

As Amended by House Committee

As Amended by Senate Committee

Session of 2022

SENATE BILL No. 453

By Committee on Public Health and Welfare

2-7

1 AN ACT concerning ~~adult care homes~~ **health professions and practices**;
2 relating to ~~unlicensed employees~~ **certified aides unlicensed employees**
3 ***working in adult care homes***; requiring ~~unlicensed employee~~ **certified**
4 **aide unlicensed employee** training courses to be taught and evaluated
5 by professional licensed nurses; requiring a demonstration of skills to
6 successfully complete training courses; ~~allowing simulation~~
7 ~~experiences to be used as part of training courses~~; **requiring the board**
8 **of nursing to report to certain legislative committees on the number**
9 **and nature of complaints received**; amending K.S.A. 39-936 and 65-
10 5115 and repealing the existing sections.

11

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

13 **New Section 1. On or before January 9, 2023, and on or before**
14 **the first day of each regular session of the legislature thereafter, the**
15 **board of nursing shall submit a report to the house of representatives**
16 **standing committee on health and human services and the senate**
17 **standing committee on public health and welfare, or any successor**
18 **committees thereto, on the number and nature of complaints filed,**
19 **investigated or charged pursuant to K.S.A. 65-1120(b), and**
20 **amendments thereto, in the prior calendar year concerning any person**
21 **licensed, certified, registered or otherwise regulated by the board of**
22 **nursing. Such report shall not include any personally identifiable**
23 **information or any information that is confidential or otherwise**
24 **restricted from disclosure under the open records act or any other**
25 **provision of law.**

26 ~~Section 1.~~ **Sec. 2.** K.S.A. 39-936 is hereby amended to read as
27 follows: 39-936. (a) The presence of each resident in an adult care home
28 shall be covered by a statement provided at the time of admission, or prior
29 thereto, setting forth the general responsibilities and services and daily or
30 monthly charges for such responsibilities and services. Each resident shall
31 be provided with a copy of such statement, with a copy going to any
32 individual responsible for payment of such services and the adult care
33 home shall keep a copy of such statement in the resident's file. No such
34 statement shall be construed to relieve any adult care home of any

1 requirement or obligation imposed upon it by law or by any requirement,
2 standard or rule and regulation adopted pursuant thereto.

3 (b) A qualified person ~~or persons~~ shall be in attendance at all times
4 ~~upon~~ when residents ~~receiving~~ receive accommodation, board, care,
5 training or treatment in adult care homes. The licensing agency may
6 establish necessary standards and rules and regulations prescribing the
7 number, qualifications, training, standards of conduct and integrity for
8 such qualified person ~~or persons~~ attendant upon the residents.

9 (c) (1) The licensing agency shall require ~~unlicensed employees of~~
10 **certified aides unlicensed employees working in** an adult care home,
11 except an adult care home licensed for the provision of services to people
12 with intellectual disability that has been granted an exception by the
13 secretary for aging and disability services upon a finding by the licensing
14 agency that an ~~appropriate~~ **approved** training program for ~~unlicensed~~
15 ~~employees~~ **certified nurse aides** is in place for such adult care home,
16 ~~employed on and after the effective date of this act~~ who provide direct,
17 individual care to residents and who do not administer medications to
18 residents and who have not completed a course of education and training
19 relating to resident care and treatment approved by the secretary for aging
20 and disability services or are not participating in such a course ~~on the~~
21 ~~effective date of this act~~ to complete successfully 40 hours of training in
22 basic resident care skills. Any ~~unlicensed person~~ **certified aide unlicensed**
23 **employee** who has not completed **at least 40 hours of the certified nurse**
24 **aide training relating to resident care and treatment** approved by the
25 secretary for aging and disability services **or who is not making progress**
26 **to complete the course of education and training required by the**
27 **secretary for aging and disability services under paragraph (2) within**
28 **four months following completion of such 40 hours** shall not provide
29 direct, individual care to residents.

30 ~~(A) Each instructor of such training course shall be licensed and in~~
31 ~~good standing to practice in this state as a registered professional nurse or~~
32 ~~a licensed practical nurse. An instructor with multistate licensure privilege~~
33 ~~shall satisfy this requirement.~~

34 ~~(B) The 40 hours of training shall be supervised by a registered~~
35 ~~professional nurse and the content and administration thereof shall comply~~
36 ~~with rules and regulations adopted by the secretary for aging and disability~~
37 ~~services and remaining hours in the certified nurse aide training shall~~
38 **be performed under the general supervision of a course supervisor.**
39 **The course supervisor shall be defined in rules and regulations and**
40 **approved by the secretary for aging and disability services. As used in**
41 **this subparagraph, "supervision" means the same as defined in K.S.A.**
42 **65-1165, and amendments thereto.** The 40 hours of training may be
43 prepared and administered by an adult care home, **hospital, as defined in**

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

9 **(B) Each instructor under the supervision of a course supervisor**
10 **of the certified nurse aide training course shall be licensed to practice**
11 **in Kansas and in good standing. As used in this subparagraph, "in**
12 **good standing" includes the possession of a license, certificate or**
13 **registration that is subject to probation or non-disciplinary conditions,**
14 **limitations or restrictions, but does not include a license, certificate or**
15 **registration that is revoked, canceled or surrendered or subject to**
16 **pending license-related disciplinary action. If the records of the**
17 **Kansas department for aging and disability services reflect that an**
18 **individual has a prohibiting offense, such license, certificate or**
19 **registration shall not be considered "in good standing." Any license,**
20 **certificate or registration that is subject to disciplinary conditions,**
21 **limitations or restrictions shall remain subject to such conditions,**
22 **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 of~~**
27 **~~certified aides~~ unlicensed employees working in** an adult care home,
28 except an adult care home licensed for the provision of services to people
29 with intellectual disability that has been granted an exception by the
30 secretary for aging and disability services upon a finding by the licensing
31 agency that an appropriate training program for ~~unlicensed employees~~
32 **certified nurse aides** is in place for such adult care home, who provide
33 direct, individual care to residents and who do not administer medications
34 to residents and who do not meet the definition of paid nutrition assistant
35 under K.S.A. 39-923(a)(27), and amendments thereto, after 90 days of
36 employment to successfully complete an approved course of instruction
37 and an examination relating to resident care and treatment as a condition to
38 continued employment by an adult care home.

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

1 **for all-inclusive care for the elderly** may be conducted on the premises
2 of the adult care home, **hospital, hospice or program for all-inclusive**
3 **care for the elderly** that prepared and that will administer the course of
4 instruction. ~~Simulation experiences may be used in the clinical instruction~~
5 ~~portions of a training course. If the training course is conducted in two~~
6 ~~parts, simulation experiences are limited to half of the clinical instruction~~
7 ~~hours.~~

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

28 (3) The licensing agency shall not require ~~unlicensed employees of~~
29 ~~certified aides~~ **unlicensed employees working in** an adult care home who
30 provide direct, individual care to residents and who do not administer
31 medications to residents to enroll in any particular approved course of
32 instruction as a condition to the taking of an examination, but the secretary
33 for aging and disability services shall prepare guidelines for the
34 preparation and administration of courses of instruction and shall approve
35 or disapprove courses of instruction.

36 (4) ~~Unlicensed employees of~~ **Certified aides** ~~Unlicensed employees~~
37 **working in** adult care homes who provide direct, individual care to
38 residents and who do not administer medications to residents may enroll in
39 any approved course of instruction and upon completion of the approved
40 course of instruction shall be eligible to take an examination. The
41 examination shall be:

42 (A) Prescribed by the secretary for aging and disability services, ~~shall~~
43 ~~be;~~

1 (B) reasonably related to the duties performed by ~~unlicensed~~
 2 ~~employees of *certified aides*~~ **unlicensed employees working in** adult care
 3 homes who provide direct, individual care to residents and who do not
 4 administer medications to residents; and

5 ~~shall be~~ (C) the same examination given by the secretary for aging
 6 and disability services to all ~~unlicensed employees of *certified aides*~~
 7 **unlicensed employees working in** adult care homes who provide direct,
 8 individual care to residents and who do not administer medications.

9 ~~(3)~~(5) The secretary for aging and disability services shall fix, charge
 10 and collect a fee to cover all or any part of the costs of the licensing
 11 agency under this subsection. The fee shall be fixed by rules and
 12 regulations of the secretary for aging and disability services. The fee shall
 13 be remitted to the state treasurer in accordance with the provisions of
 14 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
 15 remittance, the state treasurer shall deposit the entire amount in the state
 16 treasury to the credit of the health occupations credentialing fee fund
 17 created by K.S.A. 39-979, and amendments thereto.

18 ~~(4)~~(6) The secretary for aging and disability services shall establish a
 19 state registry containing information about ~~unlicensed employees of~~
 20 ***certified nurse aides working in*** adult care homes who provide direct,
 21 individual care to residents and who do not administer medications in
 22 compliance with the requirements pursuant to PL 100-203, subtitle C, as
 23 amended November 5, 1990.

24 ~~(5)~~(7) No adult care home shall use an individual ~~as an unlicensed~~
 25 ~~employee of the~~ ***working as a certified nurse aide in an*** adult care home
 26 who provides direct, individual care to residents and who does not
 27 administer medications unless the facility has inquired of the state registry
 28 as to information contained in the registry concerning the individual.

29 ~~(6)~~(8) (A) ~~Beginning July 1, 1993,~~ The adult care home ~~must~~ *shall*
 30 require any ~~unlicensed employee of the~~ ***certified nurse aide working in*** an
 31 adult care home ~~who to complete an approved refresher course if such~~
 32 *employee:*

33 (i) Provides direct, individual care to residents ~~and who;~~

34 (ii) does not administer medications; and ~~who~~

35 (iii) since passing the examination required under paragraph (2) ~~of~~
 36 ~~this subsection,~~ has had a continuous period of 24 consecutive months
 37 ~~during none of which~~ *when* the ~~unlicensed employee~~ ***certified nurse aide***
 38 ***has not*** provided direct, individual care to residents ~~to complete an~~
 39 ~~approved refresher course.~~

40 (B) The secretary for aging and disability services shall prepare
 41 guidelines for the preparation and administration of refresher courses and
 42 shall approve or disapprove courses.

43 (d) Any person who has been employed as ~~an unlicensed employee of~~

1 ***a certified nurse aide working in*** an adult care home in another state may
2 be so employed in this state without an examination if the secretary for
3 aging and disability services determines that such other state requires
4 training or examination, or both, for such employees at least equal to that
5 required by this state.

6 (e) All medical care and treatment shall be given under the direction
7 of a ~~physician authorized~~ *person licensed by the state board of healing*
8 *arts to practice under the laws of this state medicine and surgery* and shall
9 be provided promptly as needed.

10 (f) No adult care home shall require as a condition of admission to or
11 as a condition to continued residence in the adult care home that a person
12 change from a supplier of medication needs of their choice to a supplier of
13 medication selected by the adult care home. Nothing in this subsection ~~(f)~~
14 shall be construed to abrogate or affect any agreements entered into prior
15 to the effective date of this act between the adult care home and any person
16 seeking admission to or resident of the adult care home.

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

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

26 ~~Sec. 2.~~ **3.** K.S.A. 65-5115 is hereby amended to read as follows: 65-
27 5115. (a) The secretary may require, as a condition to continued
28 employment by a home health agency that home health aides, within 90
29 days of employment, successfully complete an approved course of
30 instruction and take and satisfactorily pass an examination prescribed by
31 the secretary.

32 (b) A course of instruction for home health aides may be prepared and
33 administered by any home health agency or by any other qualified person.
34 A course of instruction prepared and administered by a home health
35 agency may be conducted on the premises of the home health agency
36 ~~which-that~~ prepared and ~~which~~ will administer the course of instruction.
37 The secretary shall not require home health aides to enroll in any particular
38 approved course of instruction, but the secretary shall prepare guidelines
39 for the preparation and administration of courses of instruction and shall
40 approve or disapprove courses of instruction.

41 (c) The secretary ~~may~~ *shall* not require that home health aides
42 complete the course of instruction and pass the examination established
43 pursuant to K.S.A. ~~39-936(e)(3)~~ *39-936(c)(5)*, and amendments thereto,

1 before enrolling in an approved course of instruction authorized by this
2 section. Home health aides may enroll in any approved course of
3 instruction.

4 (d) The examination required ~~under~~ *by* this section shall be prescribed
5 by the secretary and shall be reasonably related to the duties performed by
6 home health aides. The same examination shall be given by the secretary
7 to all home health aides.

8 (e) The secretary shall fix, charge and collect an examination fee to
9 cover all or any part of the cost of the examination required ~~under~~
10 ~~subsection (a)~~ *by this section*. The examination fee shall be fixed by rules
11 and regulations of the secretary. The examination fee shall be deposited in
12 the state treasury and credited to the state general fund.

13 Sec. ~~3~~ **4**. K.S.A. 39-936 and 65-5115 are hereby repealed.

14 Sec. ~~4~~ **5**. This act shall take effect and be in force from and after its
15 publication in the statute book.