

As Amended by House Committee

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.

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
33 or more individuals not related within the third degree of relationship to
34 the administrator, operator or owner by blood or marriage and who, by
35 choice or due to functional impairments, may need personal care and may
36 need supervised nursing care to compensate for activities of daily living

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

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

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

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

1 supervision of activities of daily living but who are ambulatory and
2 essentially capable of managing their own care and affairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (29) "*Licensee*" means any person or persons acting jointly or
38 severally who are licensed by the secretary for aging and disability
39 services pursuant to the adult care home licensure act, K.S.A. 39-923 et
40 seq., and amendments thereto.

41 (b) The term "adult care home" shall not include institutions operated
42 by federal or state governments, except institutions operated by the Kansas
43 commission on veterans affairs, hospitals or institutions for the treatment

1 and care of psychiatric patients, child care facilities, maternity centers,
2 hotels, offices of physicians or hospices which are certified to participate
3 in the medicare program under 42 code of federal regulations, chapter IV,
4 section 418.1 et seq., and amendments thereto, and which provide services
5 only to hospice patients.

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

10 (d) Facilities licensed under the adult care home licensure act on the
11 day immediately preceding the effective date of this act shall continue to
12 be licensed facilities until the annual renewal date of such license and may
13 renew such license in the appropriate licensure category under the adult
14 care home licensure act subject to the payment of fees and other conditions
15 and limitations of such act.

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

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

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

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

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

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

34 (c) "Department" means the Kansas department for aging and
35 disability services.

36 (d) "Adult care home" means an assisted living facility **or residential**
37 **health care facility** licensed for less than 61 residents, ~~residential health~~
38 ~~care facility~~, home plus or adult day care as defined by K.S.A. 39-923, and
39 amendments thereto, or by the rules and regulations of the licensing
40 agency adopted pursuant to such section for which a license is required
41 under article 9 of chapter 39 of the Kansas Statutes Annotated, and
42 amendments thereto.

43 (e) "Licensee" shall have the meaning ascribed to such term in K.S.A.

1 39-923, and amendments thereto.

2 ~~(f) "Sponsor" means entities approved by the secretary to provide~~
3 ~~continuing education programs or courses on an ongoing basis under the~~
4 ~~operator registration act and in accordance with any rules and regulations~~
5 ~~promulgated by the secretary in accordance with the operator registration~~
6 ~~act.~~

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

11 (b) The secretary shall adopt by rules and regulations a system for
12 registering operators. Such rules and regulations shall include
13 qualifications for registration. Such rules and regulations shall require, at a
14 minimum, that the applicant:

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

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

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

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

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

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

26 (5) has filed an application; and

27 (6) has paid the required application fee.

28 New Sec. 5. On and after July 1, 2014, no adult care home shall be
29 operated unless under the supervision of an operator who holds a valid
30 registration as an operator issued pursuant to the operator registration act.

31 New Sec. 6. (a) Upon application and within two years of July 1,
32 2014, the secretary may waive the ~~registration~~ **application** fee and grant a
33 registration to any applicant so long as the applicant: (1) Has completed
34 the operator course approved by the secretary; and (2) has passed an
35 examination approved by the secretary prior to July 1, 2014.

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

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

43 (b) Upon making an application for a renewal of registration, such

1 individual shall pay a renewal fee to be fixed by rules and regulations and
2 shall submit evidence satisfactory to the secretary that during the period
3 immediately preceding application for renewal the applicant has
4 completed continuing education requirements as provided by the rules and
5 regulations. Any individual who submits an application for a renewal of
6 registration within 30 days after the date of expiration shall also pay a late
7 renewal fee fixed by rules and regulations. Any individual who submits an
8 application for a renewal of registration after the 30-day period following
9 the date of expiration shall be considered as having a registration that has
10 lapsed for failure to renew and shall be reissued a registration only after
11 the individual has been reinstated under subsection (d).

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

15 (d) An operator who allows their registration to lapse by failing to
16 renew may be reinstated upon payment of the renewal fee, the
17 reinstatement fee and submission of evidence demonstrating satisfactory
18 completion of any applicable program or a course of study established by
19 the secretary for reinstatement of persons whose registrations have lapsed
20 for failure to renew. The secretary shall adopt rules and regulations
21 establishing appropriate requirements for reinstatement of persons whose
22 registrations have lapsed for failure to renew.

23 (e) The expiration date of registrations issued or renewed shall be
24 established by rules and regulations of the secretary. Subject to the
25 provisions of this subsection, each registration shall be renewable on a
26 biennial basis upon the filing of a renewal application prior to the
27 expiration of an existing registration and upon payment of the renewal fee
28 established pursuant to rules and regulations. To provide for a system of
29 biennial renewal of registrations, the secretary may provide by rules and
30 regulations that registrations issued or renewed for the first time after July
31 1, 2014, may expire less than two years from the date of issuance or
32 renewal. In each case in which a registration is issued or renewed for a
33 period of time less than two years, the secretary shall prorate to the nearest
34 whole month the registration or renewal fee established pursuant to rules
35 and regulations. No proration shall be made under this subsection on
36 delinquent registration renewals.

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

43 ~~New Sec.-8.~~ 9. (a) The secretary may deny, refuse to renew, suspend

1 or revoke a registration where the operator or applicant:

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

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

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

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

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

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

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

18 (c) A person whose registration has been revoked may apply to the
19 secretary for reinstatement. The secretary shall have discretion to accept or
20 reject an application for reinstatement and may hold a hearing to consider
21 such reinstatement. An applicant for reinstatement shall submit an
22 application for reinstatement and a reinstatement fee established by the
23 secretary and fulfill the requirements under subsection (d) of section 7, and
24 amendments thereto.

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

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