

HOUSE BILL No. 2049

By Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

1-18

1 AN ACT concerning health professions and practices; relating to
2 unlicensed employees working in adult care homes; nurse aide courses
3 of instruction; prohibiting the secretary for aging and disability services
4 from requiring that such courses to be longer than 75 hours; amending
5 K.S.A. 2022 Supp. 39-936 and repealing the existing section.
6

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

8 Section 1. K.S.A. 2022 Supp. 39-936 is hereby amended to read as
9 follows: 39-936. (a) The presence of each resident in an adult care home
10 shall be covered by a statement provided at the time of admission, or prior
11 thereto, setting forth the general responsibilities and services and daily or
12 monthly charges for such responsibilities and services. Each resident shall
13 be provided with a copy of such statement, with a copy going to any
14 individual responsible for payment of such services and the adult care
15 home shall keep a copy of such statement in the resident's file. No such
16 statement shall be construed to relieve any adult care home of any
17 requirement or obligation imposed upon it by law or by any requirement,
18 standard or rule and regulation adopted pursuant thereto.

19 (b) A qualified person shall be in attendance at all times when
20 residents receive accommodation, board, care, training or treatment in
21 adult care homes. The licensing agency may establish necessary standards
22 and rules and regulations prescribing the number, qualifications, training,
23 standards of conduct and integrity for such qualified person attendant upon
24 the residents.

25 (c) (1) The licensing agency shall require unlicensed employees
26 working in an adult care home, except an adult care home licensed for the
27 provision of services to people with intellectual disability that has been
28 granted an exception by the secretary for aging and disability services
29 upon a finding by the licensing agency that an approved training program
30 for certified nurse aides is in place for such adult care home, who provide
31 direct, individual care to residents and who do not administer medications
32 to residents and who have not completed a course of education and
33 training relating to resident care and treatment approved by the secretary
34 for aging and disability services or are not participating in such a course to
35 complete successfully 40 hours of training in basic resident care skills.

1 Any unlicensed employee who has not completed at least 40 hours of the
2 certified nurse aide training approved by the secretary for aging and
3 disability services or who is not making progress to complete the course of
4 education and training required by the secretary for aging and disability
5 services under paragraph (2) within four months following completion of
6 such 40 hours shall not provide direct, individual care to residents.

7 (A) The 40 hours of training and remaining hours in the certified
8 nurse aide training shall be performed under the general supervision of a
9 course supervisor. The course supervisor shall be defined in rules and
10 regulations and approved by the secretary for aging and disability services.
11 ~~As used in this subparagraph, "supervision" means the same as defined in~~
12 ~~K.S.A. 65-1165, and amendments thereto.~~ The 40 hours of training may be
13 prepared and administered by an adult care home, hospital, as defined in
14 K.S.A. 65-425, and amendments thereto, hospice or program for all-
15 inclusive care for the elderly or by any other qualified course sponsor and
16 may be conducted on the premises of the adult care home, hospital,
17 hospice or program for all-inclusive care for the elderly. The 40 hours of
18 training required in this section shall be a part of an approved certified
19 nurse aide training course required by the secretary for aging and disability
20 services under subsection (c)(2). *As used in this subparagraph,*
21 *"supervision" means the same as defined in K.S.A. 65-1165, and*
22 *amendments thereto.*

23 (B) Each instructor under the supervision of a course supervisor of
24 the certified nurse aide training course shall be licensed to practice in
25 Kansas and in good standing. As used in this subparagraph, "in good
26 standing" includes the possession of a license, certificate or registration
27 that is subject to probation or non-disciplinary conditions, limitations or
28 restrictions, but does not include a license, certificate or registration that is
29 revoked, canceled or surrendered or subject to pending license-related
30 disciplinary action. *A license, certificate or registration shall not be*
31 *considered "in good standing" if the records of the Kansas department for*
32 *aging and disability services reflect that an individual has a prohibiting*
33 *offense, such license, certificate or registration shall not be considered "in*
34 *good standing." Any A license, certificate or registration that is subject to*
35 *disciplinary conditions, limitations or restrictions shall remain subject to*
36 *such conditions, limitations or restrictions.*

37 (C) Training for paid nutrition assistants shall consist of at least eight
38 hours of instruction, at a minimum, that meets the requirements of 42
39 C.F.R. § 483.160.

40 (2) The licensing agency may require unlicensed employees working
41 in an adult care home, except an adult care home licensed for the provision
42 of services to people with intellectual disability that has been granted an
43 exception by the secretary for aging and disability services upon a finding

1 by the licensing agency that an appropriate training program for certified
2 nurse aides is in place for such adult care home, who provide direct,
3 individual care to residents and who do not administer medications to
4 residents and who do not meet the definition of paid nutrition assistant
5 under K.S.A. 39-923(a)(27), and amendments thereto, after 90 days of
6 employment to successfully complete an approved course of instruction
7 and an examination relating to resident care and treatment as a condition to
8 continued employment by an adult care home.

9 (A) A course of instruction may be prepared and administered by any
10 adult care home, hospital, as defined in K.S.A. 65-425, and amendments
11 thereto, hospice or program for all-inclusive care for the elderly or by any
12 other qualified person. A course of instruction prepared and administered
13 by an adult care home, hospital, hospice or program for all-inclusive care
14 for the elderly may be conducted on the premises of the adult care home,
15 hospital, hospice or program for all-inclusive care for the elderly that
16 prepared and that will administer the course of instruction.

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

37 (3) The licensing agency shall not require unlicensed employees
38 working in an adult care home who provide direct, individual care to
39 residents and who do not administer medications to residents to enroll in
40 any particular approved course of instruction as a condition to the taking
41 of an examination, but the secretary for aging and disability services shall
42 prepare guidelines for the preparation and administration of courses of
43 instruction and shall approve or disapprove courses of instruction. *The*

1 *secretary shall not adopt guidelines that require such courses of*
2 *instruction to be longer than 75 hours.*

3 (4) Unlicensed employees working in adult care homes who provide
4 direct, individual care to residents and who do not administer medications
5 to residents may enroll in any approved course of instruction and upon
6 completion of the approved course of instruction shall be eligible to take
7 an examination. The examination shall be:

8 (A) Prescribed by the secretary for aging and disability services;

9 (B) reasonably related to the duties performed by unlicensed
10 employees working in adult care homes who provide direct, individual
11 care to residents and who do not administer medications to residents; and

12 (C) the same examination given by the secretary for aging and
13 disability services to all unlicensed employees working in adult care
14 homes who provide direct, individual care to residents and who do not
15 administer medications.

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

25 (6) The secretary for aging and disability services shall establish a
26 state registry containing information about certified nurse aides working in
27 adult care homes who provide direct, individual care to residents and who
28 do not administer medications in compliance with the requirements
29 pursuant to PL 100-203, subtitle C, as amended November 5, 1990.

30 (7) No adult care home shall use an individual working as a certified
31 nurse aide in an adult care home who provides direct, individual care to
32 residents and who does not administer medications unless the facility has
33 inquired of the state registry as to information contained in the registry
34 concerning the individual.

35 (8) (A) The adult care home shall require any certified nurse aide
36 working in an adult care home to complete an approved refresher course if
37 such employee:

38 (i) Provides direct, individual care to residents;

39 (ii) does not administer medications; and

40 (iii) since passing the examination required under paragraph (2), has
41 had a continuous period of 24 consecutive months when the certified nurse
42 aide has not provided direct, individual care to residents.

43 (B) The secretary for aging and disability services shall prepare

1 guidelines for the preparation and administration of refresher courses and
2 shall approve or disapprove courses.

3 (d) Any person who has been employed as a certified nurse aide
4 working in an adult care home in another state may be so employed in this
5 state without an examination if the secretary for aging and disability
6 services determines that such other state requires training or examination,
7 or both, for such employees at least equal to that required by this state.

8 (e) All medical care and treatment shall be given under the direction
9 of a person licensed by the state board of healing arts to practice medicine
10 and surgery and shall be provided promptly as needed.

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

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

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

27 Sec. 2. K.S.A. 2022 Supp. 39-936 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.