

HOUSE Substitute for SENATE BILL No. 336

By Committee on Appropriations

3-23

9 AN ACT concerning adult care homes; relating to paid nutrition assis-
10 tants; amending K.S.A. 2003 Supp. 39-923 and 39-936 and repealing
11 the existing sections.

12

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

14 Section 1. K.S.A. 2003 Supp. 39-923 is hereby amended to read as
15 follows: 39-923. (a) As used in this act:

16 (1) "Adult care home" means any nursing facility, nursing facility for
17 mental health, intermediate care facility for the mentally retarded, as-
18 sisted living facility, residential health care facility, home plus, boarding
19 care home and adult day care facility, all of which classifications of adult
20 care homes are required to be licensed by the secretary of aging.

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

26 (3) "Nursing facility for mental health" means any place or facility
27 operating 24 hours a day, seven days a week caring for six or more indi-
28 viduals not related within the third degree of relationship to the admin-
29 istrator or owner by blood or marriage and who, due to functional im-
30 pairments, need skilled nursing care and special mental health services
31 to compensate for activities of daily living limitations.

32 (4) "Intermediate care facility for the mentally retarded" means any
33 place or facility operating 24 hours a day, seven days a week caring for
34 six or more individuals not related within the third degree of relationship
35 to the administrator or owner by blood or marriage and who, due to
36 functional impairments caused by mental retardation or related condi-
37 tions need services to compensate for activities of daily living limitations.

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

1 for 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 as-
6 sisted 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 ~~or~~ 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-day-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
21 basis.

22 (7) “Home plus” means any residence or facility caring for not more
23 than eight individuals not related within the third degree of relationship
24 to the operator or owner by blood or marriage unless the resident in need
25 of care is approved for placement by the secretary of the department of
26 social and rehabilitation services, and who, due to functional impairment,
27 needs personal care and may need supervised nursing care to compensate
28 for activities of daily living limitations. The level of care provided 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
31 a portion of one wing of the facility to a not less than five-bed and not
32 more than eight-bed home plus facility provided that the home plus fa-
33 cility remains separate from the adult care home, and each facility must
34 remain contiguous.

35 (8) “Boarding care home” means any place or facility operating 24
36 hours a day, seven days a week, caring for not more than 10 individuals
37 not related within the third degree of relationship to the operator or
38 owner by blood or marriage and who, due to functional impairment, need
39 supervision of activities of daily living but who are ambulatory and essen-
40 tially capable of managing their own care and affairs.

41 (9) “Adult day care” means any place or facility operating less than
42 24 hours a day caring for individuals not related within the third degree
43 of relationship to the operator or owner by blood or marriage and who,

1 due to functional impairment need supervision of or assistance with ac-
2 tivities of daily living.

3 (10) "Place or facility" means a building or any one or more complete
4 floors of a building, or any one or more complete wings of a building, or
5 any one or more complete wings and one or more complete floors of a
6 building, and the term "place or facility" may include multiple buildings.

7 (11) "Skilled nursing care" means services performed by or under the
8 immediate supervision of a registered professional nurse and additional
9 licensed nursing personnel. Skilled nursing includes administration of
10 medications and treatments as prescribed by a licensed physician or den-
11 tist; and other nursing functions which require substantial nursing judg-
12 ment and skill based on the knowledge and application of scientific
13 principles.

14 (12) "Supervised nursing care" means services provided by or under
15 the guidance of a licensed nurse with initial direction for nursing proce-
16 dures and periodic inspection of the actual act of accomplishing the pro-
17 cedures; administration of medications and treatments as prescribed by
18 a licensed physician or dentist and assistance of residents with the per-
19 formance of activities of daily living.

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

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

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

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

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

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

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

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

40 (21) "Operator" means an individual who operates an assisted living
41 facility or residential health care facility with fewer than 61 residents, a
42 home plus or adult day care facility and has completed a course approved
43 by the secretary of health and environment on principles of assisted living

1 and has successfully passed an examination approved by the secretary of
2 health and environment on principles of assisted living and such other
3 requirements as may be established by the secretary of health and envi-
4 ronment by rules and regulations.

5 (22) “Activities of daily living” means those personal, functional ac-
6 tivities required by an individual for continued well-being, including but
7 not limited to eating, nutrition, dressing, personal hygiene, mobility,
8 toileting.

9 (23) “Personal care” means care provided by staff to assist an indi-
10 vidual with, or to perform activities of daily living.

11 (24) “Functional impairment” means an individual has experienced
12 a decline in physical, mental and psychosocial well-being and as a result,
13 is unable to compensate for the effects of the decline.

14 (25) “Kitchen” means a food preparation area that includes a sink,
15 refrigerator and a microwave oven or stove.

16 (26) The term “intermediate personal care home” for purposes of
17 those individuals applying for or receiving veterans’ benefits means resi-
18 dential health care facility.

19 (27) *“Paid nutrition assistant” means an individual who is paid to*
20 *feed residents of an adult care home, or who is used under an arrangement*
21 *with another agency or organization, who is trained by a person meeting*
22 *nurse aide instructor qualifications as prescribed by 42 C.F.R. 483.152,*
23 *42 C.F.R. 483.160 and paragraph (h) of 42 C.F.R. 483.35, in effect on*
24 *October 27, 2003, and who provides such assistance under the supervision*
25 *of a registered professional or licensed practical nurse.*

26 (b) The term “adult care home” shall not include institutions oper-
27 ated by federal or state governments, except institutions operated by the
28 Kansas commission on veterans affairs, hospitals or institutions for the
29 treatment and care of psychiatric patients, child care facilities, maternity
30 centers, hotels, offices of physicians or hospices which are certified to
31 participate in the medicare program under 42 code of federal regulations,
32 chapter IV, section 418.1 *et seq.* and amendments thereto and which
33 provide services only to hospice patients.

34 (c) Nursing facilities in existence on the effective date of this act
35 changing licensure categories to become residential health care facilities
36 shall be required to provide private bathing facilities in a minimum of
37 20% of the individual living units.

38 (d) Facilities licensed under the adult care home licensure act on the
39 day immediately preceding the effective date of this act shall continue to
40 be licensed facilities until the annual renewal date of such license and
41 may renew such license in the appropriate licensure category under the
42 adult care home licensure act subject to the payment of fees and other
43 conditions and limitations of such act.

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

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

13 Sec. 2. K.S.A. 2003 Supp. 39-936 is hereby amended to read as fol-
14 lows: 39-936. (a) The presence of each resident in an adult care home
15 shall be covered by a statement provided at the time of admission, or
16 prior thereto, setting forth the general responsibilities and services and
17 daily or monthly charges for such responsibilities and services. Each res-
18 ident shall be provided with a copy of such statement, with a copy going
19 to any individual responsible for payment of such services and the adult
20 care home shall keep a copy of such statement in the resident's file. No
21 such statement shall be construed to relieve any adult care home of any
22 requirement or obligation imposed upon it by law or by any requirement,
23 standard or rule and regulation adopted pursuant thereto.

24 (b) A qualified person or persons shall be in attendance at all times
25 upon residents receiving accommodation, board, care, training or treat-
26 ment in adult care homes. The licensing agency may establish necessary
27 standards and rules and regulations prescribing the number, qualifica-
28 tions, training, standards of conduct and integrity for such qualified per-
29 son or persons attendant upon the residents.

30 (c) (1) The licensing agency shall require unlicensed employees of
31 an adult care home, except an adult care home licensed for the provision
32 of services to the mentally retarded which has been granted an exception
33 by the secretary of ~~health and environment~~ *aging* upon a finding by the
34 licensing agency that an appropriate training program for unlicensed em-
35 ployees is in place for such adult care home, employed on and after the
36 effective date of this act who provide direct, individual care to residents
37 and who do not administer medications to residents and who have not
38 completed a course of education and training relating to resident care
39 and treatment approved by the secretary of health and environment or
40 are not participating in such a course on the effective date of this act to
41 complete successfully 40 hours of training in basic resident care skills.
42 Any unlicensed person who has not completed 40 hours of training re-
43 lating to resident care and treatment approved by the secretary of health

1 and environment shall not provide direct, individual care to residents.
2 The 40 hours of training shall be supervised by a registered professional
3 nurse and the content and administration thereof shall comply with rules
4 and regulations adopted by the secretary of health and environment. The
5 40 hours of training may be prepared and administered by an adult care
6 home or by any other qualified person and may be conducted on the
7 premises of the adult care home. The 40 hours of training required in
8 this section shall be a part of any course of education and training required
9 by the secretary of health and environment under subsection (c)(2).
10 *Training for paid nutrition assistants shall consist of at least eight hours*
11 *of instruction, at a minimum, which meets the requirements of 42 C.F.R. §*
12 *483.160.*

13 (2) The licensing agency may require unlicensed employees of an
14 adult care home, except an adult care home licensed for the provision of
15 services to the mentally retarded which has been granted an exception
16 by the secretary of health and environment upon a finding by the licensing
17 agency that an appropriate training program for unlicensed employees is
18 in place for such adult care home, who provide direct, individual care to
19 residents and who do not administer medications to residents *and who*
20 *do not meet the definition of paid nutrition assistance under paragraph*
21 *(a)(27) of K.S.A. 39-923, and amendments thereto* after 90 days of em-
22 ployment to successfully complete an approved course of instruction and
23 an examination relating to resident care and treatment as a condition to
24 continued employment by an adult care home. A course of instruction
25 may be prepared and administered by any adult care home or by any
26 other qualified person. A course of instruction prepared and administered
27 by an adult care home may be conducted on the premises of the adult
28 care home which prepared and which will administer the course of in-
29 struction. The licensing agency shall not require unlicensed employees of
30 an adult care home who provide direct, individual care to residents and
31 who do not administer medications to residents to enroll in any particular
32 approved course of instruction as a condition to the taking of an exami-
33 nation, but the secretary of health and environment shall prepare guide-
34 lines for the preparation and administration of courses of instruction and
35 shall approve or disapprove courses of instruction. Unlicensed employees
36 of adult care homes who provide direct, individual care to residents and
37 who do not administer medications to residents may enroll in any ap-
38 proved course of instruction and upon completion of the approved course
39 of instruction shall be eligible to take an examination. The examination
40 shall be prescribed by the secretary of health and environment, shall be
41 reasonably related to the duties performed by unlicensed employees of
42 adult care homes who provide direct, individual care to residents and who
43 do not administer medications to residents and shall be the same exam-

1 ination given by the secretary of health and environment to all unlicensed
2 employees of adult care homes who provide direct, individual care to
3 residents and who do not administer medications.

4 (3) The secretary of health and environment shall fix, charge and
5 collect a fee to cover all or any part of the costs of the licensing agency
6 under this subsection (c). The fee shall be fixed by rules and regulations
7 of the secretary of health and environment. The fee shall be remitted to
8 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
9 and amendments thereto. Upon receipt of each such remittance, the state
10 treasurer shall deposit the entire amount in the state treasury to the credit
11 of the state general fund.

12 (4) The secretary of health and environment shall establish a state
13 registry containing information about unlicensed employees of adult care
14 homes who provide direct, individual care to residents and who do not
15 administer medications in compliance with the requirements pursuant to
16 PL 100-203, Subtitle C, as amended November 5, 1990.

17 (5) No adult care home shall use an individual as an unlicensed em-
18 ployee of the adult care home who provides direct, individual care to
19 residents and who does not administer medications unless the facility has
20 inquired of the state registry as to information contained in the registry
21 concerning the individual.

22 (6) Beginning July 1, 1993, the adult care home must require any
23 unlicensed employee of the adult care home who provides direct, indi-
24 vidual care to residents and who does not administer medications and
25 who since passing the examination required under paragraph (2) of this
26 subsection has had a continuous period of 24 consecutive months during
27 none of which the unlicensed employee provided direct, individual care
28 to residents to complete an approved refresher course. The secretary of
29 health and environment shall prepare guidelines for the preparation and
30 administration of refresher courses and shall approve or disapprove
31 courses.

32 (d) Any person who has been employed as an unlicensed employee
33 of an adult care home in another state may be so employed in this state
34 without an examination if the secretary of health and environment deter-
35 mines that such other state requires training or examination, or both, for
36 such employees at least equal to that required by this state.

37 (e) All medical care and treatment shall be given under the direction
38 of a physician authorized to practice under the laws of this state and shall
39 be provided promptly as needed.

40 (f) No adult care home shall require as a condition of admission to
41 or as a condition to continued residence in the adult care home that a
42 person change from a supplier of medication needs of their choice to a
43 supplier of medication selected by the adult care home. Nothing in this

1 subsection (f) shall be construed to abrogate or affect any agreements
2 entered into prior to the effective date of this act between the adult care
3 home and any person seeking admission to or resident of the adult care
4 home.

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

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

14 Sec. 3. K.S.A. 2003 Supp. 39-923 and 39-936 are hereby repealed.

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