administered by the KDHE Health Occupations Credentialing (HOC) unit to be deemed rules and regulations of KDADS, where the HOC unit was relocated.

Background

HB 2418 was introduced by the Joint Committee on Administrative Rules and Regulations. At the hearing before the House Committee on Children and Seniors, a representative of KDADS provided written testimony in favor of the bill. The written testimony noted the bill was a technical clean-up to executive reorganization legislation that moved the operations of the HOC unit from KDHE to KDADS. The testimony also indicated prior legislation did not provide for the KDHE regulations administered by the HOC unit to be transferred to KDADS. There was no other testimony on the bill.

The Senate Committee on Public Health and Welfare received written testimony from a representative of KDADS in support of the bill. There was no additional testimony.

The Senate Committee amendment inserted provisions creating the Operator Registration Act (HB 2717, as further amended by the House Committee). The Senate Committee adopted the amendment at the request of a representative of KDADS. The representative provided an update on HB 2717 to the Senate Committee. Background information for HB 2717 is provided below.

According to the fiscal note on HB 2418, as introduced, prepared by the Division of the Budget, passage of the bill would have no fiscal effect. No updated fiscal note was available at the time of the Senate Committee's action.

Background on HB 2717

At the hearing before the House Committee on Children and Seniors, representatives of the Alzheimer's Association, KDADS, the Kansas Center for Assisted Living, and LeadingAge Kansas testified in favor of the bill. The KDADS representative stated by registering operators, the state may set reasonable requirements to assure operators remain current with the knowledge and standards of practice necessary to effectively operate the adult care homes. The KDADS representative also noted registration provides for disciplinary actions to protect adult care home residents from operators who have been found to have abused, neglected, or exploited a resident in an adult care home, or have committed crimes which render them unfit for the role of an operator. Other proponents indicated the bill would strengthen consumer protections by adding education and accountability for operators in the state.

No neutral or opponent testimony was provided at the House Committee hearing.

The House Committee amended the bill by amending the definition of an "adult care home," striking the definition of "sponsor," amending the minimum qualification requirements for an operator, inserting language addressing fees, and making technical amendments.

The House Committee further amended the bill by expanding the requirements that could be waived for individuals submitting applications for operator registration within two years of the effective date of the bill and by clarifying that, after July 1, 2014, adult care homes also could be operated under the supervision of a validly licensed adult care home administrator.

According to the fiscal note prepared by the Division of the Budget on HB 2717, as introduced, KDADS estimates that expenditures of \$5,000 from the State General Fund would be incurred for start-up costs to make the necessary

changes to the agency's registration software. The agency would then use registration fee revenue to finance ongoing administrative expenditures for production and processing of applications, processing approvals for continuing education requirements, consultation with operators and new applicants, and maintenance of the registry. The annual fee revenues and registration expenditures are estimated at \$45,000 per year. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*. There was no updated fiscal note available at the time of the Senate Committee action.