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As Amended by House Committee

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 430

By Committee on Judiciary

2-3

AN ACT ~~concerning adult care homes, relating to results of a survey or inspection reports, relating to continuing education for staff of adult care homes;~~ amending K.S.A. 39-935 ~~and K.S.A. 2003 Supp. 39-936~~ and repealing the existing section ~~sections;~~ relating to adult care homes; concerning the use of inspection reports; amending K.S.A. 39-935 and repealing the existing section.

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

~~Section 1. K.S.A. 39-935 is hereby amended to read as follows: 39-935. (a) Inspections shall be made and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multicounty health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any adult care home at any time upon presenting adequate identification to carry out the requirements of this section and the provisions and purposes of this act, and failure to provide such access shall constitute grounds for denial or revocation of license. A copy of any inspection reports required by this section shall be furnished to the applicant, except that a copy of the preliminary inspection report signed jointly by a representative of the adult care home and the inspector shall be left with the applicant when an inspection under this section is completed. This preliminary inspection report shall constitute the final record of deficiencies assessed against the adult care home during the inspection; all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary inspection report.~~
~~(b) The authorized agents and representatives of the licensing agency shall conduct at least one unannounced inspection of each adult care home within 15 months of any previous inspection for the purpose of determining whether the adult care home is complying with applicable~~

1 statutes and rules and regulations relating to the health and safety of the
2 residents of the adult care home. The statewide average interval between
3 inspections shall not exceed 12 months.

4 — (c) Every adult care home shall post in a conspicuous place a notice
5 indicating that the most recent inspection report and related documents
6 may be examined in the office of the administrator of the adult care home.
7 Upon request, every adult care home shall provide to any person a copy
8 of the most recent inspection report and related documents, provided the
9 person requesting such report agrees to pay a reasonable charge to cover
10 copying costs.

11 — (d) (1) **The Except as provided in subparagraph (3), the results of**
12 a survey or inspection report of an adult care home that is conducted
13 under article 9 of chapter 39 of the Kansas Statutes Annotated, and
14 amendments thereto, or in accordance with the regulations, guidelines
15 and procedures issued by the United States secretary of health and human
16 services under Titles XVIII and XIX of the social security act, 42 U.S.C.
17 301, as amended on the effective date of this act, shall be used solely to
18 determine the adult care home's compliance with licensure, certification
19 or program participation requirements with state law.

20 — (2) **The Except as provided in subparagraph (3), the results of a**
21 survey or inspection report of an adult care home shall not be used nor
22 be admissible evidence in any civil action or proceeding that is pending
23 in any court unless such action or proceeding is an appeal of an admin-
24 istrative action involving licensure, certification or program participation
25 requirements under state or federal law or is an action by any officer,
26 employee or agent of the state to enforce state law. Nothing in this section
27 prohibits the results of a survey or inspection report of an adult care home
28 from being used in a criminal investigation or prosecution.

29 — (3) **Nothing in this section shall prohibit the use and admissi-**
30 bility in evidence of one or more excerpts from any such survey or
31 inspection report that relates to the allegations asserted by the
32 named plaintiff, if the court determines on the record, following a
33 hearing outside the presence of the jury, that every such excerpt is
34 otherwise admissible under the rules of evidence of the code of civil
35 procedure.

36 — (3) (4) For purposes of this subsection, “results of a survey or in-
37 spection report of an adult care home” shall include any and all docu-
38 ments, including any written report or statement of deficiencies and all
39 findings and deficiencies cited in the statement or report, prepared by
40 any officer, employee or agent of the state of Kansas during the course of
41 or otherwise in connection with any inspection, survey or investigation of
42 any licensed adult care home that is conducted to determine compliance
43 with licensing, certification or program participation requirements under

1 ~~any provision of state or federal law.~~

2 ~~—Sec. 2. K.S.A. 2003 Supp. 39-936 is hereby amended to read as~~
3 ~~follows: 39-936. (a) The presence of each resident in an adult care~~
4 ~~home shall be covered by a statement provided at the time of ad-~~
5 ~~mission, or prior thereto, setting forth the general responsibilities~~
6 ~~and services and daily or monthly charges for such responsibilities~~
7 ~~and services. Each resident shall be provided with a copy of such~~
8 ~~statement, with a copy going to any individual responsible for pay-~~
9 ~~ment of such services and the adult care home shall keep a copy of~~
10 ~~such statement in the resident's file. No such statement shall be~~
11 ~~construed to relieve any adult care home of any requirement or~~
12 ~~obligation imposed upon it by law or by any requirement, standard~~
13 ~~or rule and regulation adopted pursuant thereto.~~

14 ~~—(b) A qualified person or persons shall be in attendance at all~~
15 ~~times upon residents receiving accommodation, board, care, train-~~
16 ~~ing or treatment in adult care homes. The licensing agency may~~
17 ~~establish necessary standards and rules and regulations prescribing~~
18 ~~the number, qualifications, training, standards of conduct and in-~~
19 ~~tegrity for such qualified person or persons attendant upon the~~
20 ~~residents.~~

21 ~~—(c) (1) The licensing agency shall require unlicensed employees~~
22 ~~of an adult care home, except an adult care home licensed for the~~
23 ~~provision of services to the mentally retarded which has been~~
24 ~~granted an exception by the secretary of health and environment~~
25 ~~upon a finding by the licensing agency that an appropriate training~~
26 ~~program for unlicensed employees is in place for such adult care~~
27 ~~home, employed on and after the effective date of this act who pro-~~
28 ~~vide direct, individual care to residents and who do not administer~~
29 ~~medications to residents and who have not completed a course of~~
30 ~~education and training relating to resident care and treatment ap-~~
31 ~~proved by the secretary of health and environment or are not par-~~
32 ~~ticipating in such a course on the effective date of this act to com-~~
33 ~~plete successfully 40 hours of training in basic resident care skills.~~
34 ~~Any unlicensed person who has not completed 40 hours of training~~
35 ~~relating to resident care and treatment approved by the secretary~~
36 ~~of health and environment shall not provide direct, individual care~~
37 ~~to residents. The 40 hours of training shall be supervised by a reg-~~
38 ~~istered professional nurse and the content and administration~~
39 ~~thereof shall comply with rules and regulations adopted by the sec-~~
40 ~~retary of health and environment. The 40 hours of training may be~~
41 ~~prepared and administered by an adult care home or by any other~~
42 ~~qualified person and may be conducted on the premises of the adult~~
43 ~~care home. The 40 hours of training required in this section shall~~

1 ~~be a part of any course of education and training required by the~~
2 ~~secretary of health and environment under subsection (c)(2).~~

3 ~~—(2) The licensing agency may require unlicensed employees of~~
4 ~~an adult care home, except an adult care home licensed for the pro-~~
5 ~~vision of services to the mentally retarded which has been granted~~
6 ~~an exception by the secretary of health and environment upon a~~
7 ~~finding by the licensing agency that an appropriate training pro-~~
8 ~~gram for unlicensed employees is in place for such adult care home,~~
9 ~~who provide direct, individual care to residents and who do not~~
10 ~~administer medications to residents after 90 days of employment to~~
11 ~~successfully complete an approved course of instruction and an ex-~~
12 ~~amination relating to resident care and treatment as a condition to~~
13 ~~continued employment by an adult care home. A course of instruc-~~
14 ~~tion may be prepared and administered by any adult care home or~~
15 ~~by any other qualified person. A course of instruction prepared and~~
16 ~~administered by an adult care home may be conducted on the prem-~~
17 ~~ises of the adult care home which prepared and which will admin-~~
18 ~~ister the course of instruction. The licensing agency shall not re-~~
19 ~~quire unlicensed employees of an adult care home who provide~~
20 ~~direct, individual care to residents and who do not administer med-~~
21 ~~ications to residents to enroll in any particular approved course of~~
22 ~~instruction as a condition to the taking of an examination, but the~~
23 ~~secretary of health and environment shall prepare guidelines for~~
24 ~~the preparation and administration of courses of instruction and~~
25 ~~shall approve or disapprove courses of instruction. Unlicensed em-~~
26 ~~ployees of adult care homes who provide direct, individual care to~~
27 ~~residents and who do not administer medications to residents may~~
28 ~~enroll in any approved course of instruction and upon completion~~
29 ~~of the approved course of instruction shall be eligible to take an~~
30 ~~examination. The examination shall be prescribed by the secretary~~
31 ~~of health and environment, shall be reasonably related to the duties~~
32 ~~performed by unlicensed employees of adult care homes who pro-~~
33 ~~vide direct, individual care to residents and who do not administer~~
34 ~~medications to residents and shall be the same examination given~~
35 ~~by the secretary of health and environment to all unlicensed em-~~
36 ~~ployees of adult care homes who provide direct, individual care to~~
37 ~~residents and who do not administer medications.~~

38 ~~—(3) The secretary of health and environment shall fix, charge~~
39 ~~and collect a fee to cover all or any part of the costs of the licensing~~
40 ~~agency under this subsection (c). The fee shall be fixed by rules and~~
41 ~~regulations of the secretary of health and environment. The fee shall~~
42 ~~be remitted to the state treasurer in accordance with the provisions~~
43 ~~of K.S.A. 75-4215, and amendments thereto. Upon receipt of each~~

1 ~~such remittance, the state treasurer shall deposit the entire amount~~
2 ~~in the state treasury to the credit of the state general fund.~~

3 ~~(4) The secretary of health and environment shall establish a~~
4 ~~state registry containing information about unlicensed employees~~
5 ~~of adult care homes who provide direct, individual care to residents~~
6 ~~and who do not administer medications in compliance with the~~
7 ~~requirements pursuant to PL 100-203, Subtitle C, as amended No-~~
8 ~~vember 5, 1990.~~

9 ~~(5) No adult care home shall use an individual as an unlicensed~~
10 ~~employee of the adult care home who provides direct, individual~~
11 ~~care to residents and who does not administer medications unless~~
12 ~~the facility has inquired of the state registry as to information con-~~
13 ~~tained in the registry concerning the individual.~~

14 ~~(6) Beginning July 1, 1993, the adult care home must require~~
15 ~~any unlicensed employee of the adult care home who provides di-~~
16 ~~rect, individual care to residents and who does not administer med-~~
17 ~~ications and who since passing the examination required under par-~~
18 ~~agraph (2) of this subsection has had a continuous period of 24~~
19 ~~consecutive months during none of which the unlicensed employee~~
20 ~~provided direct, individual care to residents to complete an ap-~~
21 ~~proved refresher course. The secretary of health and environment~~
22 ~~shall prepare guidelines for the preparation and administration of~~
23 ~~refresher courses and shall approve or disapprove courses.~~

24 ~~(d) Any person who has been employed as an unlicensed em-~~
25 ~~ployee of an adult care home in another state may be so employed~~
26 ~~in this state without an examination if the secretary of health and~~
27 ~~environment determines that such other state requires training or~~
28 ~~examination, or both, for such employees at least equal to that re-~~
29 ~~quired by this state.~~

30 ~~(e) All medical care and treatment shall be given under the di-~~
31 ~~rection of a physician authorized to practice under the laws of this~~
32 ~~state and shall be provided promptly as needed.~~

33 ~~(f) No adult care home shall require as a condition of admission~~
34 ~~to or as a condition to continued residence in the adult care home~~
35 ~~that a person change from a supplier of medication needs of their~~
36 ~~choice to a supplier of medication selected by the adult care home.~~
37 ~~Nothing in this subsection (f) shall be construed to abrogate or af-~~
38 ~~fect any agreements entered into prior to the effective date of this~~
39 ~~act between the adult care home and any person seeking admission~~
40 ~~to or resident of the adult care home.~~

41 ~~(g) Except in emergencies as defined by rules and regulations~~
42 ~~of the licensing agency and except as otherwise authorized under~~
43 ~~federal law, no resident may be transferred from or discharged from~~

1 ~~***an adult care home involuntarily unless the resident or legal guard-***~~
2 ~~***ian of the resident has been notified in writing at least 30 days in***~~
3 ~~***advance of a transfer or discharge of the resident.***~~

4 ~~***— (h) No resident who relies in good faith upon spiritual means or***~~
5 ~~***prayer for healing shall, if such resident objects thereto, be required***~~
6 ~~***to undergo medical care or treatment.***~~

7 ~~***— (i) (1) On and after July 1, 2004:***~~

8 ~~***— (A) In addition to the continuing education requirements for a li-***~~
9 ~~***censee with an active nursing license pursuant to K.S.A. 65-1117, and***~~
10 ~~***amendments thereto, such licensee shall earn two additional hours of con-***~~
11 ~~***tinuing education, if such licensee is employed by an adult care home and***~~
12 ~~***is providing direct, individual care to residents.***~~

13 ~~***— (B) In addition to the continuing education requirements for a cer-***~~
14 ~~***tified medication aide pursuant to K.S.A. 65-1,121, and amendments***~~
15 ~~***thereto, such certified medication aide shall earn two additional hours of***~~
16 ~~***continuing education, if such aide is employed by an adult care home and***~~
17 ~~***is providing direct, individual care to residents.***~~

18 ~~***— (C) In addition to the training requirements and refresher course for***~~
19 ~~***an unlicensed employee of an adult care home pursuant to subsection (c),***~~
20 ~~***such employee shall earn two additional hours of training, if such em-***~~
21 ~~***ployee is providing direct, individual care to residents.***~~

22 ~~***— (2) The continuing education or training requirements of this subsec-***~~
23 ~~***tion shall:***~~

24 ~~***— (A) Conform with the regulations of the centers for medicare/medi-***~~
25 ~~***caid services concerning enhanced quality measures;***~~

26 ~~***— (B) be approved by the quality improvement organization for Kan-***~~
27 ~~***sas; and***~~

28 ~~***— (C) be reasonably related to the duties performed by the licensees,***~~
29 ~~***aides and employees.***~~

30 ~~***— Sec. 2. 3. K.S.A. 39-935 is and K.S.A. 2003 Supp. 39-936 are***~~
31 ~~***hereby repealed.***~~

32 ~~***— Sec. 3. 4. This act shall take effect and be in force from and after its***~~
33 ~~***publication in the Kansas register.***~~

34 **Section 1. K.S.A. 39-935 is hereby amended to read as follows:**
35 **39-935. (a) Inspections shall be made and reported in writing by**
36 **the authorized agents and representatives of the licensing agency**
37 **and state fire marshal, and of the county, city-county and multi-**
38 **county health departments as often and in the manner and form**
39 **prescribed by the rules and regulations promulgated under the**
40 **provisions of this act. Access shall be given to the premises of any**
41 **adult care home at any time upon presenting adequate identifi-**
42 **cation to carry out the requirements of this section and the pro-**
43 **visions and purposes of this act, and failure to provide such access**

1 shall constitute grounds for denial or revocation of license. A copy
2 of any inspection reports required by this section shall be fur-
3 nished to the applicant, except that a copy of the preliminary in-
4 spection report signed jointly by a representative of the adult care
5 home and the inspector shall be left with the applicant when an
6 inspection under this section is completed. This preliminary in-
7 spection report shall constitute the final record of deficiencies as-
8 sessed against the adult care home during the inspection, all de-
9 ficiencies shall be specifically listed and no additional deficiencies
10 based upon the data developed at that time shall be assessed at a
11 later time. An exit interview shall be conducted in conjunction with
12 the joint signing of the preliminary inspection report.

13 (b) The authorized agents and representatives of the licensing
14 agency shall conduct at least one unannounced inspection of each
15 adult care home within 15 months of any previous inspection for
16 the purpose of determining whether the adult care home is com-
17 plying with applicable statutes and rules and regulations relating
18 to the health and safety of the residents of the adult care home.
19 The statewide average interval between inspections shall not ex-
20 ceed 12 months.

21 (c) Every adult care home shall post in a conspicuous place a
22 notice indicating that the most recent inspection report and re-
23 lated documents may be examined in the office of the administra-
24 tor of the adult care home. Upon request, every adult care home
25 shall provide to any person a copy of the most recent inspection
26 report and related documents, provided the person requesting
27 such report agrees to pay a reasonable charge to cover copying
28 costs.

29 (d) *Notwithstanding any other provision of law, no inspection report*
30 *shall be admissible as evidence in any judicial proceeding. For purposes*
31 *of this subsection, "inspection report" shall include any documents pre-*
32 *pared by any officer, employee or agent of the state of Kansas during the*
33 *course of or otherwise in connection with any inspection, investigation or*
34 *survey of any licensed adult care home conducted to determine compli-*
35 *ance with any licensing, certification or program participation require-*
36 *ments under any provision of federal or state law. However, nothing in*
37 *this section shall prohibit the use and admissibility in evidence of one or*
38 *more excerpts from any such inspection report that directly refer and*
39 *relate to the named plaintiff if the district court determines on the record,*
40 *after a hearing outside the presence of the jury, that every such excerpt*
41 *is otherwise admissible under the rules of evidence contained in chapter*
42 *60, article 4 of the Kansas Statutes Annotated, and amendments thereto.*

43 **Sec. 2. K.S.A. 39-935 is hereby repealed.**

1 **Sec. 3. This act shall take effect and be in force from and after**
2 **its publication in the Kansas register.**
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