

HOUSE BILL No. 2619

By Committee on Aging and Long-term Care

2-2

1 AN ACT concerning adult care homes; relating to licensure; amending
2 K.S.A. 39-931a and K.S.A. 2011 Supp. 39-923 and 39-931 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2011 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 the mentally retarded, assisted
10 living facility, residential health care facility, home plus, boarding care
11 home and adult day care facility; all of which are classifications of adult
12 care homes and are required to be licensed by the secretary of aging.

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

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

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

31 (5) "Assisted living facility" means any place or facility caring for six
32 or more individuals not related within the third degree of relationship to
33 the administrator, operator or owner by blood or marriage and who, by
34 choice or due to functional impairments, may need personal care and may
35 need supervised nursing care to compensate for activities of daily living
36 limitations and in which the place or facility includes apartments for

1 residents and provides or coordinates a range of services including
2 personal care or supervised nursing care available 24 hours a day, seven
3 days a week, for the support of resident independence. The provision of
4 skilled nursing procedures to a resident in an assisted living facility is not
5 prohibited by this act. Generally, the skilled services provided in an
6 assisted living facility shall be provided on an intermittent or limited term
7 basis, or if limited in scope, a regular basis.

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

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

39 (8) "Boarding care home" means any place or facility operating 24
40 hours a day, seven days a week, caring for not more than 10 individuals
41 not related within the third degree of relationship to the operator or owner
42 by blood or marriage and who, due to functional impairment, need
43 supervision of activities of daily living but who are ambulatory and

1 essentially capable of managing their own care and affairs.

2 (9) "Adult day care" means any place or facility operating less than
3 24 hours a day caring for individuals not related within the third degree of
4 relationship to the operator or owner by blood or marriage and who, due to
5 functional impairment, need supervision of or assistance with activities of
6 daily living.

7 (10) "Place or facility" means a building or any one or more complete
8 floors of a building, or any one or more complete wings of a building, or
9 any one or more complete wings and one or more complete floors of a
10 building, and the term "place or facility" may include multiple buildings.

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

18 (12) "Supervised nursing care" means services provided by or under
19 the guidance of a licensed nurse with initial direction for nursing
20 procedures and periodic inspection of the actual act of accomplishing the
21 procedures; administration of medications and treatments as prescribed by
22 a licensed physician or dentist and assistance of residents with the
23 performance of activities of daily living.

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

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

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

34 (16) "Licensing agency" means the secretary of aging.

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

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

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

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

43 (21) "Operator" means an individual who operates an assisted living

1 facility or residential health care facility with fewer than 61 residents, a
2 home plus or adult day care facility and has completed a course approved
3 by the secretary of health and environment on principles of assisted living
4 and has successfully passed an examination approved by the secretary of
5 health and environment on principles of assisted living and such other
6 requirements as may be established by the secretary of health and
7 environment by rules and regulations.

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

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

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

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

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

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

29 (28) *"Medicaid program" means the Kansas program of medical*
30 *assistance for which federal or state moneys, or any combination thereof,*
31 *are expended, or any successor federal or state, or both, health insurance*
32 *program or waiver granted thereunder.*

33 (b) The term "adult care home" shall not include institutions operated
34 by federal or state governments, except institutions operated by the Kansas
35 commission on veterans affairs, hospitals or institutions for the treatment
36 and care of psychiatric patients, child care facilities, maternity centers,
37 hotels, offices of physicians or hospices which are certified to participate
38 in the medicare program under 42 code of federal regulations, chapter IV,
39 section 418.1 *et seq.*, and amendments thereto, and which provide services
40 only to hospice patients.

41 (c) Nursing facilities in existence on the effective date of this act
42 changing licensure categories to become residential health care facilities
43 shall be required to provide private bathing facilities in a minimum of 20%

1 of the individual living units.

2 (d) Facilities licensed under the adult care home licensure act on the
3 day immediately preceding the effective date of this act shall continue to
4 be licensed facilities until the annual renewal date of such license and may
5 renew such license in the appropriate licensure category under the adult
6 care home licensure act subject to the payment of fees and other conditions
7 and limitations of such act.

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

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

19 Sec. 2. K.S.A. 2011 Supp. 39-931 is hereby amended to read as
20 follows: 39-931.

21 (a) Whenever the licensing agency finds a substantial failure to
22 comply with the requirements, standards or rules and regulations
23 established under this act or that a receiver has been appointed under
24 K.S.A. 39-958, and amendments thereto, it shall make an order denying,
25 suspending or revoking the license after notice and a hearing in accordance
26 with the provisions of the Kansas administrative procedure act, *K.S.A. 77-
27 501 et seq., and amendments thereto*. Any applicant or licensee who is
28 aggrieved by the order may appeal such order in accordance with the
29 provisions of the Kansas judicial review act, *K.S.A. 77-601 et seq., and
30 amendments thereto*.

31 (b) *Except as provided in subsection (c), whenever the licensing
32 agency denies, suspends or revokes a license under this section, the
33 applicant or licensee shall not be eligible to apply for a new license or
34 reinstatement of a license for a period of two years from the date of denial,
35 suspension or revocation.*

36 (c)(1) *Any applicant or licensee issued an emergency order by the
37 licensing agency denying, suspending or revoking a license under this
38 section may apply for a new license or reinstatement of a license at any
39 time upon submission of a written waiver of any right conferred upon such
40 applicant or licensee under the Kansas administrative procedure act,
41 K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial
42 review act, K.S.A. 77-601 et seq., and amendments thereto, to the licensing
43 agency in a settlement agreement or other manner as approved by the*

1 *licensing agency.*

2 (2) *Any licensee issued a notice of intent to take disciplinary action*
3 *by the licensing agency under this section may enter into a settlement*
4 *agreement or other manner as approved by the licensing agency, with the*
5 *licensing agency, at any time upon submission of a written waiver of any*
6 *right conferred upon such licensee under the Kansas administrative*
7 *procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the*
8 *Kansas judicial review act, K.S.A. 77-601 et seq., and amendments*
9 *thereto.*

10 (d) *No person shall operate an intermediate care facility for the*
11 *mentally retarded of five beds or less, as defined by subsection (a)(4) of*
12 *K.S.A. 39-923, and amendments thereto, within this state unless:*

13 (A) *Issued a license by the licensing agency on or before January 1,*
14 *2012; or*

15 (B) *participated in the medicaid program as an intermediate care*
16 *facility for the mentally retarded of five beds or less, on or before January*
17 *1, 2012.*

18 Sec. 3. K.S.A. 39-931a is hereby amended to read as follows: 39-
19 931a. (a) As used in this section, the term "person" means any person who
20 is an applicant for a license to operate an adult care home or who is the
21 licensee of an adult care home and who has any direct or indirect
22 ownership interest of 25% or more in an adult care home or who is the
23 owner, in whole or in part, of any mortgage, deed of trust, note or other
24 obligation secured, in whole or in part, by such facility or any of the
25 property or assets of such facility, or who, if the facility is organized as a
26 corporation, is an officer or director of the corporation, or who, if the
27 facility is organized as a partnership, is a partner.

28 (b) Pursuant to K.S.A. 39-931, and amendments thereto, the licensing
29 agency may deny a license to any person and may suspend or revoke the
30 license of any person who:

31 (1) *Has willfully or repeatedly violated any provision of law or rules*
32 *and regulations adopted pursuant to article 9 of chapter 39 of the Kansas*
33 *Statutes Annotated and acts amendatory of the provisions thereof or*
34 *supplemental thereto;*

35 (2) *has had a license to operate an adult care home denied,*
36 *suspended, revoked or limited, has been censured or has had other*
37 *disciplinary action taken, or an application for a license denied, by the*
38 *proper licensing authority of another state, territory, District of Columbia*
39 *or other country, a certified copy of the record of such action of the other*
40 *jurisdiction being conclusive evidence thereof;*

41 (3) *has failed or refused to comply with the medicaid requirements of*
42 *title XIX of the social security act, or medicaid regulations under chapter*
43 *IV of title 42 of the code of federal regulations, a certified copy of the*

1 *record of such action being conclusive evidence thereof;*

2 *(4) has failed or refused to comply with the medicare requirements of*
3 *chapter 7 of title 42 of the United States code, or medicare regulations*
4 *under chapter IV of title 42 of the code of federal regulations, a certified*
5 *copy of the record of such action being conclusive evidence thereof;*

6 *(5) has been convicted of a felony;*

7 ~~(3)~~ (6) has failed to assure that nutrition, medication and treatment of
8 residents, including the use of restraints, are in accordance with acceptable
9 medical practices; ~~or~~

10 ~~(4)~~(7) has aided, abetted, sanctioned or condoned any violation of law
11 or rules and regulations adopted pursuant to article 9 of chapter 39 of the
12 Kansas Statutes Annotated; or

13 ~~(5)~~(8) has willfully admitted a person to a nursing facility in violation
14 of K.S.A. 39-968, and amendments thereto.

15 Sec. 4. K.S.A. 39-931a and K.S.A. 2011 Supp. 39-923 and 39-931 are
16 hereby repealed.

17 Sec. 5. This act shall take effect and be in force from and after its
18 publication in the statute book.