

**As Further Amended by House Committee**

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*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

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

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

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

42 (8) "Boarding care home" means any place or facility operating 24  
43 hours a day, seven days a week, caring for not more than 10 individuals

1 not related within the third degree of relationship to the operator or owner  
2 by blood or marriage and who, due to functional impairment, need  
3 supervision of activities of daily living but who are ambulatory and  
4 essentially capable of managing their own care and affairs.

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

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

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

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

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

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

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

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

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

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

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

43 (20) "Individual living unit" means a private unit which includes, but

1 is not limited to, a toilet room with bathing facilities, sleeping, living and  
2 storage area and a lockable door.

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

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

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

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

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

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

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

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

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

43 (b) The term "adult care home" shall not include institutions operated

1 by federal or state governments, except institutions operated by the Kansas  
2 commission on veterans affairs, hospitals or institutions for the treatment  
3 and care of psychiatric patients, child care facilities, maternity centers,  
4 hotels, offices of physicians or hospices which are certified to participate  
5 in the medicare program under 42 code of federal regulations, chapter IV,  
6 section 418.1 et seq., and amendments thereto, and which provide services  
7 only to hospice patients.

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

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

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

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

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

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

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

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

36 (c) "Department" means the Kansas department for aging and  
37 disability services.

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

1 amendments thereto.

2 (e) "Licensee" shall have the meaning ascribed to such term in K.S.A.  
3 39-923, and amendments thereto.

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

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

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

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

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

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

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

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

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

28 (5) has filed an application; and

29 (6) has paid the required application fee.

30 New Sec. 5. On and after July 1, 2014, no adult care home shall be  
31 operated unless under the supervision of an operator who holds a valid  
32 registration as an operator issued pursuant to the operator registration act  
33 **or an adult care home administrator who holds a valid license as a**  
34 **licensed adult care home administrator pursuant to K.S.A. 65-3501 et**  
35 **seq., and amendments thereto.**

36 New Sec. 6. (a) Upon application and within two years of July 1,  
37 2014, the secretary may waive the ~~registration~~ ~~application~~ ~~fee~~  
38 **requirements of (b)(2) and (b)(6) of section 4, and amendments**  
39 **thereto**, and grant a registration to any applicant so long as the applicant:

40 (1) Has completed the operator course approved by the secretary; and (2)  
41 has passed an examination approved by the secretary prior to July 1, 2014.

42 (b) A person who has completed the operator course approved by the  
43 secretary and has passed an examination approved by the secretary prior to

1 July 1, 2014, and does not apply within two years of July 1, 2014, shall be  
2 considered to have a registration that has lapsed for failure to renew.

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

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

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

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

29 (e) The expiration date of registrations issued or renewed shall be  
30 established by rules and regulations of the secretary. Subject to the  
31 provisions of this subsection, each registration shall be renewable on a  
32 biennial basis upon the filing of a renewal application prior to the  
33 expiration of an existing registration and upon payment of the renewal fee  
34 established pursuant to rules and regulations. To provide for a system of  
35 biennial renewal of registrations, the secretary may provide by rules and  
36 regulations that registrations issued or renewed for the first time after July  
37 1, 2014, may expire less than two years from the date of issuance or  
38 renewal. In each case in which a registration is issued or renewed for a  
39 period of time less than two years, the secretary shall prorate to the nearest  
40 whole month the registration or renewal fee established pursuant to rules  
41 and regulations. No proration shall be made under this subsection on  
42 delinquent registration renewals.

43 **New Sec. 8. All fees under the operator registration act shall be**

1 **established by rules and regulations of the secretary. The amounts**  
2 **received for such fees shall be deposited in the state treasury in**  
3 **accordance with K.S.A. 75-4215, and amendments thereto, and shall**  
4 **be credited to the state licensure fee fund administered by the**  
5 **department pursuant to K.S.A. 39-930, and amendments thereto.**

6 New Sec. ~~8~~ **9.** (a) The secretary may deny, refuse to renew, suspend  
7 or revoke a registration where the operator or applicant:

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

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

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

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

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

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

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

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

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

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